SACRED BONDS, SECULAR CLAIMS: REASSESSING THE ARBITRABILITY OF MATRIMONIAL FINANCIAL DISPUTES IN INDIA

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ABSTRACT

In India, disputes within marriages are still not permitted to be resolved through private means due to a public policy principle that treats family matters as inherent rights. This leads all marital conflicts to be handled by a court system that is already burdened, thus undermining the constitutional guarantees of a quick trial and fair access to justice as per the Articles 21 and 39A of the Constitution. This differentiates primary status disagreements like divorce, legal separation, and child custody from secondary financial claims such as Stridhan, spousal support, and property division, asserting that the latter are lesser personal rights and can be subject to arbitration entirely. The contrasts court-mandated arbitration with private agreement orders, demonstrating that the latter offer more finality and protection against future legal battles. The document concludes with suggestions for Indian laws inspired by the family arbitration systems in the UK and Australia, aiming to strike a balance between party autonomy and essential public-interest protections.

Keywords: Marital mediation; Arbitrability. Arbitration and Conciliation Act, 1996. Material and individual rights. Stridhan. Spousal support and child maintenance. Property division. Family tribunal. Comparative Family Law. India.

Introduction: The Public-Policy Barrier to Matrimonial Arbitration

The decision to love, form a family, and find companionship is a deeply personal choice for an individual. However, in India, marriage has traditionally not been viewed solely as a private agreement but rather as a sacred social institution. Under Hindu personal law, it is seen as a sacramental union, while under Islamic law, it is considered a contractual bond with the state maintaining a paternalistic and regulatory interest. Due to the belief that the family unit is crucial for social stability, the state has historically asserted control over the resolution and restructuring of family relationships. When a marriage encounters issues, all related disputes, whether they pertain to the core marital status or financial matters, are directed to the public Family Courts.[1] The scale of this institutional burden is considerable: as of November 2023, more than 4.4 crore cases remained pending before India's district and taluka courts alone, with a further 61.7 lakh cases pending in the High Courts, according to figures compiled by the Supreme Court's own Centre for Research and Planning. Matrimonial and family matters, filed within this already congested civil docket, inevitably absorb years before even preliminary hearings are concluded.[2] This rigid approach has led to a systemic problem, with the judicial system facing an overwhelming, multi-tiered backlog. Even straightforward financial settlements, alimony distributions, or property division cases can extend over many years, effectively violating the constitutional guarantees to a prompt trial and equal access to justice enshrined under Articles 21 and 39A of the Constitution of India. [3]While legislative efforts and judicial directives have actively promoted mediation and conciliation for the purpose of marital reconciliation, the potential of utilizing private, binding arbitration in family matters remains largely unexplored. This structural hesitation stems from a sweeping, broad interpretation of the non-arbitrability doctrine, which routinely throws a blanket of "public policy considerations" over all matrimonial disputes[4].

This analysis argues that the blanket categorization of marital disputes as non-arbitrable is flawed in doctrine and inefficient in practice, a concern also raised in recent Indian legal writings, such as "Arbitrability of Matrimonial Disputes in India. [5]By distinguishing between core status

[1] Prarthana Chigateri, *Arbitrating Matrimonial Disputes in India*, 5 Law Brigade Publishers 112 (2019)

[2] 'Judiciary Struggling to Clear Backlog of over 5 Crore Cases with Less than 21,000 Judges' *The Tribune* (Chandigarh, 17 December 2023) <https://www.tribuneindia.com/news/india/21k-judges-struggle-to-clear-5-crore-cases-572887> accessed 20 July 2026.

[3] INDIA CONST. art. 21, 39A; *see also* Law Commission of India, *238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908* (December 2011).

[4] Ajar Rab, *Family Dispute Arbitration in India: A Dual Layer Protecting the Privacy and the Sacred Union*, 7 Indian J. Arb. L. 161 (2018).

[5] Namrata Jain's article "Arbitrability of Matrimonial Disputes in India," published in the Jus Corpus Law Journal (2026).

determinations (rights in rem) and secondary economic claims (subordinate rights in personam), the Indian legal system can leverage the advantages of private arbitration, including party autonomy, efficiency, and confidentiality. Through a comparison of the enforcement mechanisms in the Code of Civil Procedure, 1908, and the Arbitration and Conciliation Act, 1996, this study illustrates that private consent awards provide greater finality and protection against re-litigation compared to court-approved compromise decrees.[6]

Research Methodology

This study utilizes a qualitative, legal-doctrinal method along with a comparative legal approach, focusing on the interpretation of laws, constitutional clauses, and judicial decisions.[7] The comparative aspect assesses how two similar common-law systems, the United Kingdom and Australia, handle and oversee matrimonial arbitration, examining the effectiveness of the Indian system compared to established alternative models. [8]The UK is scrutinized for its well-established legal framework for family arbitration and its prominent court decisions supporting arbitral awards; Australia is analyzed for its formalized legal structure allowing and regulating private arbitration of property and financial disputes. These countries represent common-law backgrounds with different legal principles regarding party independence versus public interest, providing a valuable comparison to India's stance.[9]

The examination follows a four-step process for each legal concept, based on a standard qualitative assessment model inspired by Michael Quinn Patton's Qualitative Research & Evaluation Methods (3rd ed., Sage, 2002): identifying the relevant concept, closely analyzing the applicable legal provision, integrating with comparative legal practices, and evaluating against the principles of fairness, party autonomy, and access to justice. [10]The study also references the Law Commission

[6] Code of Civil Procedure, 1908, § 89; Arbitration and Conciliation Act, 1996, § 30; Law Commission of India, *238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908* (December 2011); *The Ruby Sales and Services (P) Ltd. v. State of Maharashtra*, (1994) 1 SCC 531.

[7] For foundational literature on legal-doctrinal frameworks in Indian family law, *see* 1 Dinshah Fardunji Mulla, Principles of Hindu Law § 14 (Satyajeet A. Desai ed., 22nd ed. 2016).

[8] *Haley v. Haley*, [2020] EWCA Civ 1369 (Eng.) (delineating the appellate standards for family arbitral awards in the UK); Family Law Act 1975 (Cth) s 13H (Austl.) (governing the registration and finality of family property arbitral awards)

[9] Prarthana Chigateri, *Arbitrating Matrimonial Disputes in India*, 5 Law Brigade Publishers 112 (2019); Ajar Rab, *Family Dispute Arbitration in India: A Dual Layer Protecting the Privacy and the Sacred Union*, 7 Indian J. Arb. L. 161 (2018).

[10] Michael Quinn Patton, Qualitative Research & Evaluation Methods 140–160 (3rd ed. 2002)

of India's examination of court-based settlements under the Code of Civil Procedure, as outlined in the 238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 (2011), which is the primary official assessment of the limitations of that process. [11]The assessment is limited to a legal analysis of laws, constitutional clauses, and legal precedents; it does not rely on firsthand empirical data, and its findings are indicative and most directly applicable.

The Evolving Doctrine of Arbitrability in Indian Law

The perception of marriage as a societal sacrament, rather than a simple legal agreement, has historically provided a basis for the government's strict oversight of family matters. Changes in marital status and decisions regarding parental rights under personal laws have significant societal implications, impacting inheritance, tax responsibilities, legitimacy, and social status. These consequences affect the public as a whole, creating effects that are binding on everyone (erga omnes effect), and therefore, the authority to address these matters has been exclusively granted to state-run courts. It is not permissible for private individuals to transfer the power to modify legal status to an arbitral tribunal through a contract. Since an arbitration tribunal's jurisdiction is established solely through the consent of the parties involved, its decisions cannot be enforced on third parties or the government. While this principle is logical for status-related issues, extending it universally to the financial aspects of a divorce is an unnecessary and overly controlling action that overlooks the increasing intricacy of modern marital assets.[12]

The fundamental criteria for determining arbitrability in India were established by the Supreme Court in the case of Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011). The court outlined specific types of disputes that are not eligible for private arbitration due to public policy concerns: disputes stemming from criminal activities; family disputes related to divorce, separation, reconciliation of marital rights, and child custody; matters of guardianship; insolvency and liquidation; matters of wills; and disputes over property or leases governed by particular laws. This classification is based on the differentiation between rights that can be exercised universally against everyone (rights in rem) and rights that are enforceable only against specific individuals (rights in personam). Since primary family disputes change legal status with effects that are

[11] Law Commission of India, *238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908* (December 2011).

[12] Ajar Rab, *Family Dispute Arbitration in India: A Dual Layer Protecting the Privacy and the Sacred Union*, 7 Indian J. Arb. L. 161 (2018); *also* Prarthana Chigateri, *Arbitrating Matrimonial Disputes in India*, 5 Law Brigade Publishers 112 (2019)

binding on everyone, they are considered actions in rem and are inherently non-arbitrable. However, there is an important exception: subsidiary rights in personam arising from a right in rem have always been deemed arbitrable.[13]

Subsequent legal decisions further solidified this reasoning into a systematic, four-part examination to determine when a disagreement is not suitable for arbitration under Indian legislation, most notably in the case of Vidya Drolia v. Durga Trading Corporation (2021). [14]Utilizing this structure, the Supreme Court determined that a disagreement is not fit for arbitration based on the following conditions:

- Firstly, when the legal basis for the disagreement pertains to an action concerning a right over property that is not related to a secondary personal right stemming from a property right.
- Secondly, when the disagreement impacts the rights of third parties, has broad implications, or necessitates centralized resolution that would make private resolution inappropriate or unenforceable.
- Thirdly, when the disagreement involves the inherent sovereign and public-interest responsibilities of the government.
- Fourthly, when the subject matter is explicitly or implicitly designated as not appropriate for arbitration by a compulsory law.

Utilizing this framework, fundamental disputes concerning marital status are considered not suitable for arbitration as they impact civil status significantly and fall within the jurisdiction of state-operated family courts. Conversely, economic claims arising from marriages that are purely private in nature are fully open to arbitration as they involve subordinate personal rights.[15]

To understand how the concept of arbitrability interacts with various civil disputes, it is essential to analyze the legal evolution regarding fraud allegations. In the case of N. Radhakrishnan v. Maestro Engineers (2010), the Supreme Court initially ruled that matters involving serious fraud allegations should be resolved by civil courts and not arbitrators, deeming them non-arbitrable. [16]However, a subsequent case, A. Ayyasamy v. A. Paramasivam (2016), differentiated between simple and complex fraud allegations, stating that simple fraud claims can be arbitrated while

[13] *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532
[14] *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1
[15] Arbitrability of Matrimonial Disputes in India: The Vidya Drolia Four-Fold Test, iPleaders (2026)
[16] *N. Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72

complex ones requiring extensive evidence should be handled by civil courts. [17]This distinction was also deliberated in the case of Swiss Timing Ltd. v. Organising Committee, Commonwealth Games (2014), which favored arbitration for fraud disputes.[18]

The uncertainty was ultimately clarified in the Vidya Drolia case, overturning the N. Radhakrishnan decision by allowing arbitral tribunals to handle civil aspects of fraud, coercion, undue influence, or misrepresentation. [19]The exception is when the fraud directly undermines the arbitration agreement itself, as seen in the Rajia Begum v. Barnali Mukherjea case (2026) where a serious forgery allegation affecting the existence of the arbitration agreement was deemed appropriate for resolution by a civil court.[20]

The arbitrability of disputes governed by special laws was also elucidated. While forums like the Debt Recovery Tribunal provide a faster resolution under the Recovery of Debts due to Banks and Financial Institutions Act, making such disputes arbitrable, matters under the Indian Trusts Act, 1882, as highlighted in the Vimal Kishor Shah v. Jayesh Dinesh Shah case (2016), are inherently non-arbitrable.[21]

Recently, the Supreme Court has consistently emphasized party autonomy, asserting in cases like NTPC Ltd. v. SPML Infra Ltd. (2023) that arbitral tribunals should be the primary authority for determining arbitrability issues. The role of the referring court under Section 11 of the Arbitration and Conciliation Act, 1996, is limited to a narrow review of the arbitration agreement's existence and validity. [22]Additionally, in the significant case involving the interaction between arbitration agreements under the Arbitration & Conciliation Act, 1996, and the Indian Stamp Act, 1899 (2023), [23]the Supreme Court validated unstamped arbitration agreements, ensuring that procedural objections do not halt arbitration proceedings, with stamp duty matters to be settled by the tribunal

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[17] *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386

[18] *Swiss Timing Ltd. v. Organising Committee, Commonwealth Games 2010*, (2014) 6 SCC 677

[19] *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1; *overturning N. Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72; *see also Dealing with Arbitrability of Fraud in India - The Supreme Court's Fra(e)udian Slip?*, Wolters Kluwer Arbitration Blog, https://legalblogs.wolterskluwer.com/arbitration-blog/dealing-with-arbitrability-of-fraud-in-india-the-supreme-courts-fraeudian-slip/.

[20] *Rajia Begum v. Barnali Mukherjea*, Civil Appeal No. of 2026 (Supreme Court of India)

[21] *Vimal Kishor Shah v. Jayesh Dinesh Shah*, (2016) 8 SCC 788; *see also Arbitrability of Disputes: Indian Jurisprudence (Part 2)*, Cyril Amarchand Mangaldas Blog (June 2024), https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence/.

[22] *NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385.

[23] Arbitration and Conciliation Act, 1996, § 11 (India)

itself.[24]

Deconstructing the In Rem versus In Personam Divide in Marital Relations

The legal status of a marriage is considered a fundamental property right. Processes such as divorce, annulment, or validation of a marriage can change the legal standing of individuals concerning the broader society. These legal decisions are binding on government entities, tax offices, and external parties, setting rules for inheritance and the right to remarry that cannot be altered privately. [25]

Determinations of child custody and guardianship also serve a public interest, focusing on protecting the well-being of minors. As these rulings require public supervision and adherence to protective legal criteria, they cannot be resolved through confidential arbitration and are strictly non-arbitrable.[26]

On the other hand, financial disputes related to a marriage are private matters between two people. These disputes involve personal rights that emerge from the marital union but are secondary to it. Actions such as splitting joint assets, sharing corporate stocks owned by the spouses, and dividing shared financial resources are essentially business and legal transactions. [27] The urgency of resolving such claims efficiently is underscored by persistent gender disparities in asset holding: the sixth round of the National Family Health Survey found that only 18.8 per cent of Indian households had a woman member owning a house or land, either individually or jointly, a rise of less than five percentage points over the previous round. Where a woman's economic security depends so heavily on the prompt recognition of her share in marital property, prolonged court delays compound an existing structural disadvantage.[28] They do not impact marital status but adjust property rights between individuals. Since these claims are secondary personal rights

[24] *In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*, 2023 INSC 1066

[25] *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532 (holding that matters concerning matrimonial status, divorce, and judicial separation alter civil status *erga omnes*, thereby constituting actions *in rem* that cannot be validly referred to a private arbitral tribunal); *see also* Prarthana Chigateri, *Arbitrating Matrimonial Disputes in India*, 5 Law Brigade Publishers 112 (2019)

[26] Guardians and Wards Act, 1890, § 7 (India); *see also* Ajar Rab, *Family Dispute Arbitration in India: A Dual Layer Protecting the Privacy and the Sacred Union*, 7 Indian J. Arb. L. 161 (2018) (noting the non-delegable protective duties of the state over minor wards)

[27] *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1 (affirming that subordinate rights *in personam* arising out of rights *in rem* are fully amenable to arbitration)

[28] 'Gradual Progress: India’s Women Gain Access, Not Assets, Finds NFHS' *Business Standard* (Mumbai, 10 June 2026) <https://www.business-standard.com/industry/news/nfhs-reveals-two-speed-progress-in-women-s-empowerment-across-india-126061001296_1.html> accessed 20 July 2026.

stemming from a primary property right, they lack universal impact, do not bind outside parties, and do not involve governmental functions; hence, they can be settled through private arbitration.[29]

Proprietary Autonomy and the Absolute Character of Stridhan

A woman's Stridhan is considered her exclusive possession, acknowledged in Mulla, Principles of Hindu Law (Satyajeet A. Desai ed., 22nd ed., 2016); her spouse and his family serve as trustees and are obligated by law to give it back upon request. [30]This ownership right is safeguarded under Hindu personal law and enshrined in Section 14(1) of the Hindu Succession Act, 1956, which provides a Hindu woman with full ownership of property obtained through gifting, inheritance, or partition. Traditional legal principles categorize such property into groups like Saudhayika, comprising gifts from caring relatives that she can fully control, and non-Saudhayika, an outdated concept replaced by modern laws ensuring equal property rights regardless of gender.[31]

In the significant case of Pratibha Rani v. Suraj Kumar (1985), the Supreme Court clarified the difference between unlawful dowry demands and the voluntary gifts that make up Stridhan[32]. The court ruled that a married woman's Stridhan remains her own and does not become joint property just because she marries into her husband's family. The husband and his family are mere custodians and trustees. Failure to return these items upon demand constitutes a breach of trust, punishable under Section 406 of the Indian Penal Code, now Section 316 of the Bharatiya Nyaya Sanhita, 2023. This principle was reinforced in Rashmi Kumar v. Mahesh Kumar Bhada (1997), where the court stated that misappropriating Stridhan leads to civil and criminal liabilities.[33]

The practical stakes of maintaining a clear doctrinal boundary between Stridhan and dowry are considerable, given that the National Crime Records Bureau's Crime in India 2023 report recorded 15,489 cases registered under the Dowry Prohibition Act, 1961, a fourteen per cent increase over the preceding year, alongside more than 83,000 cases still pending trial nationwide. A regime that permits swift, private arbitration of straightforward Stridhan recovery claims would relieve pressure on this already overloaded criminal-adjacent docket without diluting the protective

[29] Namrata Jain, *Arbitrability of Matrimonial Disputes in India*, 6 Jus Corpus L.J. 45 (2026)
[30] Dinshah Fardunji Mulla, Principles of Hindu Law § 14 (Satyajeet A. Desai ed., 22nd ed. 2016); Hindu Succession Act, 1956, § 14(1) (India)
[31] *Stridhan And Women's Estate: Empowering Women's Right In India*, Lawyers Club India (2024),
[32] *Pratibha Rani v. Suraj Kumar*, (1985) 2 SCC 370; Indian Penal Code, 1860, § 406; Bharatiya Nyaya Sanhita, 2023, § 316
[33] *Rashmi Kumar v. Mahesh Kumar Bhada*, (1997) 2 SCC 397; *see also Smt. Rashmi Kumar v. Mahesh Kumar Bhada*, Estate Planning Blog,

function of the dowry laws themselves.[34]

In a recent case, Maya Gopinathan v. Anoop S.B. (2024), the Supreme Court overturned an appellate judgment that had dismissed a recovery decree due to procedural delays. [35]The court stressed that matrimonial disputes cannot be rushed due to social pressures and attempts at reconciliation. By reinstating the family court's decree, the Supreme Court increased the monetary compensation to twenty-five lakh rupees, emphasizing that the burden of proof in matrimonial recovery cases relies on the civil standard of a preponderance of probabilities. Retrieving these personal assets involves a straightforward debt claim between parties and does not involve third parties, making it arbitrable.[36]

The legal distinction between voluntary gifts (Stridhan) and coercive transactions (dowry) is crucial in marital property disputes, as evidenced by various landmark judgments:

- Kans Raj v. State of Punjab (2000) differentiated dowry as property given directly for marriage and Stridhan as voluntary gifts.[37]
- Appasaheb v. State of Maharashtra (2007) clarified that routine domestic requests are not considered dowry[38].
- Inderjit Singh Grewal v. State of Punjab (2011) warned against using criminal proceedings for civil property disputes arising from marital issues.[39]
- Preeti Gupta v. State of Jharkhand (2010) stressed the importance of scrutinizing exaggerated claims involving family jewelry.[40]
- Velusamy v. Patchaiammal (2010) recognized the economic expectations and property protections due to women in relationships.[41]

These judgments collectively show that while Stridhan recovery is often pursued through remedies under the Protection of Women from Domestic Violence Act, 2005, and civil suits, it primarily

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[34] 'Dowry Crimes Rose 14% in 2023, over 15,000 Cases and 6,100 Deaths, Shows NCRB Data' *ThePrint* (New Delhi, 30 September 2025) <https://theprint.in/india/dowry-cases-rise-by-14pc-in-2023-over-6100-women-killed-ncrb-report-shows/2755172/> accessed 20 July 2026.
[35] *Maya Gopinathan v. Anoop S.B.*, 2024 INSC 334
[36] *Case Analysis of Maya Gopinathan v. Anoop S.B. & Anr*, EduLaw,
[37] *Kans Raj v. State of Punjab*, (2000) 5 SCC 207; *see also Dowry v/s Stridhan: Legal Distinctions and Women's Property Rights in India*, Legal Wires
[38] *Appasaheb v. State of Maharashtra*, (2007) 9 SCC 721; *STRIDHAN VS DOWRY: CODIFYING MORAL ETHICAL CONDUCT*, 3 J. Legal Research & Juridical Stud.
[39] *Inderjit Singh Grewal v. State of Punjab*, (2011) 12 SCC 588
[40] *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667
[41] *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469

concerns individual property rights. Since marriage does not affect a woman's absolute ownership, reclaiming Stridhan is a personal debt claim suitable for private arbitration.[42]

Alimony, Maintenance, and Property Partition as Arbitrable Claims

The foundational right to request support stems from laws focused on justice in society, like Section 125 of the Code of Criminal Procedure, 1973, aimed at preventing homelessness and poverty. The actual determination of the amount of support is a personal financial responsibility. Courts have consistently acknowledged that Section 125, being secular, takes precedence over conflicting personal laws to achieve a fundamental social goal. [43]Legal cases such as Vimla (K.) v. Veeraswamy (K.) (1991) and Bhuwan Mohan Singh v. Meena (2015) have affirmed that the entitlement to support is an ongoing duty intended to alleviate the financial hardship of dependent spouses and children. [44]Once the legal claim is established, deciding the monthly support payment or one-time alimony is essentially a contractual debt that can be handled through private arbitration.[45]

Likewise, Section 24 of the Hindu Marriage Act, 1955, [46]allows for temporary support and legal expenses to ensure that a financially disadvantaged spouse has the means to defend or pursue a marital case. In the case of Rajnesh v. Neha (2021), the Supreme Court introduced comprehensive guidelines to resolve jurisdictional overlaps and determine a fair and practical amount of support based on the actual earnings and financial capabilities of the individuals involved. [47]A Division Bench of the Delhi High Court in 2026 clarified that an appeal is a continuation of the original marital proceedings, thereby extending the protection provided by Section 24 until all appeals are exhausted.[48]

The economic rationale for prompt maintenance determinations is reinforced by persistently low female workforce participation: NFHS-6 data released in mid-2026 showed that only 30.8 per cent

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[42] Protection of Women from Domestic Violence Act, 2005, § 12, 19(8) (India);*Wife's Absolute Property*, Drishti Judiciary (2024)

[43] Code of Criminal Procedure, 1973, § 125 (India)

[44] *Vimla (K.) v. Veeraswamy (K.)*, (1991) 2 SCC 375; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353

[45] *Changing Dimensions Of S.125 Of Crpc – An Analysis Through Recent Judicial Pronouncements*, LiveLaw (2025)

[46] Hindu Marriage Act, 1955, § 24 (India)

[47] *Rajnesh v. Neha*, (2021) 2 SCC 324

[48] *Wife Entitled To Interim Maintenance Under Hindu Marriage Act During Pendency Of Appeal Against Divorce Decree: Delhi High Court*, LiveLaw (2026)

of women aged fifteen to forty-nine had been paid in cash for work performed in the preceding year, a modest rise from 24.6 per cent a decade earlier. For the large majority of women who remain economically dependent within a marriage, delay in fixing maintenance translates directly into a period of acute financial vulnerability that private arbitration, with its comparatively compressed timelines, is well placed to shorten.[49]

As decisions regarding alimony, support, and the division of marital assets focus on the financial circumstances of the parties, their standard of living, and actual income, this process resembles commercial asset valuation procedures. The final court order on property division or asset allocation does not change the marital status itself but only adjusts property rights. Therefore, these financial disagreements arise as personal rights from a broader property right and are not subject to the public policy exceptions outlined in Vidya Drolia.[50]

The Severability Principle and the Problem of Intertwined Claims

One common challenge in matrimonial arbitration is the strategy of mixing different types of claims. In contentious divorces, a partner might try to avoid a valid arbitration agreement by blending financial claims suitable for arbitration with non-arbitrable criminal or protective claims. For instance, they could combine a request to divide marital assets with accusations of cruelty under a specific legal section, or a plea for protection and maintenance orders under domestic violence laws.[51]

This tactic is aided by the demonstrably slow pace of the criminal process itself: investigative reporting on dowry-related prosecutions has found conviction rates languishing between eleven and seventeen per cent nationally, with evidentiary hurdles, hostile witnesses, and delayed trials cited as the principal causes. A spouse aware of these odds has every incentive to file a parallel criminal complaint not to secure a conviction but simply to freeze a financial dispute that would otherwise proceed swiftly to arbitration.[52]

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[49] 'Gradual Progress: India's Women Gain Access, Not Assets, Finds NFHS' *Business Standard* (Mumbai, 10 June 2026) <https://www.business-standard.com/industry/news/nfhs-reveals-two-speed-progress-in-women-s-empowerment-across-india-126061001296_1.html> accessed 20 July 2026.

[50] *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1; Calcutta High Court, *Calculation of Maintenance 'Pendente Lite'*, India Law Offices

[51] Protection of Women from Domestic Violence Act, 2005, §§ 18, 19, 20 (India) (describing statutory mechanisms for protection and maintenance that implicate public policy overrides); Indian Penal Code, 1860, § 498A (governing cruelty against women)

[52] '20 Dowry Deaths a Day, but Conviction for 1 in 6: A Tale of Evidentiary Hurdles, Delayed Trials, Apathy'

In the past, there was a strict rule, established in the Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya case in 2003, that prohibited the separation of arbitrable and non-arbitrable matters within a lawsuit. If a case involved both types of claims, the entire dispute had to be resolved by a civil court to prevent fragmented proceedings, increased expenses, and conflicting judgments[53]. The inflexible application of this rule in matrimonial conflicts encourages strategic maneuvering, allowing a spouse to halt an agreed arbitration process by introducing allegations of domestic violence or filing a criminal report, pushing purely financial property disputes back to the slow Family Court system.[54]

However, the current trend leans towards a more adaptable approach based on severability. In the Vidya Drolia case, the Supreme Court stressed the importance of removing non-arbitrable elements and upholding arbitration agreements whenever feasible. [55]Moreover, the Calcutta High Court ruling in Lindsay International Pvt. Ltd. v. Laxmi Niwas Mittal from 2020 stated that, following legal changes, the strict regulation in the Sukanya Holdings case is no longer a total barrier to referral. [56]The recommended method for intertwined claims is a divided one. Non-arbitrable criminal accusations or domestic violence claims should be addressed by criminal courts or magistrates, as they involve public order and state-enforced protection. On the other hand, contractual financial disputes, like property division or Stridhan recovery, should be separated and directed to arbitration based on the parties' agreement. This approach respects the parties' independence, enforces valid contracts, and prevents the strategic misuse of criminal and protective family law to avoid agreed arbitration processes.[57]

Comparing Settlement Mechanisms: Court-Annexed Compromise versus Private Consent Award

In cases where a couple going through a separation agrees to resolve their financial disputes in

ThePrint (New Delhi, 9 September 2025) <https://theprint.in/judiciary/20-dowry-deaths-a-day-but-conviction-for-1-in-6-a-tale-of-evidentiary-hurdles-delayed-trials-apathy/2738252/> accessed 20 July 2026.

[53] *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya*, (2003) 5 SCC 531

[54] Ajar Rab, *161 Ajar Rab* Abstract There have been several attempts to revise and revamp the arbitration regime in India with the intent of*, 7 Indian J. Arb. L. 161 (2018)

[55] *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1

[56] *Lindsay International Pvt. Ltd. v. Laxmi Niwas Mittal*, 2020 SCC OnLine Cal 1658

[57] Arbitration and Conciliation Act, 1996, § 8 (as amended in 2015, narrowing the judicial scope to a *prima facie* review of the arbitration agreement's existence); Prarthana Chigateri, *arbitrating matrimonial disputes in india - The Law Brigade Publishers*, 5 Law Brigade Publishers 112 (2019)

person amicably outside the courtroom, Indian law provides two main options: court-connected settlement leading to a compromise decree, and private arbitration leading to a consent award. The legal system allows civil courts to refer ongoing disputes to alternative dispute resolution mechanisms under Section 89 of the Code of Civil Procedure, 1908, whenever there are signs of a potential settlement. [58]If court-mediated mediation is successful, the involved parties sign a family settlement memorandum, which is then submitted to the Family Court and recorded as an official compromise decree. The court-linked approach has a weakness in terms of finality and enforcement1. According to a ruling by the Supreme Court in The Ruby Sales and Services (P) Ltd. v. State of Maharashtra (1994), a compromise decree is essentially non-judicial and does not hold a superior position to the original contract. [59]It is susceptible to challenges on various grounds that could invalidate a standard contract, like fraud, coercion, misrepresentation, mutual mistake, or undue influence. [60]This vulnerability allows a strategic partner to reopen a settled property distribution much later, dragging both parties back into prolonged legal processes. [61]

In contrast, the private consent-award method operates within the framework of the Arbitration and Conciliation Act, 19961[62]. If the parties come to a mutual agreement during arbitration proceedings, they can request the arbitrator to document it as an arbitral award based on agreed terms under Section 30 of the Act.

The law establishes a legal fiction that gives this approach significant strength: an arbitral award based on agreed terms holds the same status and impact as any other arbitral award made on substantive grounds. Once issued, it can be directly enforced as a civil court decree, without needing separate judicial confirmation or recording of the original compromise. [63]In the court-linked route, when parties present a compromise decree, Family Court judges often exceed basic legality confirmation. Motivated by a protective instinct, judges frequently delve deeper into a settlement to independently evaluate its fairness, equity, and financial adequacy. This discretionary assessment introduces considerable instability. The private consent-award path operates within a strongly protected statutory framework.

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[58] Code of Civil Procedure, 1908, § 89, Order XXIII Rule 3 (India)

[59] *Ruby Sales and Services (P) Ltd. v. State of Maharashtra*, (1994) 1 SCC 531

[60] Guenter Treitel & Edwin Peel, Cheshire, Fifoot, and Furmston's Law of Contract 320–345 (17th ed. 2017).

[61] Law Commission of India, *238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908* (December 2011) (critiquing the procedural delays and vulnerabilities inherent to court-annexed mediation decrees).

[62] Arbitration and Conciliation Act, 1996, § 30 (India)

[63] Prarthana Chigateri, *Arbitrating Matrimonial Disputes in India*, 5 Law Brigade Publishers 112 (2019)

Once documented, it can only be contested based on specific grounds permitted for overturning an arbitral award, a restriction linked by the Supreme Court to public policy considerations in Renusagar Power Co. v. General Electric Co. (1994); the enforcing court lacks the authority to conduct a merit-based assessment. [64]By eliminating the need for a judicial compromise decree, this method benefits from the high level of finality and enforcement effectiveness inherent in the arbitration system, shielding the settlement from the discretionary intervention that often impacts family court compromise decrees.[65]

Comparative Frameworks: The United Kingdom and Australia

The United Kingdom and Australia exemplify different methods of incorporating private family arbitration into the public justice system. In the UK, arbitration is governed by the Institute of Family Law Arbitrators (IFLA) Scheme, which segregates financial disputes (of property and spousal maintenance) from private-law parenting issues, excluding public-law child protection concerns. Parties who choose to participate in this scheme agree to a submission contract that binds them to the arbitrator's decision. [66]Uptake of the IFLA Scheme has nonetheless remained modest since its 2012 launch: by 2023, fewer than 650 arbitrations had been conducted under it in total, comprising 571 financial remedy cases and only 76 children's matters, figures that practitioners attribute to limited public awareness rather than any deficiency in the Scheme's design. This caution is instructive for India, suggesting that legislative recognition of matrimonial arbitration would need to be paired with sustained professional and public outreach to achieve meaningful uptake. [67] The treatment of these decisions by the judiciary has advanced through legal precedents: in the case of S v S (2014), the Family Division determined that courts retain ultimate authority but typically view arbitral decisions as highly influential, transforming them into court orders expediently. [68]This stance was later refined in Haley v. Haley (2020), where the Court of Appeal dismissed the more stringent commercial arbitration standard, [69]which demanded an award to be "clearly incorrect" to be overturned, in favor of a lesser requirement that the decision be proven to

[64] *Renusagar Power Co. v. General Electric Co.*, 1994 Supp (1) SCC 644
[65] *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1
[66] Institute of Family Law Arbitrators, *The IFLA Rules for the Financial Scheme* (2021) (UK)
[67] 'Do We Have the Family Arbitration Scheme We Need?' *Family Law in Partnership* (London, 19 October 2023) <https://www.flip.co.uk/do-we-have-the-family-arbitration-scheme-we-need/> accessed 20 July 2026.
[68] *S v S (Financial Remedies: Arbitral Award)*, [2014] EWHC 7 (Fam), [2014] 1 FLR 1257 (Eng.)
[69] *Haley v. Haley*, [2020] EWCA Civ 1369, [2021] 1 FLR 1121 (Eng.); Matrimonial Causes Act 1973, c. 18, § 25 (UK)

be "incorrect." This alteration reinforced the court's autonomous responsibility to ensure fairness under the Matrimonial Causes Act 1973 and enhanced safeguards for financially vulnerable spouses.[70]

In contrast, Australia has embraced a more structured, statute-based approach. According to the Family Law Act 1975 (Cth), arbitration is allowed for property division, spousal maintenance, and disputes linked to binding financial agreements, while matters concerning parenting and custody remain under the exclusive jurisdiction of the court[71]. Section 13H of the Act establishes a formal registration procedure where an arbitral decision, once submitted to the Family Court, holds the same legal weight as a judicial ruling. Parties can raise objections within a specified statutory timeframe, after which the decision can only be contested on specific grounds like fraud, substantial non-disclosure, procedural injustice, or a significant change in circumstances. This methodical structure provides more predictability and conclusiveness compared to the UK's precedent-based system, while still maintaining a fundamental level of judicial scrutiny.

These two systems showcase differing philosophies: the UK depends on judicial discretion and the development of legal precedents to harmonize the finality of arbitration with the court's protective role, whereas Australia achieves a similar equilibrium through explicit statutory planning, delivering clearer procedural certainty at the expense of some interpretive leeway.

Procedural Timelines and the Functus Officio Appointing Court

In Indian arbitration, a common issue is the time limit for completing proceedings as outlined in Section 29A of the Arbitration and Conciliation Act, 1996. [72]This section requires that an arbitral award be issued within twelve months after the pleadings are finished, with a possible six-month extension if all parties agree. If this timeline is exceeded, the tribunal's authority ends unless extended by the court. [73]There used to be a disagreement among High Courts regarding where

[70] Gillian Rivers & Sarah Green, *Arbitration in Family Law: A UK Perspective*, 34 Int'l J.L. Pol'y & Fam. 45 (2020)
[71] Family Law Act 1975 (Cth) ss 10L, 13E, 13H (Austl.); Family Law Regulations 1984 (Cth) reg 67Q (Austl.) (detailing procedural timeframes and challenges for registered awards)
[72] Arbitration and Conciliation Act, 1996, §§ 2(1)(e), 11, 29A (India) (as amended by the Arbitration and Conciliation (Amendment) Act, 2015)
[73] *compare Caboolture Park Shopping Centre Pty Ltd v. South Asia Industries*, 2020 SCC OnLine Del 2501 *and Mormugao Port Trust v. Chowgule and Co. Pvt. Ltd.*, 2024 SCC OnLine Bom 2519 (holding that the High Court retains jurisdiction for Section 29A extensions if it made the appointment under Section 11), *with Appa Rao Mukkamala v. Sri Janani Homes*, 2024 SCC OnLine AP 1668 (holding that the forum for extension strictly remains the principal civil court defined under Section 2(1)(e)).

applications for time extensions under Section 29A should be filed - with the High Court that appointed the arbitrator under Section 11 or the Principal Civil Court designated in Section 2(1)(e) of the Act.

The Supreme Court of India settled this jurisdictional dispute in the case of Jagdeep Chowgule v. Sheela Chowgule (2026). The case stemmed from a Family Settlement Memorandum signed in 2021 within the Chowgule family, which included an arbitration clause. After a new arbitrator was appointed by the High Court of Bombay at Goa due to a vacancy, an extension request under Section 29A was submitted to the Commercial Court. This extension was contested on the basis that the Commercial Court, being subordinate to the High Court, should not have the authority to extend the mandate of an arbitrator chosen by the High Court.[74]

Initially, the High Court had established a rule that Section 29A requests should be directed to the High Court if the arbitrator was appointed under Section 11(6), and to the Principal Civil Court if the arbitrator was selected by the parties under Section 11(2). However, the Supreme Court dismissed this division as inaccurate. It clarified that Section 11 is a specific administrative function that ends once the tribunal is formed. The referring High Court then loses its supervisory power over the arbitration proceedings.[75]

The Supreme Court refuted arguments about jurisdictional conflicts based on court hierarchy, citing the principle from A.R. Antulay v. R.S. Nayak that original jurisdiction must be based on statute, not institutional rank. It emphasized that Section 29A does not change the definition of "Court" in Section 2(1)(e), which refers to the Principal Civil Court or the High Court in its regular civil jurisdiction. By distinguishing between Section 11 and Section 29A, the decision brings clarity to the Act, ensuring that time extensions and replacement requests are handled by local commercial courts, preventing judicial overreach and safeguarding the independence of the arbitration process.[76]

The Cultural Shift Toward Consensus: Mediation of High-Stakes Trusts and Defamation

The trend towards private conflict resolution in India extends beyond arbitration, demonstrating a

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[74] J*agdeep Chowgule v. Sheela Chowgule*, 2026 INSC 92 : 2026 SCC OnLine SC 124

[75] *Statutory Interpretation versus Hierarchical Presumptions: Supreme Court Settles Section 29A Jurisdiction*, Cyril Amarchand Mangaldas Blog (April 2026), https://disputeresolution.cyrilamarchandblogs.com/2026/04/statutory-interpretation-versus-hierarchical-presumptions-supreme-court-settles-section-29a-jurisdiction/.

[76] *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602; Arbitration and Conciliation Act, 1996, §§ 2(1)(e), 11, 29A (India)

broader legal shift towards collaborative settlement approaches. This change is influenced by overloaded court schedules and the legal support provided by the Mediation Act of 2023. [77]An example of this shift can be seen in the Supreme Court's involvement in the Kapur family trust dispute in 2026. This legal battle, concerning control of the Rani Kapur Family Trust and associated corporate entities in the Sona Group valued at around ₹30,000 crore, had faced criticism for being aired in public courtrooms. To avoid damaging relationships through prolonged legal battles, Justices J.B. Pardiwala and Ujjal Bhuyan appointed former Chief Justice of India D.Y. Chandrachud as a mediator and advised the involved parties against discussing the matter publicly or on social media for public amusement.[78]

A similar cooperative approach was taken by the Supreme Court in the high-profile defamation case involving senior civil servants D. Roopa Moudgil and Rohini Sindhuri, which had the potential to harm careers and institutional reputation. The court halted all ongoing legal proceedings and directed the case to mediation under former Supreme Court Judge Kurian Joseph, emphasizing the value of dialogue and mutual respect over a courtroom judgment.[79]

This judicial preference for consensual resolution has since been institutionalised on a wider scale through the Mediation for the Nation campaign, a ninety-day initiative launched by the National Legal Services Authority in coordination with the Supreme Court's Mediation and Conciliation Project Committee, under which High Courts and district courts across the country were directed to identify and refer pending matters, including family disputes, to mediation. The campaign reflects a deliberate administrative effort to move consensual dispute resolution from isolated high-profile interventions into routine judicial practice.[80]

This evolving culture of resolving disputes, labeled by the judiciary as "Swadeshi Mediation" to represent an Indian model based on empathy, goodwill, and reconciliation, proves especially effective in settling family property disputes, trust and inheritance issues, and marital disagreements. Private family arbitration is viewed as a natural extension of this consensus-driven

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[77] Mediation Act, 2023, No. 32 of 2023 (India)

[78] *Rani Kapur v. Priya Sachdev Kapur*, Diary No. 18274 of 2026 (Supreme Court of India, order dated May 7, 2026) (Bench comprising J.B. Pardiwala and Ujjal Bhuyan, JJ., appointing former CJI D.Y. Chandrachud as mediator)

[79] *Rohini Sindhuri v. D. Roopa Divakar Moudgil*, Special Leave Petition (Crl.) No. 16203 of 2023 (Supreme Court of India, order dated June 12, 2026) (Bench comprising Satish Chandra Sharma and Sanjeev Sachdeva, JJ., staying all pending proceedings and appointing Justice (Retd.) Kurian Joseph as mediator)

[80] Shirin Khajuria, 'Reimagining Justice through Mediation: An Analysis of the Mediation Act, 2023' *Law School Policy Review* (8 August 2025) <https://lawschoolpolicyreview.com/2025/08/08/reimagining-justice-through-mediation-an-analysis-of-the-mediation-act-2023/> accessed 20 July 2026.

environment. By enabling separating couples to address their financial and property disputes through a private, confidential, and specialized tribunal, the legal system safeguards family honor, avoids public displays, and provides structured, legally binding resolutions.[81]

Conclusion

The current practice of routing every matrimonial dispute through India's Family Courts is neither efficient nor doctrinally justified. While core status matters, divorce, judicial separation, and child custody must remain within the exclusive domain of the state; ancillary financial claims stand on a different footing. Disputes over Stridhan recovery, property partition, division of corporate assets, and spousal maintenance are private, in personam economic claims that concern only the parties involved and, as subordinate rights arising from a right in rem, are fully arbitrable under modern arbitrability doctrine.

The comparative analysis demonstrates that private consent awards offer greater enforcement efficiency, speed, and finality than court-annexed settlements, which remain exposed to contract-law challenges and judicial second-guessing. Realizing this potential in India requires coordinated legislative reform: amending Section 2(3) of the Arbitration and Conciliation Act, 1996, to expressly carve out matrimonial financial claims from blanket public-policy exclusions, and inserting a mandatory referral clause into Section 9 of the Family Courts Act, 1984, compelling Family Courts to refer such disputes to arbitration and stay proceedings where a valid arbitration agreement exists.

Together, these amendments would move India toward a modern, contract-driven framework for resolving matrimonial financial disputes—one that upholds party autonomy, ensures the finality of economic settlements, and substantially eases the burden on an overstretched Family Court system, while preserving judicial oversight where it is genuinely needed: in matters of status and child welfare.

[81] D.Y. Chandrachud, Chief Justice of India, *Keynote Address at the International Mediation Conference: Swadeshi Mediation and the Contours of Indian Dispute Resolution* (Legal Era, 2024);