

<https://doi.org/10.33472/AFJBS.6.15.2024.5688-5697>



African Journal of Biological Sciences

Journal homepage: <http://www.afjbs.com>



Research Paper

Open Access

Right of Women to Be Part of Faith Based Mediation in India: A Critical Analysis from Human Rights Perspective

Shiji Biji^{1*}, Dr. Somu C S²

¹Christ (Deemed to be University) Pune,
Department of Law, 30 Valor Court, Lavasa, Maharashtra-412112. 5/822, B.M.C. Colony,
Malwani, Malad West, Mumbai-400 095.

²Christ (Deemed to be University), Pune, Department of Law, 30 Valor Court, Lavasa,
Maharashtra- 412112.

Email: somu.cs@christuniversity.in

Corresponding Email: shiji.biji@res.christuniversity.in,

Article Info

Volume 6, Issue 15, September 2024

Received: 29 July 2024

Accepted: 30 August 2024

Published: 26 September 2024

doi: [10.33472/AFJBS.6.15.2024.5688-5697](https://doi.org/10.33472/AFJBS.6.15.2024.5688-5697)

ABSTRACT:

Human rights encompass the basic rights and freedoms inherent to all individuals, regardless of religion, race, caste, gender, or any other status. These rights are inalienable and must be safeguarded against all forms of discrimination. The notion of fundamental rights is enshrined in the Universal Declaration of Human Rights and numerous other international treaties. In India, a country with a rich and diverse religious landscape, the connection between human rights and faith is intricate, frequently leading to potential conflicts between religious practices and human rights principles. Faith-based mediation, though not legally recognized in India, is practiced within various communities under the guise of reconciliation. Women's right to participate in mediation, including faith-based mediation, is a crucial aspect of their human rights and is integral to achieving gender equality. However, it is often observed that women are excluded from leadership roles as mediators or arbitrators within many religious settings in India. Encouraging women's participation as mediators in faith-based contexts can significantly advance their rights, but this would require confronting and changing cultural and social norms that restrict women's roles. This article aims to collect primary data and analyze existing observations to explore the role of women in faith-based mediation in India, emphasizing the tension between religious beliefs and the promotion of women's human rights.

Keywords: Human Rights, Women Mediators, Faith Based Mediation, Mediation, Gender Equality.

© 2024 Shiji Biji, This is an open access article under the CC BY license (<https://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made

1. Introduction

Human rights are inherent to every individual, regardless of their status, and are considered fundamental to human existence. These rights are interconnected and cannot be taken away, as they are rooted in the belief in the dignity and worth of every person. Human rights encompass a wide range of protections, including the right to existence and personal liberty, along with political, social, economic, and cultural rights, such as the privilege to work, education, besides a decent livelihood. The protection of these rights is crucial for the freedom and well-being of all individuals and is enshrined in Global Treaty like the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. 'It is widely observed that people everywhere require the realization of diverse values and capabilities for their individual and collective well-being. However, this need is often thwarted by social and natural forces, resulting in exploitation, oppression, persecution, and other forms of deprivation. These observations form the foundation of what we now recognize as "human rights" and the associated national and international legal processes. Violations of human rights can have severe consequences, leading to suffering, conflict, and injustice. 'Following the end of the Cold War, the debate over human rights took on a North-South dimension, intensified by cultural-relativist critiques that questioned the universality of human rights principles, arguing that they are Western in origin and therefore less applicable in non-Western contexts. This perspective—that the scope of human rights should be shaped by local customs and traditions—raises concerns, especially considering that the concept of human rights is present in all major philosophical and religious traditions' Attaining gender equality and eradicating all forms of discrimination against women are essential human rights and core principles of the United Nations. Despite this, women globally still face violations of their rights throughout their lives, and the achievement of women's human rights has not always been given priority. 'Attaining gender equality demands a comprehensive understanding of how women experience discrimination and are denied equal rights, in order to create effective strategies to eliminate such inequalities. 'In 1967, United Nations Member States adopted the Declaration on the Elimination of Discrimination against Women, which declares that discrimination against women is an affront to human dignity and urges States to eliminate discriminatory laws, customs, regulations, and practices, and to ensure legal protection for the equal rights of men and women. Shortly thereafter, a proposal was made for a legally binding treaty on women's rights, leading to the adoption of the Convention on the Elimination of All Forms of Discrimination against Women by the General Assembly in 1979. The preamble of this convention acknowledges that, despite the existence of other agreements, women still do not enjoy equal rights with men.' 'The Convention defines sex-based discrimination and outlines the responsibilities of States to eliminate it and achieve true equality. Like all human rights treaties, obligations are only incurred by States upon ratification. The Convention requires States to address not just discriminatory laws, but also discriminatory practices, customs, and actions by private individuals or groups.' The World Conference in Vienna effectively approved the Vienna Declaration and Programme of Action, asserting that "the human rights of women and the girl-child are an inseparable, essential, and indivisible component of universal human rights" (para. 18), and strongly underscoring the necessity to eradicate all forms of gender-based violence. Additionally, the Programme of Action called for resolving any conflicts between women's rights and the harmful effects of certain traditional or customary practices, cultural biases, and religious extremism (para. 38). The Human Rights Council is the main intergovernmental entity within the United Nations tasked with advancing and safeguarding human rights. Consisting of 47 member states elected by the General Assembly, the Council has regularly convened special panels on women's rights and the integration of a gender perspective since its inception in 2006. Discrimination can manifest through de jure or

direct discriminatory measures, such as laws or policies that restrict, favor, or differentiate between specific groups—examples include prohibiting women from driving, owning land, or inheriting property. Achieving formal equality necessitates the removal of all forms of de jure discrimination. Although significant strides have been made to abolish discriminatory laws, many still remain, and reforming these laws should be a top priority for States to meet their human rights commitments. The incorporation of gender equality and women's empowerment as one of the eight Millennium Development Goals highlights that numerous commitments are still unmet. It also offers a vital chance to translate those promises into concrete actions.

The Constitution of India and various legislations ensure equality and include provisions for affirmative action in favor of women, specifically prohibiting discrimination against them, especially by the State. Despite these guarantees, in practice, women's ability to enjoy and exercise equal rights is still limited in many areas of life, including social, economic, and political spheres. Regarding the religious rights of women, it has been observed that, "Reforms in women's religious rights have been slow, with courts lacking a unified, decisive approach to declaring discriminatory religious practices unconstitutional. For example, although there is increasing awareness of the role of women as priestesses, the only relevant Supreme Court judgment is an old one that acknowledges a Hindu woman's hereditary right to inherit the administrative duties of a pujari. However, this recognition is limited and does not extend to acknowledging her equal right or capability to perform sacred rituals as a pujari." Presentation Sr. and theologian Shalini Mulackal remarked that women have internalized patriarchal Christianity and have grown accustomed to the restricted roles allocated to them. The language, symbols, and culturally shaped interpretations of religious texts have led to practices that marginalize women, contributing to their exploitation and the violence they face. Kalpana Kannabiran, a Hindu woman and director of the Council for Social Development in Hyderabad, mentioned in her keynote speech, "Religion is not a fixed entity; it is a negotiated reality." She also noted the irony that Pope Francis, despite advocating for expanded roles for women, remains trapped in a complementary gender mindset. Abraham noted that despite his generally progressive encyclicals, they still prescribe gender-specific roles for women, neglecting their intellectual capacity, theological knowledge, organizational skills, and leadership abilities. "Catholic women governed by the Code of Canon Law face significant gender-based discrimination, primarily through their exclusion from ordination and the roles associated with it. The emphasis on Christ's maleness over his humanity places women in a subordinate position to men. Even among the non-ordained, women and men are not afforded equal rights. For instance, only men, including married men, are permitted to be ordained as deacons and installed as lectors." "Manusmriti, the sacred code of conduct for Hindus, portrays women in a highly negative manner and contains numerous derogatory remarks about them. It promotes the idea that men should have complete control over the women in their lives.

1. Women and Mediation in India:

Phumzile Mlambo-Ngcuka, the UN Under-Secretary-General and Executive Director of UN Women, emphasized in his speech that "Women are key stakeholders and guardians in the processes of managing and sustaining peace. Based on my own experiences, I can affirm that having women at the center of peacemaking is crucial. A review of 15 years of implementing resolution 1325 concluded that peace is more secure and lasting when women are involved in shaping peace agreements, supporting them, and participating in leadership institutions." Kate Hudson, the General Secretary of the Campaign for Nuclear Disarmament, stated that "In the peace movement, women are not focused on wielding power over others. Instead, they are more interested in empowering others rather than seeking power for themselves."

Lara Sievers explains that in the context of gender theory in conflict resolution, the term "Mediators Interest" refers to "Motivation." She further notes that it is evident that a mediator's

gender can affect their motivation, such as influencing their preference for dividing resources. Studies from 1975 reveal that interpersonal orientation differs between men and women, with women generally having a higher interpersonal orientation (IO) than men. Women tend to prioritize the relationship dimension more than men.

The participation of women in mediation in India has steadily increased over the years, reflecting broader societal changes and efforts to promote gender equality. There is also a growing awareness among women about mediation as an alternative dispute resolution mechanism, leading to more women actively engaging in mediation to resolve various disputes. India's legal framework, including the Family Courts Act and the Civil Procedure Code, recognizes and promotes mediation. Additionally, the introduction of mediation provisions in the Consumer Protection Act, the Commercial Courts Act, and the amendment of the Arbitration and Conciliation Act has further strengthened the role of mediation. The Government of India has also supported mediation through various initiatives aimed at reducing the judiciary's burden. Government efforts, such as the Mediation and Conciliation Project Committee and the establishment of community mediation centers, have improved access to mediation services for women. Mediation enables women to take an active role in decision-making and pursue solutions that are equitable and advantageous for all parties involved.

Women play a vital role as mediators in India, with a growing recognition of gender diversity leading to increased efforts to boost the representation of women in this field. Women are being encouraged to pursue careers in mediation, and training programs are organized to equip them with the necessary skills. The mediation process, which relies heavily on strong interpersonal skills and the ability to foster trust, benefits greatly from the contributions of women. These qualities are especially valuable in facilitating constructive dialogue and finding mutually acceptable solutions in sensitive or personal matters, such as family disputes. Women mediators can act as role models, encouraging other women to engage in the mediation process. By creating a supportive environment, women mediators ensure that all parties feel heard and respected, regardless of gender or other identities. They are also actively involved in community-based mediation initiatives and grassroots movements, promoting conflict resolution at the local level. The ability of women mediators to navigate cultural sensitivities and communicate effectively with different parties further enhances the effectiveness and legitimacy of mediation outcomes. The reasoning behind using women as mediators is grounded in the belief that a distressed woman needs an environment where she can express her grievances fully, she should be able to address those who have wronged her without being constrained by feelings of inferiority, embarrassment, fear, or powerlessness. She needs to express her concerns in her own terms to women who are deeply familiar with her social and cultural background, share her perspectives on right and wrong, and understand her situation not only intellectually but through personal experience. Mediators who are peers in these aspects are better suited than an educated middle-class individual, regardless of their training or intentions, to assist her in finding a solution that is both culturally relevant and practical.— whether that means reaching a mutually satisfactory compromise or finding a way to escape the situation and start anew.

In her article on "The 'women's court' in India: an alternative dispute resolution body for women in distress," Sylvia Vatuk from the University of Illinois at Chicago, U.S.A., observed that scholars critically examining these all-woman courts have raised several questions about their effectiveness. They ask whether these courts truly provide more workable and just remedies for abused and distressed women compared to formal state-run courts, government-sponsored ADR institutions, or non-state caste, community, or religious dispute-resolution bodies. While there is no firm consensus among scholars and activists on this issue, one recurring theme in the literature is that, despite the good intentions of the organizations sponsoring them, women's

courts—even those following the 'all-woman' model—are inevitably influenced by patriarchal Indian cultural assumptions about appropriate feminine behavior, roles, and responsibilities in marriage and society. These assumptions heavily influence the types of resolutions these courts offer, just as they do in other dispute-resolution forums.

"Women tend to define motivations in terms of interactions, favor more equitable agreements, and adopt a more cooperative negotiation style. These factors collectively should lead to greater adherence to mediated agreements. Research indicates that greater inclusivity in formal peace processes, particularly the involvement of women, enhances the credibility of the process and contributes to the durability of the agreements reached. Peace processes with significant involvement of women are found to be more legitimate and sustainable compared to those with minimal or no women's participation." (Klein, *The Role of Women in Mediation and Conflict Resolution: Lessons*, 2012)

In a diverse country like India, where multiple religions coexist, religious barriers can significantly impact mediation, especially in communities where religious norms play a crucial role in shaping social and cultural dynamics. Certain religious teachings may reinforce patriarchal values and traditional gender roles, thereby limiting women's decision-making authority. Religious customs, particularly those related to family matters, may discriminate against women and restrict their legal rights. These customs often mirror traditional patriarchal values, prioritizing male interests over female ones, which can create obstacles for women in asserting their rights or negotiating fair outcomes through mediation. In conservative communities, women may be excluded from decision-making forums and face challenges when dealing with male mediators or disputants, which can hinder their ability to participate effectively in the mediation process. "Religious women often face a double disadvantage, as both secular and religious actors, as well as third parties, may be reluctant to involve them in mediation processes. However, because religious women can play central roles in conflicts—either because the conflict directly affects them or because they act as agents of change—it is essential to analyze their role in such situations. It has also been observed that the dynamics created by conflicting parties can complicate the simultaneous inclusion of female and religious actors in mediation. Secular conflict actors may avoid involving religious figures, viewing religion as inherently opposed to women's progress. Additionally, religious and traditional actors can create challenges for including women, sometimes outright rejecting the idea of their involvement. "Religion operates according to its own set of rules, which may sometimes appeal to a higher sense of morality but also condone practices that can be harmful to certain groups, such as women or individuals with disabilities. It has been established that just because an ADR mechanism is based on the personal laws of a religion, it cannot be granted legal status or permitted to enforce decisions that violate a person's rights."

2. Religious Beliefs and Human Right of Women to be part of Faith- Based Mediation in India:

The human rights of women to participate in faith-based mediation in India can intersect with various religious practices and beliefs, creating challenges to their full involvement in the dispute resolution process. "Mediation is encouraged in Christianity and is supported by several Bible verses that emphasize "promoting reconciliation and forgiveness for all." Other passages advise against taking disputes to court, instead advocating for resolving conflicts personally to preserve relationships. Mediation is also considered a method for resolving disputes between individuals who are not Christians, with the aim of maintaining harmony and good relations." "Like Christianity, Islam also encourages mediation, bestowing the highest respect upon mediators. It discusses the concept of a committee similar to the Christian Ministry of Justice. There are no restrictions on the types of disputes that can be mediated, and mediation with people from other communities is also permitted to maintain peace and harmony." "In

Hinduism, the tradition of mediating religious disputes dates back to the era of the Mahabharata, where Lord Krishna made an unsuccessful attempt to mediate between the Kauravas and Pandavas to prevent the battle of Kurukshetra.

Faith-based mediation processes in India are often shaped by religious practices that assign specific roles and expectations to women, which may include prioritizing male leadership and limiting women's involvement. During a two-day convention organized by the Indian Christian Women's Movement in Pune, aimed at advocating for equal positions within the Church, Sister Noella D'souza, the national convenor of ICWM, stated, "We lack a voice in the Church's decision-making, and we are striving for gender equality, seeking to be recognized as equal disciples and included in the decision-making process.

Women have the right to participate in mediation processes without any gender-based discrimination, as recognized by human rights standards. This includes their right to be involved in decision-making, to have access to justice, and to take part in conflict resolution. "Every individual has the right to participate in decisions that shape their life. This right forms the basis of the ideal of equal participation in decision-making between women and men. It argues that, because women understand their own situations best, they should participate equally with men to ensure their perspectives are effectively integrated at all levels of decision-making, from private to public spheres, and from local to global contexts.

There can be situations where religious beliefs and practices clash with human rights, particularly regarding gender equality and women's rights. This conflict can create tension between the right to religious freedom and the right to gender equality and non-discrimination. A 2012 UN Women study revealed that from 1992 to 2011, across 31 major peace processes, women made up only 2% of chief mediators, 4% of witnesses and signatories, and 9% of negotiators. These figures spurred efforts to increase the representation of women in mediation. The lack of women's physical presence at peace talks also meant that their interests were not adequately represented. In India, there are laws and regulations that protect women's rights, including the right to equality and non-discrimination. However, applying these rights in faith-based mediation is complex, particularly when religious laws and customs are involved. Balancing religious beliefs with human rights in the context of faith-based mediation requires careful consideration, fostering dialogue and understanding between religious communities, and supporting women's rights within religious institutions. Addressing the relationship between religious beliefs and women's human rights in faith-based mediation necessitates a nuanced approach that respects both religious diversity and women's rights. This can be achieved by promoting gender-sensitive approaches within religious communities and ensuring that women have equal opportunities to participate in the mediation process alongside men.

Role of Women in Faith-Based Mediation in India:

"Women are integral to the mediation process. In comparison to men, I notice that women, especially women of faith, approach their work with a deep sense of empathy and inclusiveness, which contrasts with the more professionally distant manner often observed in many of my male colleagues," says Lantana Abdullahi Bako, author of the Nigeria case study and an experienced faith-based mediator involved in resolving inter-religious violence across various parts of Nigeria." Women serve as spiritual leaders in India within their faith communities offer support and wisdom to the individuals who approach them for resolution of dispute through Mediation. Women Mediators possess unique insights into cultural norms and values, enabling them to steer complex interpersonal dynamics and facilitate meaningful dialogue.

Women mediators in faith-based mediation are seen as agents of social change, often championing progressive interpretations of religious teachings that promote peace,

reconciliation, and mutual respect. Their role in faith-based mediation highlights their diverse contributions as spiritual leaders, caretakers, and healers, all of which play a crucial part in fostering peace, justice, and harmony within both religious and societal contexts.

"Religious traditions often have a structurally male-dominated framework, which poses challenges for female faith-based mediators as they strive to secure key roles in mediation processes. However, being both faith-based and women can also present them with opportunities, such as the trust they frequently receive from their communities." Women of faith in India play a crucial role in conflict resolution due to their positions within religious communities, contributing equally to the development activities in those communities. While training seminars and workshops can be organized to help manage differences, it is also essential to engage women of faith in activities that teach them how to address issues at the grassroots level. In India, gender has often been overlooked in conflict resolution processes, and women are frequently excluded from contributing to conflict resolution due to prevailing religious beliefs and customs. Women are often seen solely as victims of conflict, making it vital to recognize their importance at all levels and involve them in every phase of conflict management.

Empirical study:

As part of the research on this topic, an empirical study was conducted to gather individuals' views on including women as mediators to advance gender equality and human rights, as well as their opinions on supporting the training and empowerment of women to become mediators in religious contexts. A questionnaire, prepared under expert guidance, was used for this survey and distributed through Google Forms.

- Do women in India have the right to be mediators in legal and religious contexts

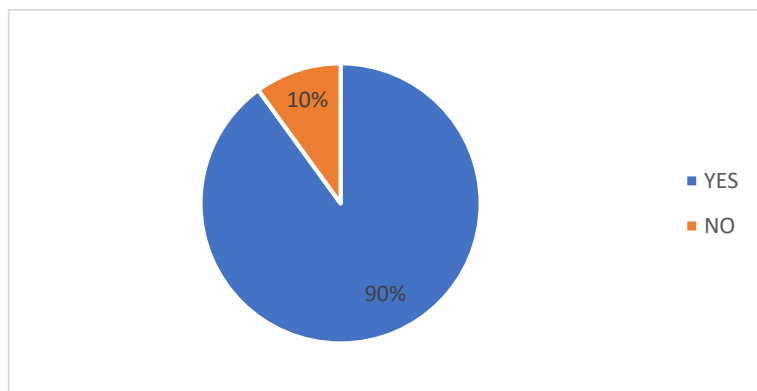


Diagram 1 illustrates that 90% of respondents consent to the fact that women have the right to serve as mediators, not only in legal contexts but also in religious ones. The 10% who responded negatively may reflect a lack of awareness about women's existing rights concerning their role in conflict resolution.

- Is the inclusion of women as mediators important for promoting gender equality and human rights?

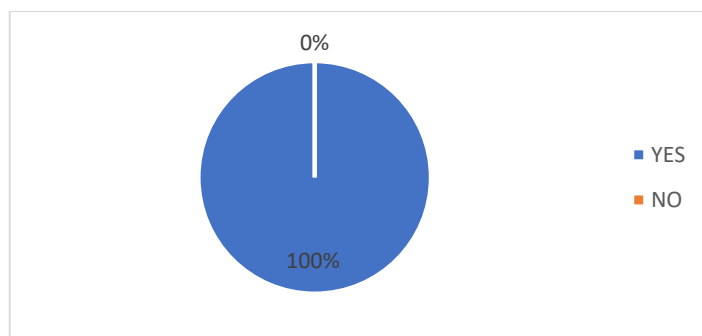
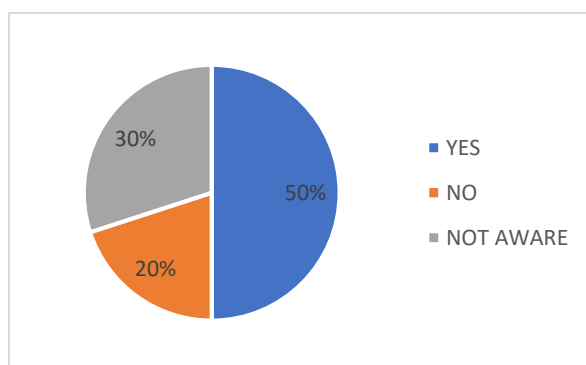


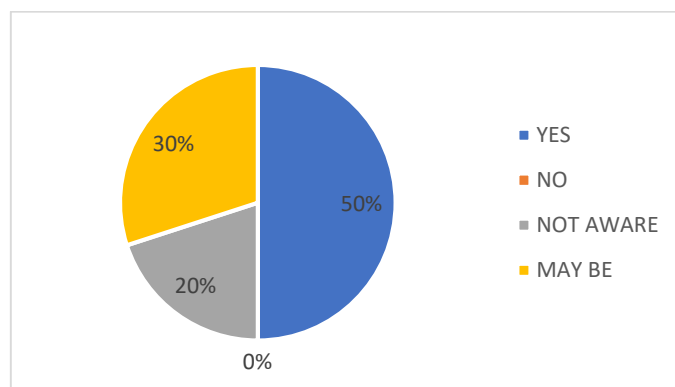
Diagram 2 demonstrates a positive response from the population regarding the inclusion of women as mediators to develop gender equality and human rights. This shows that current inequality in women's participation in conflict resolution needs to be addressed. Women at all levels should be given the opportunity to participate in the mediation process, which involves not only encouraging their involvement in conflict resolution but also protecting their human rights.

- Are there specific legal provisions in India that allow women to act as mediators in religious disputes?



Awareness of legal provisions for women is crucial in advocating for their denied rights. Diagram 3 reveals that 50% of the population is unaware of the existing legal provisions regarding women's rights to act as mediators in religious disputes, reflecting a divide in the population's knowledge of these laws. It is unfortunate that there is a lack of awareness about the laws and provisions for women in India, highlighting the urgent need for efforts to promote awareness programs on this issue.

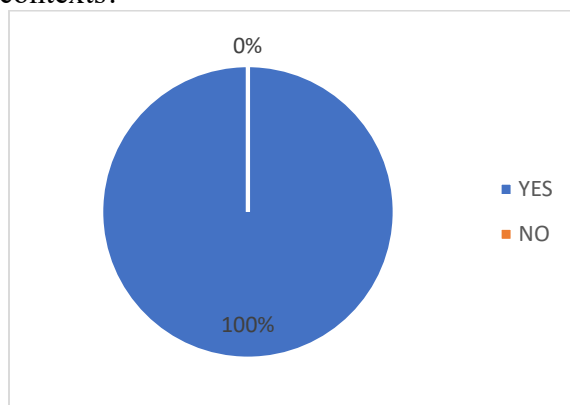
- Do religious and cultural beliefs sometimes restrict women from becoming mediators in India



The male-dominated society, along with religious and cultural beliefs that view men as the primary decision-makers, often acts as a barrier to women's human rights to participate in

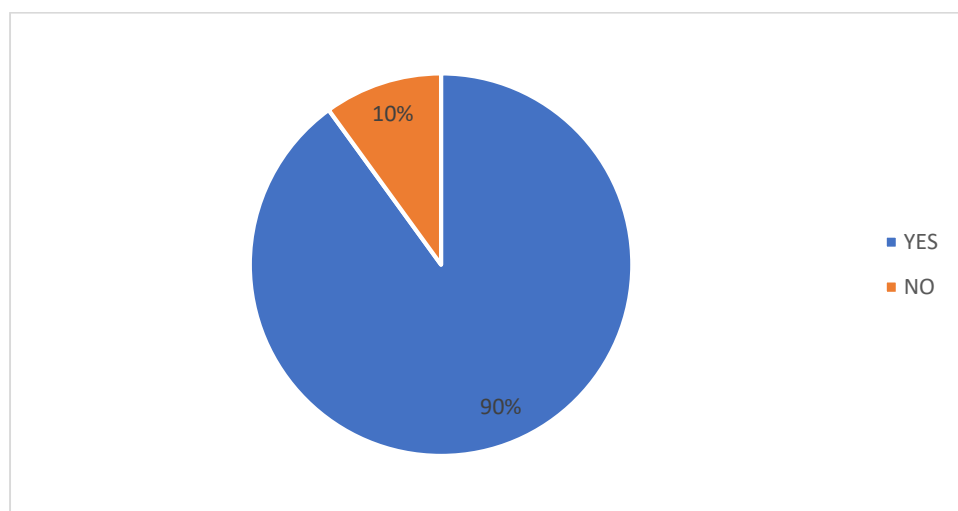
decision-making processes. The ingrained belief that men hold more authority in resolving disputes makes it challenging to include women in faith-based mediation processes.

- Should there be efforts to encourage the training and women's empowerment to become mediators in religious contexts?



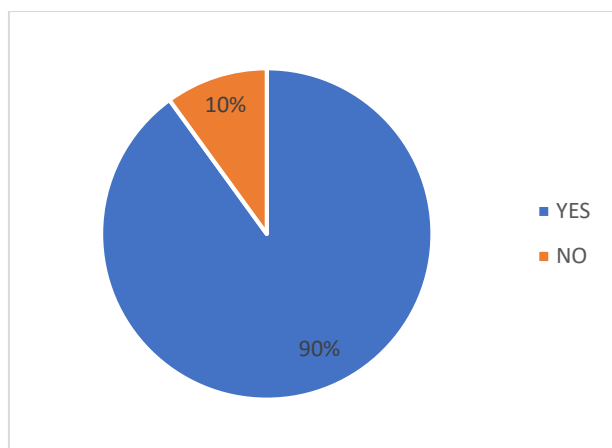
According to observations and research conducted by foreign authors, women are often seen as more effective in resolving conflicts. The diagram above reflects a positive attitude among the population towards promoting and empowering women in India to become faith-based mediators.

- Is there a need for legal reforms in India to ensure equal opportunities for women to be mediators in religious disputes?



Existing religious and cultural beliefs often act as barriers to women's involvement in the conflict resolution process. Changing this attitude towards women is essential, and can only be achieved through laws that support their participation in peacemaking. The diagram above shows that 90% of the surveyed population agrees on the need for a law that ensures equal opportunities for women to serve as mediators in religious disputes.

- Should religious laws and practices be reformed to better accommodate women as mediators and protect their human rights?



It is crucial to ensure that religious laws and practices in society do not violate women's fundamental rights from a human rights perspective. Religious traditions often include texts written in specific historical contexts that may need modification or adaptation to better align with concepts of human rights and gender equality. The diagram above shows that individuals support reforming existing laws and beliefs to protect women's rights to serve as faith-based mediators in India.

3. Conclusion

The study reveals that, in India, as in many other countries, the participation of women in faith-based mediation intersects with issues of human rights and religious freedom. While India has made significant strides in advancing women's rights through legislation, more work is needed to ensure these rights are fully realized, particularly within religious communities. Legal frameworks may need to be adjusted to prevent the violation of women's rights due to existing religious practices. Education and awareness are crucial in challenging traditional gender roles, reforming laws and practices to better accommodate women as faith-based mediators, and protecting their human rights. Achieving this requires an approach that respects both religious diversity and human rights principles. Meaningful collaboration between religious leaders, policymakers, and stakeholders is essential for promoting gender equality within religious communities and making effective decisions regarding women's participation in faith-based mediation. In conclusion, ensuring women's participation in faith-based mediation in India will require a multi-faceted approach, achieved through cooperative efforts across communities to uphold the fundamental principles of human rights and gender equality for all.