

**Working Party on Mediation in the context of the Malta Process
Questionnaire II**

Drawn up by the Permanent Bureau

Identification

State : India

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ENFORCEABILITY OF MEDIATED AGREEMENTS	
1. Are there legal restrictions on the content of mediated agreements regarding family law matters in India?	<input type="checkbox"/> No√: However, every mediated agreement has to meet the requirements of the relevant law including the test of Order XXIII Rule 3 of the CPC.
2. Are mediated agreements in a family dispute involving children enforceable in India without any additional formalities such as notarisations or approval by court?	<input type="checkbox"/> No√ Any agreement settling rights of minors requires leave of the Court. Such settlement has to be approved by the Court in the best interest of the child.
3. Can agreements mediated in India in a family dispute involving children be approved by or registered with a court? (If the answer is "No" please continue with question 4.)	<input type="checkbox"/> Yes√: They have to be approved by the Court. There is no provision for registration.
3. a) Is the agreement once approved by or registered with a court treated as a decision of that court?	<input type="checkbox"/> Yes√
3. b) What exact steps are needed to make a mediated agreement into a court order?	In a matter pending before Court, the mediated agreement becomes enforceable after it is approved by the Court. This agreement is sent back to the Court for approval.
3. c) Which court would be competent?	The Referral Court.

3. d) What are the costs for having a mediated agreement made into a court order in India?	No additional expenses are involved. As in the case of all settlements the Court is likely to pass orders in terms of the Settlement.
4. Are there any other method(s) by which a mediated agreement can be rendered enforceable in India (e.g. by being notarised)	In case of a pre mediation litigation the provisions of the Arbitration and Conciliation Act, 1996 are invoked and a Conciliation agreement is drawn up.
4. a) What are the possible costs for this other method(s)?	The Mediation Centre charges Rs.10,000/- towards costs at the initial stage. Thereafter, Rs.500/- is charged for every sitting and Rs.10,000/- towards the mediator's honorarium. The agreements are typed on Rs.100/- stamp paper.
5. Can agreements mediated in another country in a family dispute involving children be approved by a court or otherwise formalised in India?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Only if they are presented in Court by filing appropriate proceedings and the Court approves the same.
5. a) If so, will the agreement mediated abroad be treated exactly as an agreement mediated in India?	<input type="checkbox"/> No <input checked="" type="checkbox"/>
6. In what circumstances, if any, can an agreement which has been approved by or registered with a court abroad, be recognised and enforced in India?	An agreement approved by the Court abroad will have the same force as a decree/order of a country having reciprocating treaty/agreement.
7. What specific measures are available in India for enforcing an agreement on child custody or contact?	The Court has to be moved by an application for enforcement of the agreement. The Court then passes appropriate orders thereon.

I shall welcome any further clarification.

(Justice Vikramajit Sen)