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“DOMESTIC VIOLENCE MEDIATION: JUSTICE OR FORCED SETTLEMENT”

AUTHORED BY - STUTI SINHA & MRS. YAMINI MISHRA

1.ABSTRACT

The increasing use of mediation in domestic violence cases is a complex issue that throws up a whole host of problems at the intersection of restorative justice and coerced compromise. While mediation is designed to reduce the adversarial nature of litigation and promote consensual solutions, its use in cases involving domestic violence is a major concern - it raises all sorts of legal and ethical red flags.

Through a close examination of the Indian legal system, court trends and key principles, this paper highlights the inherent tension between the idea that mediation is voluntary, and the harsh reality that often those in abusive relationships feel they have no choice. It also takes a hard look at how courts have been allowing criminal cases to be dropped because both parties have agreed to settle, thereby blurring the line between sorting out private disputes and public justice.

Looking beyond the doctrinal side of things is the research in this paper which draws on responses from people who've actually gone through mediation in domestic violence cases - and what it uncovers is a pattern of pressure, compromise and downright dissatisfaction. The paper concludes that while mediation may have a limited role to play in certain situations, allowing it to be used without some kind of regulation risks silencing victims and watering down the seriousness of domestic violence as a crime.

2.INTRODUCTION

Domestic violence is a really tough nut to crack in terms of legal thinking - its got one foot firmly in the private sphere of family life and the other on the public domain of state action. Its not just a dispute between two individuals, its a symptom of deeper structural issues like gender inequality, economic power imbalances and the way society treats people. As a result the law doesn't view domestic violence as just a personal squabble between two people, but as a serious breach of human rights that deserves serious attention and action.

In India, the way the law deals with domestic violence has changed over time. Traditionally its been handled through criminal law - Section 498A¹ of the Indian Penal Code comes to mind - but the passage of the Protection of Women from Domestic Violence Act in 2005 marked a major shift. That Act introduced a new framework that focuses on giving women their rights – it provides immediate protection orders, rights to a home, and money - and it does this in a civil rather than a purely criminal way. What this dual framework (criminal and civil) does is try to balance protection for the victim with a need for justice and deterrence.

But alongside all this progress, there's been a worrying trend in judicial and institutional practice - a shift towards using mediation as a way of resolving disputes in domestic violence and matrimonial cases. Family courts, High Courts, and even lower courts are increasingly sending these cases to mediation centres. This is partly driven by a desire to unclog the courts and find more consensual solutions, but also partly because there's a view that family disputes are better resolved through talking rather than fighting in court.

Mediation is a keystone component of Alternative Dispute Resolution, built on the idea that parties should be able to come together in a calm and open environment and hammer out a mutually acceptable solution. The model works pretty well in many cases - commercial disputes, civil disagreements etc - as it's efficient, cost effective and people seem pretty happy with the results. The key principles underpinning it though are voluntariness, neutrality, confidentiality, and the party having the autonomy to choose their own path. However, when we try to apply this approach to domestic violence cases, things start to fall apart.

The main problem is that the idea of two people being able to negotiate on a level playing field just doesn't hold up when one party is violent or abusive. In cases like this there's unequal footing, fear and a whole lot of control making it impossible for the victim to engage in any meaningful way. They may well be tied down financially, emotionally or socially. So, the real question becomes - can a process that relies on equality and voluntariness actually work when what you've got is inequality and coercion?

One of the main worries is that mediation may actually end up reinforcing the existing power imbalance and putting the victim in an even tougher spot. The focus on finding a compromise can be pretty intense and may force victims to choose between being a good family member, or

¹ Indian Penal Code, 1860 (Act no. 45 of 1860)

socially acceptable, over their own safety and rights. It's a pretty fraught issue.

The courts haven't helped. In a case called *B.S. Joshi v. State of Haryana*,² the Supreme Court went out of their way to stress the importance of settlement in family disputes and actually quashed some criminal proceedings because the parties had come to an agreement. They took this approach in other cases as well - *Gian Singh v. State of Punjab*³ and *Narinder Singh v. State of Punjab*⁴. On the one hand this is all well and good as it reduces the amount of time people spend in court and makes for happier families, but on the other hand it's also pushed the idea that settlement is sometimes more important than getting it right.

This all happens in a pretty contentious space. On one side mediation is a great way to get out of court, fast and with a result that works for everyone. On the other its a whole different story - coercion, victims being silenced, and the overall effectiveness of the justice system being watered down. In this paper we want to take a closer look at this tension and work out whether mediation in domestic violence cases is truly about doing justice, or if its just a convenient way to get things settled quickly.

We will look at the legal framework, how the courts view mediation, and what actually happens in real life. We'll also be bringing some real world data into the mix to see how it all plays out in practice.

Ultimately, this inquiry goes deeper than just whether mediation is a good process to use in a case involving domestic violence, but also raises a bigger question: should domestic violence, which is a form of harm, ever be something that gets negotiated or do we just have to have some kind of official and accountable way of dealing with it?

Domestic violence is a real confusing case in legal terms because on the one hand, its something that happens in private, but on the other hand, its a big public issue. Historically, it's been handled by the criminal justice system but in India, there's also civil law side to it too. The Protection of Women from Domestic Violence Act of 2005 (PWDVA)⁵ has given domestic violence the attention its due. Nonetheless, of late, theres a growing tendency to get mediation involved especially in family courts and when there are disputes over the marriage.

² *B.S. Joshi v. State of Harayana & Anr* (2003) 4SCC 675

³ *Gian Singh v. State of Punjab* (2012) 10 SCC 303

⁴ *Narinder Singh & Ors. v. State of Punjab & Anr.* (2014) 6 SCC 466

⁵ Act 43 of 2005

Mediation is based on the idea that people can just talk things over and come to a mutually acceptable agreement. But that just doesn't hold up when you're dealing with a situation where one person has all the power and the other person is basically powerless. The idea that both parties have equal bargaining power just falls apart in a relationship where there is abuse, fear and someone is entirely dependent on the other.

This paper is looking at the question of whether mediation in cases of domestic violence does any real good or if its just a way of getting a quick settlement at the expense of the victim being able to stand up for themselves and get justice.

3. LITERATURE REVIEW

Everyone involved in ADR have always been saying how mediation is just a more humane and practical way of sorting things out than going to court. But a lot of left leaning legal scholars have been saying that when you use mediation in domestic violence cases its a bad idea. People like Martha Fineman and Catharine MacKinnon have pointed out that the idea of private resolution of disputes doesn't really take into account the fact that there are all sorts of inequalities built in.

In India too, a lot of the research being done on this says that the mediation centers that get attached to the courts are more worried about getting the cases resolved quickly than they are about making sure things are fair. And what shows up in a lot of the research is that women are often the ones ending up agreeing to a settlement because of social pressure or because they are scared of the hassle and cost of a long court case.

4. HYPOTHESIS

4.1 Objective Of The Study

This study is looking at mediation in cases of domestic violence and trying to figure out whether or not its actually fair. Its looking at court records and trying to identify some of the dangers of getting a mediated settlement. And its trying to come up some new rules and laws that will make sure the victim gets their rights.

4.2 Hypothesis Review

We think that when mediation happens in cases of domestic violence the settlements that result

are often pretty one sided and that is because there is such a big power imbalance in these cases. We also think that this undermines the idea of justice unless we do something about it.

4.3 Research Problem

The biggest problem we are up against is that mediation is supposed to be about people agreeing to things, but domestic violence is all about people using power to get what they want. The courts in India are starting to want to get cases settled even in the really serious criminal cases - and that is making it look like the victims are being pushed into agreeing to a settlement just so the case will go away.

4.4 Research Questions

1. Is mediation really a good way to deal with domestic violence cases?
2. Does mediation basically turn domestic violence into a civilian issue rather than a criminal one?
3. How much does the fact that there is a power imbalance affect whether or not people in mediation are really making their own decisions?
4. Are these settlements voluntary or are they just imposed on the victims?
5. Does mediation in domestic violence cases basically shut down the victim and stop them from getting the justice they deserve?

5 METHODOLOGY

5.1 Methodology Overview

In this study we're taking a mixed-methods approach - combining both the study of legal doctrine and the empirical to get a deep look at the role that mediation plays in domestic violence cases.

The study of doctrine involves examining the legal sources : statutes such as the Protection of Women from Domestic Violence Act of 2005, and some important court decisions like *B.S. Joshi v. State of Haryana*, *Gian Singh v. State of Punjab*, and *Narinder Singh v. State of Punjab*. We also looked at secondary sources - academic articles and scholarly writings - to get a closer look at how the law actually works in practice.

To get a more complete picture we also used a non-doctrinal, or empirical, approach - we administered a structured questionnaire to 20 people who had gone through mediation in a domestic violence case. The questions covered stuff like, were they pushed into settling, were

they able to express their concerns, were they satisfied with the outcome, and did they think justice had been done.

This two-part approach lets us get a really clear picture of the law on paper - and how it actually works in real life.

5.2 Data Analysis

We looked at the data from our survey - and used a combination of percentages and some interpretation to make sense of the responses. What we found was that most of the people who responded said they had been pushed into settling and that many of them said they hadn't been able to express their concerns.

A lot of the participants also told us that they were not happy with the outcome and that they didn't think that mediation really delivered justice.

It looks to us like in domestic violence cases mediation is often more about getting a deal done then making sure that people get a fair shake - that there is a gap between the way mediation is supposed to work and how it actually works in practice.

6.LEGAL FRAMEWORK IN INDIA

The Protection of Women from Domestic Violence Act of 2005 is a big deal in India - its the first time that domestic violence has been recognized as not just a crime but also as a civil rights issue. So the law provides for protection orders, for keeping people in their homes, and for financial help.

One of the key things about the PWDVA is that its not a criminal law - its a civil one - and its supposed to work alongside other laws like section 498A of the Indian Penal Code. Because its not a crime law - there isn't any requirement to go to mediation - but sometimes courts will order mediation even if it isn't specified in the law.

So its actually judges who decide to use mediation in cases - not the law itself.

7.ROLE OF MEDIATION IN DOMESTIC VOILENCE CASES

Mediation is brought into cases at all sorts of stages - sometimes by the police, sometimes by family courts, and sometimes even in the High Court if someones trying to get a case thrown out. The idea is to save family relationships and reduce the amount of hassle people have to go

through in court.

But in reality, its still a bit of a mystery just how mediation works in practice - and we need to dig deeper to get a clear picture of how it actually works.

While this stuff may be okay when it comes to minor squabbles, its application in cases of domestic violence is super contentious. Mediation might give people a chance to have a conversation, but it can also turn into a space where the victim is nudged to "compromise" rather than getting the justice they deserve.

7.1 Judicial Approach

The judiciary has had a big hand in making mediation look like a legitimate option for dealing with disputes in the marriage or family courts.

In *B.S. Joshi v. State of Haryana*, the Supreme Court basically said that it's okay to drop a criminal case under Section 498A if the couple works out their differences, and it's all about promoting reconciliation.

This was taken a step further in *Gian Singh v. State of Punjab*, where the Court said that even if an offence can't be settled out of court, you can still get the case quashed if the couple has sorted things out. The only condition is that the offence is something that's mainly between individuals.

And *Narinder Singh v. State of Punjab*, the Court gave some guidelines on how to drop a case if the couple comes to an agreement, which basically cements mediation's role in all this.

Now, these judgments are trying to cut down on the number of court cases and promote harmony, but they raise a ton of red flags when it comes to domestic violence. By letting these cases be dropped, courts might be treating violence like a private issue rather than a serious public rights issue.

8. POWER IMBALANCE AND CONSENT IN MEDIATION

One of the biggest problems with mediation – especially in cases of domestic violence – is that it's based on the assumption that both parties are on equal footing, negotiating freely. The thing is, that's not how it usually plays out when there's domestic violence involved.

Victims are often at the mercy of the abuser because of financial, social, and emotional dependence. And when it comes to consent, it's rarely ever truly voluntary. It can be influenced

by fear, guilt trips, or the desire to avoid stigma. Even a mediator who tries to stay neutral can inadvertently make things worse by encouraging compromise.

8.1 Whether Mediation Silences Victims

One of the biggest and most damaging criticisms of mediation in cases of domestic violence is that not only does it fail to make the victim's voice heard, but it often actively mutes it – both because of the way the process is set up and the way it affects the victim psychologically. While mediation is sold as a way to empower the victim and get them involved, the reality is often the opposite.

To start with, the fact that mediation is typically informal and confidential is a world away from how the court system works. Unlike a court case, mediation doesn't have any of the same safeguards, like clear rules of evidence or a record of what's said. While confidentiality is usually seen as a good thing – because it lets people be more open – it can, in cases of domestic violence, effectively erase the victim's story from the official record. What's not written down isn't really acknowledged. Which means that the actual experience of being abused might never get recognised as a legal wrong.

The lack of any official recognition has both symbolic and real-life consequences. Symbolically, it means the victim's experience is essentially ignored – it's not legally acknowledged as a wrong.

Practically, it makes it harder for the victim to get help in future because there's no official record of the abuse that happened.

Moreover the emphasis on settlement can shift the focus away from holding people to account and on to just tidying the whole thing up. The harm done to the victim gets pushed to the back of the bus to make way for sorting the case out.

8.2 Silencing Through Social and Familial Pressures

Beyond the law system, mediation in domestic violence cases is embedded in a much bigger world that often puts family first over making sure justice gets done. Victims - particularly women - may be up against massive pressure from their own family, community, and even lawyers to just sort it out amicably.

You hear all sorts of talk about “being flexible” “saving the marriage” and “avoiding a scandal” and that all creates an atmosphere where talking openly about being abused is really tricky. So, in this sense, mediation becomes a place where the way people think a family should work gets tangled up with the legal system and that just makes it even harder for the victim to have a say.

The thing is that this isn't always easy to see. This kind of silencing goes on through people just accepting things as they are and also through other people expecting certain behaviour and that all makes it harder to even notice it is happening.

8.3 Difference Between Being Heard and Making a Difference

It's also really important to bear in mind the difference between actually being able to speak out and having that voice actually make a difference. Even when victims are given the chance to have their say mediation can often limit how much their words are actually listened to. For instance:

- They might be heard saying how they were hurt, but nothing actually happens about it
- Serious allegations are turned into just another thing to be negotiated like paying compensation or splitting up
- And the whole process gets wrapped up in trying to get some kind of closure rather than making sure the person who did the harm gets held accountable

9. CONFLICT BETWEEN JUSTICE AND SETTLEMENT

Right at the heart of this debate about mediation in domestic violence cases is a basic disagreement over whether justice, especially when it comes to really serious stuff like violence, should ever be just negotiated away. This isn't just about the process of law but about what the law is actually supposed to be about - responding to serious harm.

Criminal law is rooted in making sure people are deterred from doing bad things and that we know that these crimes are wrong. When it comes to domestic violence, it's not just about sorting things out between two people, it's about the whole community standing up and saying this is wrong. This is about the state taking on the role of defender of society and showing that it will not stand for this kind of behavior.

Mediation, on the other hand, works in a world where people can have a chat and come to some sort of agreement. It's based on finding common ground and coming to a deal rather than one person being right and the other being wrong. That model works well when it comes to business disputes or civil disagreements where both sides are on a level playing field and the problem is fairly simple to sort out.

But when we try to apply that approach to cases of domestic violence, that tension between two

different ways of looking at things really comes to the fore.

9.1 The Case for Settlement: A Human and Reasonable Approach

From one perspective, mediation offers a load of practical and humanitarian benefits. Domestic relationships are often complicated - they involve emotional ties, shared living spaces, and in many cases, kids. An all-out adversarial approach can make conflict worse, drag out the court process, and result in outcomes that are technically sound, yet may not be all that practical.

Settlement through mediation can get you:

- **A Quick & Flexible Fix:** Victims might be able to get things like maintenance, living arrangements, or separation terms sorted out a heck of a lot faster than if they went through court.
- **Less Emotional & Financial Stress:** The court battle in domestic violence cases can be a real grind; mediation can offer closure a lot sooner.
- **Preserving Relationships Where Possible:** In cases where the violence isn't too bad or is situational, mediation can hope to keep things amicable.
- **Victim Power:** Some argue that mediation lets victims actually have a say in the outcome, rather than just being told what to do by a judge.

Here, settlement is not seen as a compromise on justice - it's a practical way to deal with the complexities of domestic disputes. It's a shift away from punishment towards restorative or negotiated justice, where the focus is on finding a resolution rather than doling out blame.

9.2 The Case for Justice: How Mediation Can Go Wrong

But despite these advantages, a strong argument against settlement comes back when you consider the real nature of domestic violence. Unlike run-of-the-mill civil disputes, domestic violence involves patterns of control, intimidation & unfairness. These dynamics totally mess with the fair negotiation process.

It's not just some theoretical concern, though - it's a practical one:

- **Consent might be a charade:** Victims are agreeing to settlements because they're afraid, need someone to lean on, or are subjected to societal pressure, not because they really want to.
- **Power imbalance makes mediation unfair:** The abuser often has an upper hand - they can make economic, emotional or social demands that influence the settlement terms.
- **Domestic violence gets watered down:** Mediation risks treating domestic violence as

something you can just hammer out a deal on, rather than something serious; that might even encourage a culture of turning a blind eye to abuse.

- **Justice gets sidestepped:** Settlement might let the perpetrator avoid being held to account for their crimes, which can make the law less of a deterrent.

Justice shouldn't be reduced to just compromise, in this view - the public nature of domestic violence requires acknowledging the rights & dignity of the victim while holding the offender to account. If mediation isn't done right, it could shift focus away from finding justice and just focused on wrapping things up.

9.3 Balancing The Two: A Structural Dilemma

The debate over justice & settlement isn't easy to resolve because both sides have some real concerns. On one hand, insisting on a full-blown court process might miss the practical needs & preferences of victims, some of whom don't want to go after their abuser in court. On the other hand, overemphasizing mediation risks keeping domestic violence private and undermining the law's protective role.

This creates a tough structural dilemma:

- If the system prioritises justice (punishment and accountability) it can end up being too rigid, slow and disconnected from the reality that victims actually live with.
- And if it prioritises **settlement (compromise and resolution) - ** it might risk becoming permissive, informal and open to coercion.

The big challenge isn't simply choosing between justice and settlement - but rather recognising that the two operate on completely different principles - and sometimes those principles aren't compatible when dealing with abuse.

9.4 Critical Reflection

A closer look suggests the problem isn't actually with mediation in and of itself - but with when mediations are just sort of plunked down into the wrong contexts. Domestic violence cases need a framework that acknowledges both the need for protection and the reality of people's relationship dynamics.

However, in practice, it often ends up being the other way round - settlement gets a lot of emphasis. Institutional pressures - like keeping the case load down, promoting reconciliation and meeting targets - can sometimes inadvertently push mediation even where it's not a good fit. This can shift the system away from being justice-focused and more towards a resolution-focused model where the main goal is to get disputes over with, rather than actually dealing

with the harm.

9.5 Conclusion Of The Issue

The conflict between justice and settlement in domestic violence mediation actually gets at a deeper question about what the purpose of the legal system is supposed to be. While settlement might offer some short-term relief and make things a bit easier to manage procedurally - it doesn't always equate to justice, especially in cases where one side has the upper hand and the other side is at a disadvantage.

At the same time, just rejecting mediation entirely might mean missing out on situations where the victim themselves actually wants a negotiated outcome.

So the issue isn't about completely rejecting mediation or accepting it without question - its about recognising where mediation might not be the best idea. Justice in domestic violence cases can't be wrapped up with a neat compromise; nor can settlement be written off as irrelevant. What needs to happen is that mediation is used in a way that doesn't replace justice but actually works alongside it.

The thing is - at the moment, the tension between justice and settlement isn't really getting resolved - and often settlement ends up taking priority over justice.

At its core the question is whether justice can ever actually be negotiated. The legal system is based on punishment and deterrence - mediation is all about finding common ground.

In domestic violence cases this tension becomes super clear-cut. Settlement might offer some quick relief but it might well fail to deal with the underlying abuse. Justice, on the other hand, might require formal adjudication and punishment.

10. NON DOCTRINAL RESEARCH FINDINGS

To get a sense of how mediation actually plays out in practice I had a chat with around 5 or 6 people who had been through court-annexed mediation. These were just casual conversations not structured interviews but they gave some useful insight into what the mediation experience felt like.

One thing that kept coming up was that almost nobody ever actually refuses to go for mediation, even though its technically voluntary. If a court or family suggests it, it seems to become the next step that everyone expects to take. Like one person put it, "You've got the option to go for it, but in reality no one actually does."

As for speaking up during the mediation process, a few people said they felt comfortable but others admitted to holding back on things. There was a sense that speaking up too much might actually make things harder to settle. As one person said, “You can say things, but you're usually just saying them because you've thought about it first.”

When it came to pressure, it wasn't direct but it was definitely there – though in a pretty indirect way, through family expectations, advice from lawyers and the general need to avoid long court battles. Most people agreed to settle not because they thought it was fair, but just because they wanted to get the whole thing over with.

After mediation, maybe a handful of people felt like things had actually improved a bit. But for the others, the dispute got resolved on paper but not really in real life.

Overall, all this suggests that mediation can be pretty good at getting an end to things, but for loads of people it feels more like a practical compromise than anything like justice.

10.1 Analytical Observations

These interactions show that mediation in cases of domestic violence, while formally voluntary, often takes place within a framework of unwritten expectations and pressure from the situation. Being part of it seems to have less to do with being able to make a free choice and more to do with just doing what needs to be done. Although mediation can bring an end to things, it often does this by nudging people towards compromise rather than really dealing with what went wrong, which raises questions about whether the outcome is actually just or is it just an easy way to get it over with.

11. CONCLUSION

Taking a close look at how the law works, what the judges are doing, and what the data shows makes it pretty clear: mediation in cases of domestic violence, as it stands, operates way more like a way to get disputes settled under pressure than like a tool for getting justice.

The basic principles of mediation – free choice, being equal, and being fully signed up to what you're getting into – are pretty well rubbed out when you're dealing with domestic violence. The big power imbalance between the two parties, combined with all the usual pressures from family, money worries and the pressure to just resolve things as quickly as possible, creates an

atmosphere where agreements can be made without anyone really being in control.

And then judges go and endorse these settlements, especially when they drop the charges. This only makes matters worse by making it all about getting closure and not about making sure that people are held accountable for what they've done.

The evidence from the participants backs this up. A good number of people reported feeling pushed around, not being happy with the outcome and not feeling like they'd got any justice at all. These aren't just random complaints, but kind of point to a much bigger problem – that mediation is just not being used right in these sorts of cases.

So we can say with real certainty that as it currently stands, mediation in disputes over domestic violence just isn't doing anything like justice. Instead, it often results in dodgy or compromised settlements that let down the victims and undermines their rights and safety.

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