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## Arbitrability of Matrimonial Disputes in India

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*As an alternative dispute resolution (ADR) method, Arbitration is an expanding legal option in India, offering many advantages, including efficiency, flexibility, and reduced pressure on judicial resources. The Indian government regulates arbitration primarily through the Arbitration and Conciliation Act 1996 and based on the UNCITRAL Model Law, which sets out principles of party autonomy. Although commercial and civil matters have a long history of arbitration, matrimonial disputes often differ from these types of disputes in terms of how marriage is treated. Matrimonial disputes may include issues regarding marital status, legitimation, custody and other rights and obligations that have some impact on society as well as both parties to a marriage. For this reason, matrimonial courts will frequently address considerations of public policy, as well as address the marital status of both parties and custody rights. This paper will examine the meaning of arbitration, the distinct characteristics of matrimonial disputes, and the extent to which matrimonial disputes can be arbitrated in accordance with the laws of India. The author will utilise an analysis of related statutory provisions and landmark decisions rendered by Indian courts (including *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd.*, and *Ashok Kumar Malhotra v Kasturi Lal Malhotra*) to indicate the caution taken by the judiciary in determining what ancillary matters can be arbitrated and which core matrimonial issues cannot. In addition to identifying key issues related to Family Law Arbitration (such as Public Policy Issues, Power Imbalances, Inadequate Procedural Protections, Enforceability of Arbitral Awards), this paper concludes that there needs to be a balanced approach toward Family Law, whereby Mediation/Conciliation are considered primary to Family Law but that Arbitration can also play a role in strictly defined areas that can only be arbitrated if they are governed by specific statutes/treaties or specific industry standards, and there should be, in addition to legislative clarity and proper oversight, safeguards for all parties involved in Family Law Arbitration.*

**Keywords:** *arbitration, matrimonial disputes, adr methods, right in personam.*

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## INTRODUCTION

The Indian dispute resolution process has seen tremendous changes thanks to the growing use of ADR methodologies recently. Of these ADR methods, Arbitration has proven to be an effective method of quickly and confidentially resolving disputing parties' issues. Primarily governed by the Arbitration and Conciliation Act of 1996, Arbitration represents an alternative to traditional court systems and therefore improves the efficiency of this conventional method of dispute resolution, increases flexibility through party autonomy, and reduces the need for judicial intervention. The use of arbitration has been successfully applied in many areas; however, the use of arbitration to resolve matrimonial disputes is more problematic in nature and will continue to be a highly debated and controversial legal issue for the foreseeable future.

Because matrimonial disputes can involve many more than just two individual parties, there are also very significant issues in the area of matrimonial disputes that arise from the overall effects of those disputes on society and therefore, the public policy issues involved in those disputes are often as much of a concern for the state as for the parties involved. Disputes that arise from marriages are unique in their impact on the legal system because they often impact public policies, social welfare, and an individual's status, in addition to being disagreements between individual parties. Couples are not the only parties involved in these disputes; children and family units also directly experience the effects of marital breakdowns, such as divorce, restitution of conjugal rights, child custody, maintenance, and legitimacy, which may have larger ramifications on society.

Consequently, Indian courts have long been reluctant to allow for arbitration for family law cases, noting that some marital status disputes are intrinsically non-arbitrable. Thus, the degree to which arbitration can resolve marital disputes is primarily a function of the arbitrability of those disputes. Courts have attempted to identify and separate ancillary (usually property-related) disputes arising from marriage and eligible for resolution by the private adjudicatory process from those core matrimonial disputes that are exclusively within the jurisdiction of the courts. This evolving judicial approach attempts to balance

public protections of vulnerable parties and interests with efficient resolution of disputes. The purpose of this study is to analyse the scope of arbitrating matrimonial disputes in India. It does this by examining statutory provisions, court rulings, and new developments to determine whether arbitration can serve as an additional mechanism within the framework of family justice.

## WHAT IS ARBITRATION?

Arbitration is a well-established mechanism of Alternative Dispute Resolution (ADR) in which parties voluntarily agree to submit their disputes to one or more impartial third persons, known as arbitrators, whose decision is binding upon the parties. It is founded on the principle of party autonomy, allowing individuals to resolve disputes outside the formal court system through a process that is flexible, private, and efficient. When selecting arbitration, the parties decide on a private method of resolving disputes rather than pursuing litigation in court.<sup>1</sup>

In India, arbitration is governed by the Arbitration and Conciliation Act, 1996,<sup>2</sup> which was enacted to promote speedy dispute resolution and reduce the burden on courts. The main object of the Act is to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The Act is largely based on the UNCITRAL Model Law,<sup>3</sup> reflecting India's intention to align its arbitration framework with international standards. Section 2(1)(a) of the Act defines arbitration as 'any arbitration whether or not administered by a permanent arbitral institution.'<sup>4</sup> It recognises arbitration as a dispute resolution process, irrespective of whether it is administered by a permanent arbitral institution or conducted on an ad hoc basis.

### **Its main characteristics are:**

**Arbitration is Consensual:** Arbitration can only take place if both parties have agreed to it.

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<sup>1</sup> 'What is Arbitration?' (WIPO) <<https://www.wipo.int/amc/en/arbitration/what-is-arb.html>> accessed 11 February 2026

<sup>2</sup> Arbitration and Conciliation Act 1996

<sup>3</sup> UNCITRAL Model Law on International Commercial Arbitration 1985

<sup>4</sup> Arbitration and Conciliation Act 1996, s 2(1)(a)

**The Parties Select the Arbitrator(s):** The parties may jointly choose a single arbitrator. If they decide on a three-member arbitral tribunal, each party will appoint one arbitrator; the two appointed individuals will then agree on the chairperson of the tribunal.

**Arbitration is Neutral:** In addition to their selection of neutrals of appropriate nationality, parties are able to choose such important elements as the applicable law, language and venue of the arbitration. This enables them to guarantee that neither side benefits from a home court advantage.

**Arbitration is a Confidential Procedure:** It protects the confidentiality of the existence of the arbitration, any disclosures made during that procedure, and the award.

**The Decision of the Arbitral Tribunal is Final and Easy to Enforce:** The parties agree to carry out the decision of the arbitral tribunal without delay.<sup>5</sup> Section 35 of the Act mentions the Finality of arbitral awards as 'Subject to this Part, an arbitral award shall be final and binding on the parties and persons claiming under them respectively.'<sup>6</sup>

**The Statutory provisions that accept the methods of Alternative Dispute Resolution are:**

**Section 89** of the Code of Civil Procedure, 1908<sup>7</sup> clearly states that if a court determines that a dispute is capable of being settled out of court, it must consider referring the dispute to an Alternative Dispute Resolution method, including arbitration, conciliation or through a court-sponsored settlement option, including Lok Adalat or mediation.<sup>8</sup>

**Order XXXII-A Rules 3** of the Code of Civil Procedure, 1908<sup>9</sup> (hereafter referred to as 'CPC') requires the court to assist in the resolution of all disputes related to family law.

The main goal of arbitration is to provide a quick, affordable, and effective way to resolve disputes. It serves as a practical alternative to litigation by reducing delays and enabling

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<sup>5</sup> What is Arbitration? (n 1)

<sup>6</sup> Arbitration and Conciliation Act 1996, s 35

<sup>7</sup> Code of Civil Procedure 1908, s 89

<sup>8</sup> Sumit Attri, 'Judicial process in Matrimonial Proceedings - ADR methods - Arbitration - Conciliation - Mediation - Negotiation - Judicial Settlement' (*Nalsar Pro*)

<[http://nalsarpro.softpal.in/Portals/23/Day%204%20session%202-Mr\\_Sumit%20Attri-Lecture%20%20ADR.pdf](http://nalsarpro.softpal.in/Portals/23/Day%204%20session%202-Mr_Sumit%20Attri-Lecture%20%20ADR.pdf)> accessed 11 February 2026

<sup>9</sup> Code of Civil Procedure 1908, Or XXXII-A r 3

experts to make decisions. It also helps ease the burden on courts and promotes access to justice.

The landmark decision of the Hon'ble Supreme Court in *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd. & Ors.*<sup>10</sup> laid down the Booz Allen Test, which established the criteria for assessing the arbitrability of disputes. The issue was related to the settlement of a suit for the enforcement of a charge/mortgage through arbitration. The Supreme Court responded negatively and identified three conditions that need to be fulfilled for a matter to be submitted to arbitration:

- The disputes must be appropriate for resolution and settlement through arbitration.
- The disputes must fall within the scope of the arbitration agreement; and
- The parties must have submitted the disputes for arbitration.<sup>11</sup>

The court also distinguished between rights in rem and rights in personam, where disputes involving rights in personam are generally arbitrable, but the other is not because they affect the public at large. This was the foundational judgment regarding the arbitrability of disputes in India, which set a benchmark for arbitration in the Indian judiciary.

## **MATRIMONIAL DISPUTES**

Matrimonial disputes are conflicts that occur between spouses in a marital relationship. Between husband and wife exists the possibility of conflict due to differences of opinion regarding marriage-related topics. The conflicts that arise between partners are typically not about the partners' ability to work together towards a mutually beneficial outcome, but rather how far the partners are willing to go in terms of becoming financially, socially, and emotionally involved with other people and their problems. Many matrimonial disputes have both legal and emotional components because they involve a range of relationships and emotions connected to family and community. At their core, they reflect the failure of marital harmony.

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<sup>10</sup> *Booz Allen & Hamilton Inc v SBI Home Finance Ltd and Ors* (2011) 5 SCC 532

<sup>11</sup> Vikash Kumar Jha and Ena Kapur, 'Arbitrability of Disputes: Indian Jurisprudence [Part I]' (*Cyril Amarchand Mangaldas*, 25 June 2024)

<<https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence-part-i/>> accessed 11 February 2026

As per the Family Courts Act, 1984,<sup>12</sup> these are the matrimonial disputes entertained by the family court. A suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage or for a decree as to the validity of a marriage or as to the matrimonial status of any person. Any suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. A suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. It can also be a suit or proceeding for a declaration as to the legitimacy of any person, or for maintenance and in relation to the guardianship of the person or the custody of, or access to, any minor.<sup>13</sup>

Matrimonial disputes are generally governed by personal laws such as the Hindu Marriage Act 1955, the Hindu Succession Act 1956, and Muslim, Christian and Parsi personal laws.

### **ARBITRABILITY OF MATRIMONIAL DISPUTES IN INDIA**

Family Law arbitration is the same process<sup>14</sup> as Arbitration, but the parties are Husband and wife or ex-husband and ex-wife, and they submit their issues to a third party for a final and binding resolution. It does not matter at which stage of the divorce process a couple agrees to the use of arbitration; it can happen before their divorce is finalised, coinciding with their divorce being finalised, or after the divorce is finalised. After agreeing to submit a dispute(s) to arbitration, the couple's dispute will be resolved by the arbitrator after a hearing during which the parties present their case. The arbitrator renders an 'award' or decision, which is then forwarded to the court for confirmation. Arbitration is usually conducted on a more informal basis and adheres to relaxed rules of evidence in comparison to judicial proceedings.

Enacted in 1984, the Family Courts Act is a specific legislation that has established Family Courts as distinct institutions for the resolution of family-related issues. One of the major goals of the Act is to promote the process of resolving disputes through 'conciliation'. In fact, virtually all family disputes will be subject to a mediation process prior to being resolved

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<sup>12</sup> Family Courts Act 1984

<sup>13</sup> *Ibid* s 7

<sup>14</sup> 'FAQ' (*Institute of Family Law Arbitrators*) <<https://ifla.org.uk/what-is-arbitration/faqs/>> accessed 11 February 2026

through litigation. Section 9<sup>15</sup> states that the courts should make every endeavour for settlement in respect of the subject matter of the suit. Sections 23(2) and 23(3)<sup>16</sup> and Section 34(3)<sup>17</sup> provide for the reconciliation of the disputes between the parties.

But the question arises, what exactly are the disputes that can be decided by this method? The Arbitration and Conciliation Act 1996 does not explicitly classify matrimonial disputes as either arbitrable or non-arbitrable, which has resulted in the judiciary taking a primary role in deciding whether these cases are amenable to arbitration. The courts have developed their own rules for determining if a dispute is suitable for arbitration, which involves reviewing many factors related to the rights being claimed, as well as how a decision would impact the public interest. By using this method, Indian courts have been able to balance the promotion of arbitration as a viable method of resolving disputes with statutory protections under family and personal law.

A key test applied by Indian courts to determine arbitrability is the distinction between rights in rem and rights in personam. Issues such as Divorce and other marital statuses, custody and Legitimacy of Children are considered rights in rem because they affect not only the Parties involved but also how marriage is perceived within society at large. Therefore, the Courts find that such types of disputes cannot be arbitrated. The courts will allow for Arbitration on Financial Settlements, Division of property, and Maintenance Agreements because these types of disputes impact only those parties involved in them. However, courts will only allow Arbitration of these limited types of disputes to the extent that the Arbitration does not restrain or limit any statutory protections or create a conflicting situation with the marital status.

If two parties agree to arbitration, then financial and property disputes are able to be settled through arbitration if they both agree to do so. Financial and property disputes can include the division of a couple's property that was acquired during the marriage, the return of stridhan (the wife's property), monetary claims, and the division of joint property owned by a married couple. The issue of how much support to pay one another in the form of maintenance/ alimony can also be arbitrated, signed, and then put before a competent court

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<sup>15</sup> Family Courts Act 1984, s 9

<sup>16</sup> Hindu Marriage Act 1955, ss 23(2)-23(3)

<sup>17</sup> Special Marriage Act 1954, s 34(3)

for approval (if there is a signed agreement). Family property disputes that arise because of families entering into a settlement (contract) with each other can be arbitrated, as they only involve private rights. Arbitral proceedings in relation to family properties do not affect the marriage.

However, Arbitration still does not include the following family disputes:

- Divorce
- Judicial Separation
- Restitution of Conjugal Rights
- Validity of Marriage
- Child Custody and Guardianship
- Adoption
- Matters involving Criminal Allegations (e.g., Domestic Violence and Cruelty)

These matters are entirely within the jurisdiction of family courts as matters of public policy. Public policy plays a crucial role in restricting the arbitrability of matrimonial disputes. Marriage is not simply a legal contract; it is also a social institution regulated by a civil code of laws designed to ensure the well-being of an individual spouse and the children of both spouses. Allowing for private parties to settle disputes through arbitration involving basic aspects of marriage may erode protections afforded to spouses and children and would impede judicial oversight. Additionally, because arbitration proceedings are private, they lack the safeguards available in a family court and, therefore, are not suited to resolve disputes of public interest or social welfare. Thus, consistently, the courts of India have maintained that all legal matters affecting marital status and family relationships must lie within the jurisdiction of a court.

### **JUDICIAL APPROACH: CASE LAW ANALYSIS**

The Indian judiciary has adopted a cautious and limiting approach towards the arbitrability of matrimonial disputes. Courts advocate for alternative dispute resolution (ADR), as they wish to lessen the number of cases that are currently before them and wish to maintain peace within families, but they have always taken a different position on the ability to use arbitration versus other ADR processes, e.g. mediation and conciliation. This shows that the

courts are very much aware that matrimonial issues do involve personal relations that are sensitive in nature, as well as the right of a spouse by statute and also involve a matter of public policy.

In the case of *Booz-Allen & Hamilton's*<sup>18</sup> the hon'ble court further specified that although issues such as criminal offences and matrimonial disputes might not be appropriate for resolution through arbitration, nonetheless, verbal or written Agreements setting out the 'Incidental' (i.e., anything that is closely related to the above disputes whatsoever) can refer their incidental disputes to Arbitration. For example, in respect of a Criminal Act (e.g. Assault) causing a physical Injury to another person, the injured party would have a right to seek damages through the courts, or the (lower) courts have held that where a person has met with a Criminal (Assault), that person may seek Damages via Arbitration. Conversely, a Husband and Wife may refer to arbitration of their Agreement regarding the Separation Terms.

In the case of *Ashok Kumar Malhotra & Ors. v Kasturi Lal Malhotra*,<sup>19</sup> the court emphasized that the well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters. The court noticed that the cases referred to above relate to rights in rem. The decision of the *Keventer Agro Ltd.* case from the Calcutta High Court was upheld by this Court. In that case, it was established that disputes involving specific performance of contracts may be referred for resolution through an arbitration process. Additionally, neither Section 34(2)(b)(i) nor the law prohibits parties from submitting disputes concerning their rights as husband and wife (related to divorce) or other issues related to that relationship (related to separation) for resolution through the arbitration process.

Furthermore, the Court also stated that while criminal and matrimonial disputes generally cannot be resolved through arbitration, ancillary matters, including financial issues, can be arbitrated. There are specific categories of disputes, such as those based on criminal conduct that are considered 'public' issues, disputes arising out of illegal contracts, and disputes

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<sup>18</sup> *Booz Allen & Hamilton Inc v SBI Home Finance Ltd and Ors* (2011) 5 SCC 532

<sup>19</sup> *Ashok Kumar Malhotra and Ors v Kasturi Lal Malhotra* (2012) MANU/PH/0136/2012

related to personal identity (status) – such as divorce – that cannot be arbitrated. However, two parties can agree to arbitrate over their separation; therefore, there is a mechanism available for them to enter into a valid agreement relative to their future relationship.

The Delhi High Court in Prem Aggarwal's case cited marriage as an issue not subject to arbitration and that issues related to marriage will only be decided by special courts that have been given exclusive jurisdiction over marriage matters under law, with no other court or tribunal having jurisdiction over these types of matters.

But at the same time, the judiciary has also recognised the significance of amicable resolution of marital disagreements. In *K. Srinivas Rao v D.A. Deepa* (2013),<sup>20</sup> the Supreme Court highlighted the value of mediation and conciliation (alternative dispute resolution) as options for resolving marital discord before litigation begins and during litigation. The Court did not endorse arbitration as a preferred method of resolution of a marital dispute, but emphasised the need for flexibility and oversight of courts on family law matters.

Overall, the Indian judicial system pursues a balanced approach to disputes between family members. Indian courts support the use of alternatives to litigation to reduce the amount of litigation between family members; however, the courts only allow arbitration for certain types of ancillary disputes and require that courts oversee all major marital disputes to avoid any potential abuse. This approach seeks to support and maintain the public's interest, statutory protection of family rights, and to avoid the possibility of private mediators abusing the conflict between family members in sensitive areas of Family Law.

## CHALLENGES AND LIMITATIONS

The increased emphasis placed on Alternative Dispute Resolution (ADR) in recent years has also led to several legal, social and practical barriers regarding the use of Arbitration in family law. As such, the Indian Judiciary has adopted a more cautious approach and has effectively limited the number of Family Law matters that can be resolved through arbitration.

One of the original challenges is the Public Policy nature of all matrimonial disputes. Marriage is not just a simple private contract between two individuals, but is considered a social institution that is governed by Personal Laws and contains Statutory protections.

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<sup>20</sup> *K Srinivas Rao v D A Deepa* AIR 2013 SC 2176

Divorce, marital status, legitimacy of children, and custody are all issues that affect the general public, as they also contain Rights in Rem (meaning Rights that are enforceable against all, not just a specific party). If these issues are allowed to be determined through Private Arbitration (as opposed to Public and Judicial Supervision), it could potentially be detrimental to the public good and weaken the Public Policy powers of the Judiciary.

Another of the largest hurdles is the requirement of Free and Informed Consent. Family Arbitration is fundamentally based on the Mutual Agreement of the Parties. However, the Emotional Dependence of Spouses in Family Law disputes, Financial Disparity between Spouses and Social Pressure may sometimes compel one Spouse (usually the 'weaker' economic or social party) to agree to submit to Arbitration even if he or she does not wish to do so. This creates an extremely large question as to the Fairness and Voluntariness of Arbitral Proceedings in Family Law.

The lack of procedural safeguards in arbitration poses challenges. Family courts have specific procedures to safeguard vulnerable parties (especially women and children) from harm, while arbitration is less formal and private, and does not always provide the same level of safeguards as judicial review, welfare evaluations of children, and protection from coercion, making arbitration unsuitable for sensitive family matters.

Another practical challenge is that arbitral awards often require court intervention to enforce or validate. Whether the award is for maintenance, division of property or financial settlement, it is still necessary to go through the courts to enforce or validate it. This defeats the purpose of arbitration, which is to resolve issues more efficiently and expeditiously. Furthermore, arbitral awards cannot modify the status of a marriage or displace statutory provisions, thereby limiting their effectiveness.

Furthermore, while confidentiality is usually viewed as one of the advantages of arbitration, in the case of matrimonial disputes, this could also be a disadvantage. Conducting proceedings privately may allow for the concealment of instances of domestic violence, cruelty or exploitation, which, in turn, denies victims access to statutory remedies and court protection.

Thus, the Indian court system has demonstrated a consistent preference towards mediation and conciliation techniques when resolving matrimonial disputes, compared to arbitration

methods. Mediation provides flexibility, emotional healing and negotiated settlement, while arbitration is an adversarial process, which results in a binding determination on the parties involved. The judiciary's preference may limit the practical use of arbitration for resolving family law disputes. Therefore, while arbitration provides efficiency and choice, it is limited in scope in matrimonial disputes in India because of legal concerns regarding public policy, consent, procedural fairness and enforceability.

## **SUGGESTIONS AND WAY FORWARD**

While there are limits placed on the use of Arbitration as a mechanism in resolving matrimonial disputes, it may serve some purposes. To protect against eliminating statutory protections and the public interest in allowing arbitrators to resolve sensitive family matters, a careful and neutral approach will be necessary.

A legislative guideline exists that defines the categories of matrimonial/family disputes that can be arbitrated. The Arbitration & Conciliation Act, 1996, may be amended to specifically identify those types of family disputes eligible for arbitration, such as division of properties and financial settlements, but not matters concerning marital status, custody rights, or legitimacy. This clarification will provide consistency and clarity for judges, helping to eliminate the uncertainty caused by inconsistent judicial interpretations.

Arbitration of matrimonial disputes will only occur under strict judicial supervision. Judicial supervision is necessary to determine whether the consent to arbitrate was given voluntarily, whether the arbitrator acted fairly and whether the award complies with applicable personal law before the enforcement of an award. Providing this level of judicial supervision will protect against abuse of the arbitration process at the expense of vulnerable parties.

Requirements for safeguards for consent to arbitration must be enhanced. Measures must be taken to ensure that any consent to arbitration is given freely, fully informed and voluntarily, particularly when one spouse is in a position of unequal bargaining power to the other. Providing mandatory pre-arbitration counselling to individuals or obtaining a judicial verification of consent may alleviate this concern.

Arbitration should be restricted to certain ancillary matters, including, for example, property settlements, the restoration of stridhana, and the determination of the amount of

maintenance payable by agreement of the parties. In regard to divorce, custody of children, and guardianship, these types of issues should remain exclusively within the purview of the family courts.

Mediation and conciliation should be given greater emphasis as the preferred means of resolving disputes related to family law. Since arbitration has an adversarial basis and binds the parties, it may not fit well in attempting to resolve family disputes of a highly emotional nature. Therefore, strengthening the institutional performance of mediation within family courts will promote the least prejudicial administration of justice.

In summary, the best approach is to adopt a framework that utilises both hybrid models of dispute resolution by emphasising mediation and judicial support with the limited, but strictly regulated, approach to arbitration to resolve family disputes. This framework provides for balancing efficiency, fairness, protection and private settlement against public interest.

## CONCLUSION

India has seen a growth in the importance of arbitration as an alternative method for resolving disputes due to its advantages in terms of time and cost savings, as well as decreasing the burden placed on the judicial system. However, because of the distinctiveness of marriage from both a social and legal perspective, matrimonial disputes have not yet been seen as successful for arbitration purposes.

Matrimonial disputes typically include issues that involve a person's legal status and public policy, as well as the rights they may have under different statutes. As such, matrimonial disputes typically cannot be resolved in private through arbitration. There is a clear judicial policy in India that identifies core matrimonial issues (i.e. divorce, validity of marriage, child custody, and legitimacy of children) as non-arbitrable because they involve rights in rem, and thus must be litigated in court. Contrarily, the courts have taken a more measured approach to permitting parties in matrimonial disputes to resolve questions related to the ancillary financial or property aspect of matrimonial disputes via arbitration, so long as there is genuine consent of both parties and the court retains some level of control.

In the last few decades, arbitration has emerged as a viable option for resolving disputes in India. Arbitration provides parties with quicker and more efficient resolution than litigation, which consumes considerable amounts of judicial resources and time. However, due to the unique characteristics of marriage as both a social and legal institution, arbitration has not yet been widely utilised for matrimonial disputes.

Core issues related to matrimonial disputes (e.g., divorce and legitimacy of children) cannot be resolved by arbitration because of the rights of the parties (in rem) concerning these core issues. Likewise, while many ancillary financial and property disputes related to marriage can be resolved by arbitration, the court system has displayed limited willingness to resolve these ancillary disputes unless:

- (a) consent has been given without undue influence from either party;
- (b) there exists adequate judicial oversight of the arbitration proceedings to protect the parties' interests;
- (c) they have been provided by law with guidance as to how ancillary issues should be resolved.

Therefore, arbitration cannot replace the judicial resolution of matrimonial issues, but it may have a limited role to play in resolving ancillary issues related to matrimonial disputes. The most effective way to address matrimonial issues through arbitration is to adopt a balanced approach that emphasises mediation and conciliation, with adequate judicial oversight and legislative direction. By adopting this balanced approach, efficiency in resolution does not occur at the expense of fairness, dignity, and social justice.