Matrimonial Disputes in India: A Case for Partial Arbitrability

By Payal Chawla

The Indian matrimonial justice system is overburdened, fragmented and marked by overlapping jurisdictions, struggling to keep pace with the volume and complexity of disputes that come before it. Increasingly difficult for litigants to navigate, it often transforms the breakdown of a personal relationship into prolonged procedural warfare. What begins as a family dispute frequently evolves into years of parallel proceedings before multiple forums, leaving parties, and often their children, trapped in a cycle of continuing litigation. Not infrequently, the litigation itself comes to outlast the marriage, consuming some of the most productive years of the parties' lives and, in many cases, a significant part of their children's formative years.

This article advances a modest but important proposition: that certain aspects of matrimonial disputes ought to be capable of resolution through arbitration. It does not contend that marriage itself, or those matters that lie exclusively within the domain of the courts, should become arbitrable. Questions relating to marital status, dissolution of marriage, legitimacy and certain aspects of guardianship are matters in rem and must remain within the exclusive jurisdiction of courts.

The argument advanced here is narrower. Many of the collateral disputes that arise from the breakdown of a marriage, particularly those relating to maintenance, financial disclosure, division of assets and other inter se obligations between spouses, are fundamentally disputes in personam. The same may be said of several ancillary issues that routinely occupy judicial time, including the attribution of fault, the determination of the primary caregiving parent, and the financial consequences that flow from such determinations. Far from being unsuitable for arbitration, these disputes may, in many cases, be particularly well-suited to determination by specialist arbitral tribunals.

By separating questions of status from questions of financial consequence and other inter-personal obligations, it may be possible to reduce delay, minimise procedural duplication and alleviate the burden on an already strained justice delivery system, while preserving judicial control over matters that implicate public rights and child welfare.

The need for such a framework becomes apparent when one examines the procedural architecture of matrimonial litigation in India. A matrimonial dispute rarely remains confined to a single proceeding. Depending upon the nature of the allegations and the reliefs sought, parties often find themselves litigating simultaneously before Family Courts, Magistrates' Courts, Sessions Courts and constitutional courts. Each proceeding follows its own procedural trajectory and is accompanied by a distinct appellate or revisional mechanism.

Diverse and Parallel Proceedings

A matrimonial dispute rarely remains confined to a single forum or a single cause of action. What begins as a petition for divorce or judicial separation can rapidly proliferate into a network of simultaneous proceedings before multiple courts, each governed by distinct procedural rules and each carrying its own appellate machinery.

A single dispute may, at any given time, simultaneously encompass a petition for divorce or judicial separation before the Family Court; an application for maintenance under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023; proceedings under the Protection of Women from Domestic Violence Act, 2005 for protection, residence or monetary relief; criminal proceedings under Sections 85 and 86 of the Bharatiya Nyaya Sanhita, 2023 for dowry and matrimonial cruelty; guardianship and custody proceedings, which may themselves be the subject of recurring applications as circumstances evolve; execution proceedings arising from orders already passed; and contempt proceedings where compliance is alleged to have been withheld. In more complex matters, the web of litigation extends further still, to disputes over shares in joint family or ancestral property and applications alleging perjury.

The complexity is compounded by the interlocutory dimension. Interim orders, particularly interim maintenance, ad interim custody arrangements, and interim injunctions in property disputes, are routinely challenged before appellate or revisional forums, often before the underlying proceeding has concluded. Maintenance orders are modified and re-litigated as financial circumstances change. Custody arrangements, being inherently sensitive to the welfare of the child, are revisited with shifting facts and frequently generate recurring applications. Each execution proceeding introduces a further stratum of litigation, and allegations of non-compliance regularly give rise to fresh contempt proceedings.

The result is that the matrimonial litigant is seldom engaged in a single dispute. More often, she or he is simultaneously navigating a constellation of interconnected proceedings, progressing at an uneven pace, before different forums, and subject to distinct appellate routes.

Limited Issues

Despite this procedural complexity, a closer examination reveals that the overwhelming majority of matrimonial disputes ultimately narrow down to a limited set of recurring questions: whose conduct led to the breakdown of the marriage; what is the true income and financial capacity of the earning spouse or spouses; what amount of maintenance or financial support is payable, to whom and for what duration; how assets ought to be divided; and how parental responsibilities should be structured. These questions, though arising within a matrimonial context, are fundamentally adjudicatory in nature. It is this disconnect between procedural multiplicity and substantive simplicity that invites a reconsideration of whether some of these issues might be resolved more effectively through alternative adjudicatory mechanisms.

The result is procedural duplication on an extraordinary scale. The same parties repeatedly litigate overlapping factual issues before different forums. Questions concerning income, expenditure, conduct and child welfare are revisited in multiple proceedings. The problem is particularly acute in the Indian context, where disputes over financial disclosure are commonplace and parties frequently advance sharply divergent accounts of income, assets and earning capacity. Financial prosperity may be emphasised when advantageous, while claims of hardship emerge when financial obligations are sought to be reduced. Establishing the true financial position often requires extensive disclosure, repeated evidentiary exercises and prolonged adjudication, generating significant delay and expense.

This prolonged adversarial process leaves behind deeply disgruntled parties, emotionally strained children and an overburdened judicial system. Years that ought to have been devoted to rebuilding lives and securing the future of children of broken homes are instead spent in the corridors of courts.

The Paradox at the Heart of Matrimonial Litigation

Marriage occupies a unique position in Indian jurisprudence. Under Hindu law, marriage is not merely a civil contract but a sacrament, a sacred union traditionally regarded as spiritually binding. It sits at the foundation of the family, which in turn forms the basic unit of society.

Yet a striking dichotomy lies at the heart of matrimonial jurisprudence in India. On the one hand, marriage continues to be treated as an institution of profound personal, familial and societal significance. On the other hand, the legal system has increasingly recognised that the breakdown of a marriage may give rise to serious wrongs warranting criminal prosecution. The enactment of provisions addressing dowry-related offences, domestic violence, matrimonial cruelty and other forms of abuse reflects an important legislative response to social realities that cannot be ignored.

While criminal prosecution is both necessary and appropriate where matrimonial disputes involve allegations of abuse, cruelty or other criminal wrongdoing, not every aspect of matrimonial breakdown is of the same character. Many of the disputes that consume the greatest amount of judicial time concern maintenance, financial disclosure, division of assets and parental responsibilities. These are disputes between individuals concerning competing rights and obligations, and are often better suited to confidential, specialist and time-bound adjudication. Arbitration offers the possibility of resolving such disputes without diminishing the court's essential role in matters of status, criminal liability and child welfare.

Rights in Rem versus Rights in Personam

There is no quarrel with the distinction between rights in rem and rights in personam. In *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*[1], the Supreme Court recognised that disputes concerning rights in rem are generally non-arbitrable, whereas subordinate rights in personam arising from rights in rem may be arbitrable. The principle was reaffirmed in *Vidya Drolia v. Durga Trading Corporation*[2], where the Court reiterated that disputes affecting status and rights exercisable against the world at large ordinarily remain outside the arbitral domain.

There can be little disagreement that dissolution of marriage, declarations of marital status, legitimacy and certain guardianship determinations are matters in rem. They alter legal status and have consequences extending beyond the immediate parties. However, not every dispute arising from marriage necessarily shares that character. Questions concerning maintenance quantification, financial disclosure, valuation of assets, educational expenses, ownership disputes, reimbursement claims and other

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[1] 2011 AIR SC 2507
[2] 2020 SCC OnLine SC 1018

financial obligations are fundamentally disputes between identified individuals. Their resolution does not alter legal status. They concern reciprocal obligations inter se.

The more difficult question is whether the mere existence of a matrimonial relationship should automatically render every consequential dispute non-arbitrable.

Indeed, Indian matrimonial law already recognises private dispute resolution in various forms. Mediation, negotiated settlements, parenting plans, consent terms and mutual consent divorce settlements are routinely encouraged by courts. Parties frequently agree upon maintenance structures, custody arrangements and property divisions. The legal system therefore already accepts that substantial components of matrimonial disputes are capable of consensual private resolution.

The difficulty, however, is that mediation depends upon consensus. In highly acrimonious matrimonial disputes, consensus is often elusive. Mediators cannot impose outcomes. Where negotiations fail, parties return to the court system and continue litigating. Financial disputes involving business interests, asset tracing, valuation exercises and competing income claims often require adjudication rather than facilitation. Arbitration helps bridge the gap between disputes that cannot be resolved through mediation and the prospect of prolonged court proceedings. It offers finality without sacrificing flexibility.

The Global Position

Comparative experience demonstrates that the notion that all disputes arising from a matrimonial relationship are inherently non-arbitrable is steadily yielding ground to a more nuanced approach. Several jurisdictions now distinguish between disputes affecting marital status and those concerning the financial consequences of family breakdown.

In England and Wales, arbitration under the Institute of Family Law Arbitrators ("IFLA") scheme is available for financial and property disputes arising out of marriage, civil partnership and cohabitation, and has since 2016 been extended to certain disputes concerning parental responsibility and children's arrangements. Australia similarly permits arbitration of property, maintenance and financial disputes under the Family Law Act 1975, a framework most recently strengthened by the Family Law Amendment Act 2024. In Canada, Ontario and British Columbia have enacted statutory frameworks specifically recognising family arbitration. It is however important to note that the position is not uniform across provinces, Quebec expressly declaring family matters non-arbitrable. Several jurisdictions in the United States permit arbitration of property division, spousal support and, in some instances, child-related issues, subject to judicial oversight. Spain, while not yet having a settled statutory framework, has seen the development of specialist family arbitration institutions in practice. Germany, by contrast, maintains a position of formal non-arbitrability for family law matters, though specialist private tribunals operate in that space. The common thread running through the permissive systems is the recognition that while questions of marital status, divorce and certain child welfare matters must remain subject to judicial supervision, disputes concerning financial obligations and proprietary rights between family members are capable of private adjudication, provided adequate safeguards exist to protect vulnerable parties and the interests of children.

The experience of England and Wales is interesting. Significantly, family arbitration in England was not introduced through any dedicated legislation. Rather, the Institute of Family Law Arbitrators (IFLA) established a voluntary arbitral framework operating under the general provisions of the Arbitration Act 1996. Recognising the increasing strain upon the family justice system, the family law community developed a specialist arbitration framework through the Institute of Family Law Arbitrators. The original Financial Scheme was launched in February 2012; following its success, a Children Scheme was introduced in July 2016. Both operate under the arbitration framework. The Financial Scheme applies to all forms of financial and property dispute arising from the breakdown of marriage, civil partnership and cohabitation, including maintenance, asset division, pension sharing, and financial provision for children. The Children Scheme covers disputes concerning where children should live, how much time they should spend with each parent, and relocation within England and Wales. Importantly, however, the scheme preserves the exclusive jurisdiction of the court over divorce, nullity and marital status, and excludes matters such as cross-jurisdictional relocation and life-changing medical treatment decisions. The governing principle is that status remains with the court; the financial and practical consequences of marital breakdown may be determined by an arbitrator.

In *S v S*[3], the High Court recognised that, although an arbitrator may determine the dispute, the resulting award must ultimately be translated into a court order because an arbitral tribunal lacks the statutory authority to bind third parties, such as pension administrators, or to finally exclude the court's supervisory jurisdiction. The Court therefore devised an expedited approval process. Where both parties accepted the award, they could seek its incorporation into a court order through a fast-track procedure requiring the filing of the arbitration agreement, the award, the proposed consent order and the prescribed financial disclosure documents. Such applications were intended to be dealt with swiftly, often without the delays ordinarily associated with financial remedy proceedings. Where a party sought to resile from the award, a "show cause" procedure would apply, the dissenting party being required to establish a ground of challenge within the boundaries of the Arbitration Act 1996 in an abbreviated hearing. The President made clear that the award carried decisive weight and that arbitration was not to become merely a preliminary stage before a full rehearing.

In *BC v BG*[4], Deputy High Court Judge Ambrose adopted a markedly arbitration-friendly approach, emphasising the mandatory framework of the Arbitration Act 1996 and the limited grounds upon which arbitral awards could be challenged. The judgment underscored the advantages of arbitration, particularly its finality, efficiency and certainty, and cautioned against allowing dissatisfied parties to use the court process as a means of relitigating disputes already determined by an arbitrator. In effect, *BC v BG* treated family arbitral awards in a manner broadly analogous to commercial arbitral

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[3] [2014] EWHC 7 (Fam)
[4] [2019] EWFC 7

awards, subject only to the narrow avenues of challenge recognised under the Arbitration Act 1996.

However, *Haley v Haley*[5] departed from that approach. While reaffirming the value of family arbitration, the Court of Appeal held that family arbitral awards should not be insulated from review by the restrictive standards applicable to commercial arbitration. Instead, where a party seeks to challenge a financial remedy award, the court must apply the same principles that would govern an appeal from a decision of a family court judge.

Lessons for India

India faces a challenge of scale that far exceeds that of England and Wales. Family courts across the country struggle with substantial caseloads. Multiple proceedings continue simultaneously before different forums. Interim applications consume enormous judicial resources. In many cases, litigation itself becomes the punishment.

A carefully designed family arbitration framework could alleviate some of these pressures. Divorce, nullity, adoption, guardianship, legitimacy and core child welfare issues would remain exclusively within the jurisdiction of courts. Financial disputes, however, including maintenance quantification, determination of earning capacity, asset division, child support, educational expenses, business valuation, could potentially be referred to specialist arbitrators. Such disputes often require expertise in valuation, taxation, accounting and financial analysis. Arbitrators with specialised experience may in some cases be better equipped to resolve these questions efficiently than a court burdened with a crowded docket.

Unlike the position in the United Kingdom, the introduction of a comparable framework in India would almost certainly require specific legislative intervention. Any such reform would necessitate a careful examination of the existing statutory framework governing matrimonial disputes, including the various personal laws, the Family Courts Act, 1984, the Protection of Women from Domestic Violence Act, 2005, the Bharatiya Nagarik Suraksha Sanhita, 2023, and other allied enactments. Parliament would need to identify, with precision, those categories of disputes that may be referred to arbitration and those that must remain within the exclusive jurisdiction of the courts.

Equally important would be the formulation of a coherent procedural framework governing the relationship between arbitral and judicial proceedings. Consideration would need to be given to which proceedings ought to remain stayed during the pendency of the arbitration, which proceedings should continue unabated, and the manner in which arbitral determinations are to be incorporated into, or reviewed by, the courts. Participation in such a process must necessarily remain voluntary and informed, supported by adequate safeguards to ensure fairness, protect vulnerable parties and preserve the paramount consideration of child welfare wherever implicated.

As India searches for solutions to mounting judicial delays, family arbitration deserves serious consideration. Not as a substitute for family courts, but as a complementary

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[5] *[2020] ECA Civ 1369*

mechanism capable of delivering faster, more specialised and more effective justice. In a justice system burdened by delay, procedural innovation is not merely desirable; it may be indispensable.

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