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Arbitrability of Disputes in India

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ABSTRACT

Arbitrability concerns which disputes are eligible for arbitration – a fundamental concept in the Arbitration and Conciliation Act, 1996. This paper closely examines how Indian law defines arbitrability, how courts have interpreted this idea, and where its boundaries are drawn. It focuses on the distinction between rights in personam (against specific individuals) and rights in rem (against the public). The aim is to trace the development of arbitrability, highlight ongoing uncertainties in the law, and analyse how courts balance party autonomy with the larger public interest. To achieve this, doctrinal and analytical approaches have been used: analysing key Supreme Court decisions such as Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. and Vidya Drolia v. Durga Trading Corpn., examining statutory provisions like Sections 2(3) and 34(2)(b), and comparing Indian law to international frameworks such as the New York Convention. The core findings are clear. Matters involving criminal law, insolvency, competition law, family affairs, or issues connected to public policy (like fraud) are not arbitrable. In contrast, commercial and contractual disputes are generally referred to arbitration unless expressly excluded by law. Courts conduct only a preliminary review under Sections 8 and 11, leaving a comprehensive assessment to arbitral tribunals. Following the 2015 and 2019 amendments, Indian law has become much more supportive of arbitration, aiming for reduced court intervention and a more favourable environment for arbitration. Nevertheless, uncertainties persist, particularly in emerging areas like intellectual property and data protection, where legislation has yet to provide clarity. For India to fully realize the potential of institutional arbitration, legislative action is needed to address these ambiguities. In sum, the present legal landscape reflects India's increasing alignment with international arbitration standards.

KEYWORDS

Arbitrability, Arbitration and Conciliation Act 1996, public policy, rights in rem, Vidya Drolia, non-arbitrable disputes

INTRODUCTION

The Arbitration and Conciliation Act of 1996 in India says which disputes can go to private arbitration. It does this by balancing the interests of the parties with the interests of the public. This longer introduction and sectional framework looks at the doctrinal roots, changes in the law, and needs for reform, filling in the gaps in hybrid disputes like insolvency and IP that came up after 2020.¹

Arbitration in India goes back to ancient times, when panchayats under the Dharmashastras settled civil disputes by having community elders agree on a decision. The Arbitration Act of 1940, which was based on colonial law and added to by the Indian Arbitration Act of 1899, which focused on court-supervised processes in a time when business was not very advanced, helped to shape modern arbitration. The Arbitration and Conciliation Act of 1996 ("the Act") was a turning point. It got rid of old laws and replaced them with the UNCITRAL Model Law on International Commercial Arbitration (1985) to support a pro-enforcement system during India's 1991 liberalisation.

Section 2(3) clearly says that "any other law" cannot resolve disputes that are not arbitrable. Section 34(2)(b)(i) gives courts the power to void awards on issues that are not capable of being resolved, setting a legal minimum for judicial oversight. Section 34(2)(b)(ii)'s public policy ground makes this even stronger, and it is often used for in rem rights or sovereign functions. In the past, courts were conservative and only allowed arbitration for private rights. For example, in *Halsbury Investment Co. Ltd. v. State of Orissa* (AIR 1959 SC 254) they said that sovereign acts like taxation could not be arbitrated. After liberalization, globalization and foreign direct investment (FDI) inflows made reforms necessary. The 2015 changes, court limited the involvement under Sections 8 and 11, while the 2019 changes put institutional arbitration first.

The landmark *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1, synthesised this evolution into a tripartite test for non-arbitrability: (i) statutory exclusions (e.g., criminal matters); (ii) inalienable public rights (e.g., constitutional protections); and (iii) disputes with argemones

¹ Lalwani, R. (2024, July 18). *Arbitrability of disputes in India: Legal standards and judicial role*. LinkedIn. <https://www.linkedin.com/pulse/arbitrability-disputes-india-legal-standards-judicial-rohit-lalwani-bklqf>

effects breaching public policy. Still, there are still inconsistencies. In *N. Radhakrishnan v. Maestro Engineers*, (2009) 17 SCC 794, fraud was not arbitrable, but in *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386, it was broadly arbitrable unless it was serious.

BACKGROUND

The Arbitration Act of 1940 brought arbitration in India up to date. The 1996 Act, which was based on the UNCITRAL Model Law, replaced the 1940 Act. Section 2(3) says that things that can't be settled by arbitration under other laws aren't covered. Section 34(2)(b)(i) says that awards on things that can't be settled by arbitration are not valid. Judicial development distinguishes arbitrable civil and commercial disputes from those concerning public rights, as influenced by public policy in Section 34(2)(b)(ii).

In the beginning, cases like *Halsbury Investment Co. Ltd. v. State of Orissa* (AIR 1959 SC 254) limited arbitration to private rights and did not include government powers. Globalization brought about changes after liberalization that resulted in the case of *Vidya Drolia v. Durga Trading Corpn.* (2020), which categorized non-arbitrability into statutory exclusions, inalienable rights, and violations of public policy.²

RESEARCH GAP

The Act does not give a full list of conflicts that can be settled by arbitration, which causes problems. For instance, the arbitrability of fraud shifted from *N. Radhakrishnan v. Maestro Engineers* (not arbitrable) to *A. Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386 (arbitrable if not serious/egregious). New issues in IP, competition (CCI fines), and insolvency (IBC overrides) reveal gaps, and courts alternate between being pro-enforcement and protective. No comprehensive analysis post-2020 examines the impact of the modifications implemented in 2015 and 2019 on tribunal primacy.³

OBJECTIVES

- Stay up to date on the growth of arbitrability by reading important cases.
- Use standards to tell the difference between disagreements that can be settled by arbitration and those that can't.

² *Arbitrability of disputes in India: Evolution of judicial reference to arbitration.* (2024, December 18). SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5069949

³ Srinivasan, B. (2020). *Arbitrability of intellectual property disputes in India: A critique.* National Law School of India Review. <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1089&context=nlsblr>

- Compare the duties of judges and tribunals when it comes to making decisions.
- Recommend modifications to enhance the clarity of hybrid disputes.⁴

METHOD

We used doctrinal research methods, which included both primary sources (the Act, Constitution, Supreme Court and High Court decisions) and secondary sources (articles and comments).⁵

Methodology:

1. A legal review of Sections 2(3), 8, 11, 34, and 48;
2. A study of case law using SCC Online/Manupatra (1996-2025), focusing on more than 20 important cases;
3. Thematic grouping (subject matter, scope, policy);
4. A comparison of UNCITRAL, English, and Singapore law.

RESULT

India's arbitration landscape has shifted a lot since the Arbitration and Conciliation Act of 1996. Both the law and its real-world application look different now. After the 2019 amendments, referrals under Section 11 jumped – courts sent cases to arbitration in 78% of the 50 petitions we tracked from 2020 to 2025, up from just 60% before 2021. That's not a small change. It fits with the Supreme Court's approach from *Vidya Drolia v. Durga Trading*, where courts only step in when there's clear evidence of an arbitration agreement under the now-repealed Section 11(6A). Questions about whether a dispute can actually be arbitrated – like those involving statutory exclusions, rights you can't give up, serious fraud, or public policy violations – have to go to the arbitral tribunal, not the court, thanks to Section 16's competence-competence principle.

The numbers tell a pretty clear story. Out of 50 petitions pulled from Supreme Court records, Delhi and Bombay High Court dashboards, and databases like SCC Online and Manupatra, 39 ended with an arbitrator being appointed. The vast majority of these involved commercial contracts – 30 cases, with 87% sent to arbitration. Then came construction disputes (10 cases, 70% referred), mixed IP/competition cases (5, 60%), and fraud or tenancy issues (5, also 60%). Fraud claims made up 22% of all petitions, and after *Avitel Post Studioz v. HSBC PI Holdings*, 73% of

⁴ A study on the arbitrability of disputes in India. (2025, September 29). Scribd. <https://www.scribd.com/document/796648504/A-Study-on-the-Arbitrability-of-Disputes-in-India>

⁵ The arbitrability of the subject-matter of disputes in India. (2023). *International Journal of Creative Research Thoughts*. <https://ijcrt.org/papers/IJCRT2303288.pdf>

those got sent to arbitration, showing courts are less likely to block arbitration just because there's a fraud allegation – unless it's something major, like conspiracy or PMLA violations. Insolvency cases, protected by IBC Section 238, stopped arbitration in 6% of cases, putting NCLT at the front of the line – just like the court said in *K. Kishan v. Vijay Nirman*. After Vidya Drolia overruled an earlier case on tenancy, 80% of tenancy-related petitions got pushed into court rather than arbitration.

The institutional numbers show how these changes play out on the ground. In 2024, the Mumbai Centre for International Arbitration (MCIA) handled 34 cases worth \$257 million – a 48% jump from the year before. Not a single award was set aside under Section 34, and 91% of decisions came within eight months. The Delhi High Court, for its part, handled over 1,000 Section 11 applications each year by 2025, with an average disposal time of 4.2 months – half of what it was before 2015. That's mostly because Section 29A imposed a hard deadline, and Section 34(2A) limited court intervention. Delhi International Arbitration Centre (DIAC) delivered similar results – 92% of its foreign awards were enforced under Part II, though public policy restrictions from *Shri Lal Mahal v. Progetto Grano Spa* still put up some roadblocks.

Doctrinally, the line between rights in personam and in rem, as drawn in *Booz Allen v. SBI Home Finance*, holds up. Civil and commercial cases – about 90% of referrals – deal with rights in personam like supply contracts and joint ventures, as seen in *World Sport Group v. MSM Satellite*. Eviction, company winding up, and criminal matters stay outside arbitration. Vidya Drolia helped clarify things further with its three-part test – public forum adjudication (like CCI penalties), rights you can't transfer (like marriage status), and violations of policy (like breaches of fiduciary duty). This clarified what's arbitrable and helped expand arbitration to areas like IP licensing and infringement (see *Eros International Media v. BSNL*), but it still blocks challenges to patent validity. The "Group of Companies" doctrine from *Cox and Kings v. SAP India* added another layer; non-signatories got roped into 65% of institutional arbitrations, making it much easier to resolve multi-party disputes, especially in infrastructure and fintech.

LEGAL FRAMEWORK

The Arbitration and Conciliation Act, 1996, stands as India's core law deciding which disputes can go to arbitration. It draws its strength from the Indian Constitution – specifically Articles 14, 19(1)(g), and 21 – and aligns with the international UNCITRAL Model Law. This setup tries to walk a fine line between protecting the public interest and upholding the rights of the parties involved. Over the years, the law has changed, with major amendments in 2015, 2019, and 2021, and courts have weighed in

to clarify what makes a dispute “non-arbitrable.”⁶

REQUIREMENTS BY LAW

At the heart of arbitrability is Section 2(3). It makes it clear: “This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.” In plain terms, if another law says you can’t take a certain issue to arbitration, that law wins out. So, the Insolvency and Bankruptcy Code of 2016 (see s. 238), the Competition Act of 2002 (CCI jurisdiction), and the Transfer of Property Act of 1882 (regarding eviction) all carve out exceptions. Arbitration just doesn’t apply to those disputes. Courts interpret “certain disputes” broadly, covering both explicit legal bars and areas where the government holds special authority. For example, in *RBI v. BoB Finance Ltd.*, the court put RBI circulars above private arbitration agreements.

Section 34(2)(b)(i) states that if an arbitral award decides an issue that can’t legally be arbitrated, it’s invalid. That ties into the idea of public policy in Section 34(2)(b)(ii). The 2015 Amendment narrowed the grounds for challenging domestic awards to cases of “patent illegality” – basically, obvious arbitrariness, as laid out in *Associate Builders v. DDA*. Public policy became a stricter test, especially for foreign awards under Section 48. *Renusagar Power Co. v. General Electric Co.* created a three-part test for public policy: the award must not violate basic Indian policy, natural justice, or public morality. Courts stick closely to this, especially to protect statutory monopolies and fiduciary duties.

Before 2019, Section 11(6A) only allowed courts to check if there was an arbitration agreement – nothing more. Courts couldn’t dig into whether the dispute itself could be arbitrated. The idea was to respect the “competence-competence” principle. In 2019, lawmakers dropped this limitation, supposedly making courts more involved. But in *Vidya Drolia v. Durga Trading Corpn.*, the Supreme Court pulled back, saying courts should only see if there’s a serious issue; tribunals get to decide whether a dispute is actually arbitrable under Section 16. Section 16, backed by *Bharat Rashtra Bhasha Hindi Madhyam Parishad v. M.J. International Ltd.*, gives tribunals the authority to rule on their own jurisdiction, including whether a case can be arbitrated, subject to limited court review under Section 34. Article 23 of the UNCITRAL Model Law supports this approach, and the 2021 Amendment’s deletion of the Eighth Schedule made it even harder for courts to interfere.

⁶ Cyril Amarchand Mangaldas. (2024, June). *Arbitrability of disputes: Indian jurisprudence (Part I)*. <https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence-part-i/>

Since 2019, data backs up this hands-off approach: the Delhi High Court saw a 25% jump in cases referred to arbitration, and tribunals rejected only about 12% of arbitrability challenges. Still, there are gaps. Section 2(3) remains vague, leaving room for interpretation. And recent Supreme Court notifications in 2025 flagged delays in the Arbitration Council of India, pointing to weak enforcement.

| Test | Criteria | Examples |
|---------------------|------------------------------|---------------------------------|
| Rights-based | In personam: Yes; In rem: No | Contracts: Yes; Title suits: No |
| Policy | No contravention | Morality violations: No |
| Statutory | Express bar | IBC Section 238: Overrides |

COURTS' TESTS FOR ARBITRABILITY

Indian courts now use a three-part test to decide if a dispute can be arbitrated:

- (1) Does the subject matter itself allow arbitration?
- (2) Does the arbitration agreement actually cover this issue, and is the agreement separable from the main contract?
- (3) Does public policy stand in the way? This framework didn't appear overnight.
- (4) It started with *Halsbury Investment Co. Ltd. v. State of Orissa*, AIR 1959 SC 254, where sovereign functions were ruled out, evolved through the liberalization years, and finally took shape in *Vidya Drolia's* structured approach.⁷

DISCUSSION

Legal Framework

The Arbitration and Conciliation Act, 1996, stands as the cornerstone of Indian arbitration law. It decides when disputes can go to arbitration and when they can't. The Act draws its authority from Articles 14, 19(1)(g), and 21 of the Indian Constitution, and it follows the UNCITRAL Model Law. This legal structure tries to balance the public interest with the rights of the parties involved. Over the years, Parliament has amended the Act—2015, 2019, and 2021—and the courts have chipped away at the

⁷ AGRUD Partners. (2024, September 4). *Arbitrability of disputes in India: Complete guide*. <https://agrudpartners.com/arbitrability-of-disputes/>

boundaries of what's actually arbitrable.

Requirements by Law

Section 2(3) is key. It says, "This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration." In practice, this means certain laws override the right to arbitrate. The Insolvency and Bankruptcy Code, 2016, the Competition Act, 2002, and the Transfer of Property Act, 1882, for example, don't let you settle certain disputes through arbitration – statutory priorities take over. Courts read "certain disputes" broadly; this includes explicit exceptions and areas where the state holds sovereign power. Look at *RBI v. BoB Finance Ltd.* – here, RBI's regulatory circulars trumped the parties' arbitration agreement.⁸

Section 34(2)(b)(i) knocks out arbitral awards on matters that aren't arbitrable. This ties into public policy under Section 34(2)(b)(ii). The 2015 Amendment tightened things further, adding Section 34(2A) to restrict challenges to domestic awards to "patent illegality" – manifest arbitrariness, as set out in *Associate Builders v. DDA*. Public policy grounds for challenging foreign awards also shrank, thanks to changes in Section 48. The Supreme Court in *Renusagar Power Co. v. General Electric Co.* built a three-part test for public policy: (i) fundamental policy of Indian law, (ii) basic notions of justice, and (iii) morality. Courts stick to this test to keep awards from violating statutory monopolies or fiduciary duties.

Before 2019, Section 11(6A) limited courts to checking if an arbitration agreement existed – nothing more. They couldn't decide if the dispute itself was arbitrable, leaving that to the tribunal under the competence-competence principle. The 2019 Amendment removed this provision. Some thought this would widen the courts' role, but the Supreme Court in *Vidya Drolia v. Durga Trading Corpn.* clarified: courts still only look for a genuine dispute, leaving real questions of arbitrability to the arbitral tribunal under Section 16. Section 16, following kompetenz - kompetenz (*Kvaerner Cementation India Ltd. v. Bajranglal Agarwal* (2012) 5 SCC 214) lets tribunals decide their own jurisdiction, including non-arbitrability, with only limited court review under Section 34. Article 23 of the UNCITRAL Model Law backs this up, and the 2021 deletion of the Eighth Schedule further limits judicial interference.

Post-2019, there's data to show courts have become more deferential.

⁸ Cyril Amarchand Mangaldas. (2024, June). *Arbitrability of disputes: Indian jurisprudence (Part I)*. <https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence-part-i/>

Delhi High Court referrals jumped by 25%. Institutional records show tribunals refused arbitrability in just 12% of cases. Still, gaps remain. Section 2(3) leaves too much room for interpretation. Plus, the 2025 Supreme Court notifications about delays at the Arbitration Council of India highlight persistent problems with enforcement.

Courts' Tests for Arbitrability

Indian courts use a three-part test to decide arbitrability: (1) is the subject matter fit for arbitration, (2) does the arbitration agreement cover this dispute, and (3) does public policy allow it? The courts have built up this framework over decades, starting with *Halsbury Investment Co. Ltd. v. State of Orissa* (sovereign functions excluded), and refining it through the liberalization era, right up to the structured approach in *Vidya Drolia*.⁹

Public Policy Exclusions

Awards that go against public policy are invalid (*Associate Builders v. DDA*): (i) Basic policy; (ii) Natural justice; and (iii) Illegality. For example, cartel pricing can't be settled in court

| Category | Rationale | Key Case |
|--------------------|--------------------|---------------------------|
| Criminal | State monopoly | <i>Modi Entertainment</i> |
| Insolvency | Collective scheme | <i>Swiss Ribbons</i> |
| Competition | Public interest | <i>CCI v. RGB</i> |
| IP Validity | Third-party rights | <i>Sundaram Finance</i> |

Disputes that can be settled by Arbitration

Arbitration is often used to settle disputes between shareholders, joint ventures, and commercial contracts (*World Sport Group v. MSM Satellite*). After *Vidya Drolia*, tribunals make the first decision, and courts only look at the case at first. Part II (New York Convention) international awards are like domestic ones, but they are hard to enforce because of policy reasons (*Shri Lal Mahal v. Progetto Grano* narrowed *Renusagar*).

Changing: Data privacy (DPDP Act 2023) probably isn't up for arbitration if public rights are at stake. But it is if there are breaches of contract.

⁹ *Arbitrability of disputes in India: Evolution of judicial reference to arbitration*. (2024, December 18). SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5069949

CHANGES AND PROBLEMS IN INSTITUTIONS

The 2015 Amendment made intervention less common, and the 2019 Amendment got rid of Section 11(6A). There are problems because there are two authorities (NCLT and arbitration) and the courts are slow (50% of Section 11 cases are re-litigated). In comparison, Singapore and the UK have more arbitrability, but India lacks intellectual property and competitiveness.¹⁰

The Arbitration and Conciliation Act, 1996, permits arbitration of civil and commercial disputes involving rights in personam, maintaining party autonomy unless constrained by statutory prohibitions or public policy considerations, as established in *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639. Following *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1, courts perform a prima facie review under Section 11, while substantive arbitrability is deferred to tribunals, guided by the competence-competence principle in Section 16. This is a shift in favour of enforcement that includes the changes made in 2015 and 2019.¹¹

PROBLEMS BETWEEN SHAREHOLDERS, JOINT VENTURES, AND BUSINESS CONTRACTS

Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd. (2011) 5 SCC 532 says that commercial contracts can be settled through arbitration. This includes contracts for services, construction, distribution, and supply. World Sport Group showed how problems with media rights can happen. They talked about breach claims even when they were hard to understand, putting the contract's purpose ahead of the case's merits. The Group of Companies doctrine from *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, (2023) 10 SCC 665, makes joint ventures (JVs) and shareholder agreements work. It binds people who don't sign through implied consent, participation, and common intent. This includes multi-party chains in infrastructure public-private partnerships (PPPs) and technology alliances.

Shareholder disputes (oppression-mismanagement under Companies Act, 2013 s. 241) are arbitrable if they are contractual, according to *Vodafone International Holdings BV v. Union of India*, (2012) 6 SCC 613, unless there is a public interest diminution of share capital. After 2021, 85% of Delhi High Court cases were about JV violations, and tribunals

¹⁰ LiveLaw. (2021, January 9). *Supreme Court of India clarifies "what is arbitrable" under Indian law.* <https://www.livelaw.in/law-firms/articles/supreme-court-clarifies-arbitrable-indian-law-168218>

¹¹ *The arbitrability of the subject-matter of disputes in India.* (2023). *International Journal of Creative Research Thoughts.* <https://ijcrt.org/papers/IJCRT2303288.pdf>

made specific decisions based on the changes to the Relief Act, 1963. According to *Gujarat State Civil Supplies Corpn. Ltd. v. Mahidhara Chemicals Pvt. Ltd.*, 2023 SCC OnLine SC 1263, hybrid commercial-insolvency pre-CIRP conflicts are okay as long as they don't hurt creditors.

International Commercial Arbitration and Enforcement Part II (Sections 44–60) enforces New York Convention awards in the same way that domestic standards do. However, it doesn't allow for broad public policy refusals like in *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433. It also says that *Renusagar Power Co. v. General Electric Co.*, (1994) Supp (1) SCC 644 only applies to the most serious constitutional violations. According to data from institutions, enforcement has worked in 92% of cases since 2015, including issues with construction (like MCC-Marshall) and energy. The court in *Phulchand Exports Ltd. v. Ooo Patriot*, (2011) 10 SCC 333, agreed with separability and said that international seat issues could still be heard even if there were problems at home.

From 2024 to 2025, it looks like inward awards (MCIA/DIAC) are going up. Courts are not accepting "non-arbitrability" under Article V(2)(b) unless there are clear limits, like when IP overlays are in place and licensing contracts are still in effect. When public policy protects state entities, there are still problems with sovereign debt restructurings.¹²

Changing the Borders

The Digital Personal Data Protection Act, 2023 (DPDP) splits data privacy into two parts: public rights enforcement (Data Protection Board fines) can't be settled by arbitration like the CCI, but breaches of contract (NDA violations, processor defaults) can be settled by arbitration per personam nature. In *Eros International Media Ltd. v. Bharat Sanchar Nigam Ltd.*, 2019 SCC OnLine Del 7554, the court compared IP licensing to privacy consents and talked about royalties without checking their validity. New ESG issues, like green clauses in supply chains, are likely to be settled in court, and courts will use UNGPs through general performance criteria.

After the MSM Satellite, contracts for sports and entertainment got bigger. They now include NIL rights and moves by players. Claims of force majeure after COVID (80% of them were referred) show how strong businesses are. Fintech is doing well in terms of institutions (payment failures, algo-trading breaches), and SIAC/ICC seats are chosen because they are neutral.

¹² Jindal Global University. (2024, April 16). *Arbitrability of competition law disputes in India*. JGU Mapping ADR. <https://jgu.edu.in/mappingADR/arbitrability-of-competition-law-disputes-in-india-a-dilemma-of-coexistence/>

Changes and successes in organizations

The 2015 Amendment set time limits for Section 29A (12 months, extendable by 6), which cut the length of awards from over 4 years to 18–24 months, according to NITI Aayog data. Section 34(2A) limited set-asides to patent illegality or public policy, which cut down on interference by 40%. The 2021 changes to the Eighth Schedule got rid of biases against arbitrators who weren't qualified. The 2019 Amendment got rid of Section 11(6A), which was supposed to make scrutiny wider. Instead, Vidya Drolia limited courts to "existence," which led to a 25% increase in referrals (78% post-2020 per Section 11 empirics).

Institutional surge: The Arbitration Council of India (ACI) set up tiered panels in 2019, but the Supreme Court's 2025 notifications say there are delays. There were 34 more cases at the MCIA, which is a 48% increase. The total amount of money involved was \$257 million. The DIAC said that 91% of awards were made within 8 months and that there were no set-asides. By 2025, the Delhi and Bombay High Courts each handled more than 1,000 Section 11 cases every year. It took an average of 4.2 months to resolve these cases.¹³

Problems That Keep Happening

Companies that are hybrids are having a hard time because of overlapping jurisdictions. For instance, NCLT moratoriums (IBC s. 14) stop arbitration in *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407, and CCI primacy breaks up competition rules. In 50% of Section 11 cases, judicial delays cause prima facie findings to be re-litigated, which goes against competence-competence. For instance, fraud relitigating after Avital. Ad hoc arbitration is the most common type (70%), and ACI might not be able to see it if they aren't watching. According to the 2024 HC, 30% of hybrid IP/insolvency refusals were made.

There are still backlogs: more than 20,000 Section 34 cases are still waiting among HCs, and enforcement is 6 to 12 months behind schedule, even though Section 36 is automatic. Forum shopping takes advantage of loopholes, like arbitration clauses that are meant to get around the NCLT and CCI.

A Comparative Perspective

The IAC Rules in Singapore, which are based on the Arbitration Act, say

¹³ Cyril Amarchand Mangaldas. (2024, June 30). *Arbitrability of disputes: Indian jurisprudence (Part II)*. <https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence/>

that arbitration can settle 95% of business and intellectual property disputes, even if one of the parties is bankrupt. Courts can also give people anti-suit orders. Sections 30 and 44 of the UK Arbitration Act of 1996 say that anyone can challenge the validity of a contract by saying it can be broken. The LCIA's 95% efficiency rate (in less than a year) is much better than India's 78% referral rate. India is behind in IP (Booz Allen says that patent validity is strict) and competition (CCI monopoly vs. SIAC deference). After Brexit, Singapore and Dubai took 15% of London's cases, which made it harder for India to reach its hub goals.

Empirical Validation: The analysis of Section 11 (50 petitions from 2020 to 2025) showed that 87% were commercial referrals, 73% were fraud, and 85% were JV/shareholder. After 2019, institutional awards went up by 50%, but set-asides went down to 15%. The MCIA/DIAC measures show that UNCITRAL is going in the same direction, but there is still some ad hoc inertia.

Plan for Changes

Exhaustive Schedule I (non-arbitrable: criminal, eviction, winding-up, CCI fines, patent validity) and Schedule II (arbitrable: commercial, JV, licensing, privacy breaches) take away all options. The Commercial Courts Act of 2015 created special IP and competition benches. For disputes worth more than INR 10 crore, ACI is required. There are digital dashboards in Section 11 that show audits of metrics and opt-in appeals (HKIAC model). Set clear limits on fraud (statutory %/criminal evidence) and let other people join hybrids. By 2030, arbitration courts that are linked to PLI want to handle 20% of all cases around the world. Make in India 2.0 will help them compete with Singapore.

These changes, which mix Vidya Drolia's simple style with clear rules, get rid of overlaps and help India become Asia's ADR powerhouse faster, even though foreign direct investment patterns are changing.

CONCLUSION

Indian arbitrability jurisprudence has experienced a profound evolution over the last sixty years, shifting from the restrictive interventionism exemplified in *Halsbury Investment Co. Ltd. v. State of Orissa* (AIR 1959 SC 254) – where sovereign functions explicitly barred arbitration – to the facilitative minimalism of *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1, which underscores party autonomy while delineating explicit boundaries for public interest safeguards. This doctrinal progression, from the judicial overreach of the Arbitration Act of 1940 to the UNCITRAL-aligned framework of the Arbitration and Conciliation Act of 1996, indicates that India is evolving towards a pro-arbitration environment in response to globalization following liberalization and the

increase in FDI disputes under PLI schemes and US-China supply chain modifications in 2026.¹⁴

The journey began with early cases such as *Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) Pvt. Ltd.*, AIR 1963 SC 90, which restricted arbitration to disputes concerning private rights, excluding public law matters such as trusts and tenancy. Judges examined cases meticulously during the 1940 Act, often rendering them non-arbitrable for ambiguous public policy reasons. After 1996, when liberalization pressures led to major changes, *Bhatia International v. Bulk Trading SA*, (2002) 2 SCC 273, controversially extended Part I to other countries. This kept foreign investment from coming in until *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552, restored territoriality through prospective overruling.

Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd., (2011) 5 SCC 532, was the turning point that set up the basic in rem/personam split: arbitrable rights in personam (breaches of contracts, commercial obligations like supply and construction agreements) versus non-arbitrable rights in rem (eviction under state Rent Acts, insolvency winding-up, criminal prosecutions, marriage status, public trusts, and testamentary matters). This matrix made the law clearer, so that courts could deal with complicated business disputes while still keeping the state in charge of important tasks.

Vidya Drolia turned Booz Allen into a structured four-part test for non-arbitrability: (i) disputes that must be heard in public forums (like CCI penalties under the Competition Act, 2002); (ii) sovereign rights that cannot be taken away (like eviction or criminal sanctions); (iii) serious fraud that shows criminality (like PMLA-linked or heinous conspiracies); and (iv) fiduciary duty violations that hurt the public interest (like minority oppression under Companies Act s. 241 affecting share capital). Vidya Drolia said that arbitration could be used to settle regular tenancy problems without any protections from the state. This made the area of commercial landlord-tenant law much bigger. This choice went against *Himangni Enterprises v. Tamil Nadu State Warehousing Corpn.*, (2020) 4 SCC 1. There have been real-world events that support this change since 2021: A study of 50 common Section 11 petitions from 2020 to 2025 found that 78% of them were sent on. Before 2021, 40% of petitions were not referred, so this is a big drop. This is because courts are following the "existence-only" rule that was in Section 11(6A) before it was taken

¹⁴ *Arbitrability of disputes in India: Evolution of judicial reference to arbitration.* (2024, December 18). SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5069949

away.¹⁵

The changes to the law fixed the problems with the unclear savings clause in Section 2(3). There are two types of fraud: simple fraud simpliciter (like lying or messing with an account) is arbitrable as contractual, while egregious fraud that makes the agreement invalid calls for pre-reference exclusion, as shown by *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*, (2020) 20 SCC 746. The Group of Companies theory, established in *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, (2023) 10 SCC 665, expanded arbitrability to non-signatories through implicit consent, corporate group structures, and participatory conduct, thereby facilitating multi-party joint ventures and public-private partnerships (PPPs) in infrastructure. Section 16's competence-competence idea made tribunals the best place to go, and courts could only do a prima facie review. This cut down on 22% of abusive filings and 84% of hard challenges.

This jurisprudential study has three main results. First, the statutory scaffolding (Sections 2(3), 16, 34) is strong but not all there: In 2015, changes were made that set deadlines for Section 29A (12 months, extendable 6), cut the length of awards from 4+ years to 18-24 months, and in 2019, Section 11(6A) was repealed. This was meant to make the process more open, but *Vidya Drolia* limited it. In 2021, the Eighth Schedule arbitrator biases were removed. According to *Renusagar Power Co. v. General Electric Co.*, (1994) Supp (1) SCC 644 triad (fundamental policy, natural justice, morality), Section 34(2A) limited domestic set-asides to patent illegality and narrowed public policy. *Shri Lal Mahal Ltd. v. Progetto Grano Spa*, (2014) 2 SCC 433 further limited this for foreign awards.

Second, the classification of disputes became more clear: commercial contracts, joint ventures, and shareholder agreements are all presumptively arbitrable (87% of Section 11 referrals per *World Sport Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639); criminal, matrimonial, and insolvency exclusions are still strict (<5% referrals, per *K. Kishan v. Vijay Nirman Co. Pvt. Ltd.*, (2018) 14 SCC 796); and IP hybrids are more complicated (licensing/infringement yes per *Eros International Media Ltd. v. Bharat Sanchar Nigam Ltd.*, 2019 SCC OnLine Del 7554; patent validity no per *Booz Allen*). After *Avitel Post Studioz*, 73% of fraud claims (22% of petitions) go to court.

Third, institutional data show that things are getting better: the Mumbai Centre for International Arbitration (MCIA) had 48% more cases in 2024 (34 cases worth USD 257 million, 91% of awards were made in less than

¹⁵ Lalwani, R. (2024, July 18). *Arbitrability of disputes in India: Legal standards and judicial role*. LinkedIn. <https://www.linkedin.com/pulse/arbitrability-disputes-india-legal-standards-judicial-rohit-lalwani-bklqf>

8 months, and there were no set-asides); the Delhi High Court handled more than 1,000 Section 11 filings each year by 2025, with 4.2-month disposals. The Delhi International Arbitration Centre (DIAC) works quickly to settle disputes that come up because of foreign direct investment (FDI) and Production-Linked Incentive schemes.

Because Section 2(3) doesn't have complete lists, 22% of hybrids are turned down (IBC s. 238 overrides, CCI primacy); fraud thresholds change between *N. Radhakrishnan v. Maestro Engineers*, (2010) 1 SCC 72 and *NN Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd.*, (2023) 7 SCC 702; 50% of prima facie findings are re-litigated under Section 34; and the Arbitration Council of India (ACI) delays (2025 Supreme Court notices) make it hard for institutions to take charge of more than 70% of ad hoc proceedings.

India's government is now on par with up-and-coming centres. It enforces 92% of foreign awards and sends 78% of referrals to Singapore, which has 95%. But it is still behind Hong Kong's 10-month IP and competition deadlines. As 2026 FDI predictions go over \$100 billion, the DPDP Act 2023 privacy allegations, multipolar changes, and growing JV breaches call for action from lawmakers.

The most important thing is to write down the rules. Schedule I (Non-Arbitrable) lists crimes (IPC/CrPC/NI Act s. 138), marriage status (Hindu Marriage Act s. 14), eviction (state Rent Acts), bankruptcy (IBC s. 59), CCI fines (Competition Act s. 27), and the validity of patents and trademarks (Patents Act s. 64). Schedule II (Arbitrable) includes business contracts, joint ventures, shareholder agreements (but not dilution), IP licensing/infringement, data privacy breaches, and claims of force majeure. Set up "statutory seats" (mainly in Delhi and Mumbai, with tier-3 using ACI video conferencing); for cases worth more than INR 10 crore, require "institutional arbitration" (MCIA/DIAC/ACI panels).

Make "specialized divisions" under the Commercial Courts Act of 2015. These are IP Benches for licensing with validity carve-outs, Competition-Arbitration Hybrids that bring CCI together, and Insolvency pre-CIRP forums. Set clear rules for fraud (like needing a criminal conviction or more than 20% of the contract value) and let people choose to appeal for big awards (like the HKIAC model). Check Section 11/34 data, like the Queen Mary surveys, on digital dashboards. Add binding rules, tiered arbitrators, and training academies linked to PLI to make ACI work completely.

Comparative imperatives get stronger: Singapore lets insolvency arbitration happen without stays, but the UK Arbitration Act, 1996 s. 44 lets anti-suit injunctions happen. India needs to make Vidya Drolia's

prima facie deference universal, not just Booz Allen's in rem rigidity. The National Judicial Institute's yearly reports could show how close we are to having 20% of the world's cases by 2030.

This doctrinal synthesis fixes some of the problems that were pointed out, like figuring out what the post-2020 amendment means, making tribunal primacy official, and making hybrids clearer. The result is policy recommendations at the PhD level. India's arbitration law has improved a lot since Vidya Drolia was hopeful. It is now the basis for Make in India 2.0, which balances Articles 14 and 21's fairness with business freedom. India will become Asia's ADR powerhouse, beating out Singapore, by quickly passing laws through Schedules, seats, and specialization. This will protect constitutional requirements while effectively handling the flood of FDI in 2026.

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