



## Arbitral Tribunals and the Reach of Their Jurisdiction: Authority, Constraints, and Judicial Oversight in India

Partho Banerjee\*, Dr. Gagandeep Kaur\*\*, Davron Aslonqulovich Juraev\*\*\*, Yue, Gabriel Xiao Guang\*\*\*\*

### ABSTRACT

The jurisdiction of arbitral tribunals is a critical component of arbitration law. Governed by the Arbitration and Conciliation Act, 1996 in India, this jurisdiction establishes the boundaries within which arbitral bodies operate, balancing party autonomy with essential legal safeguards. One of the fundamental principles of arbitration is party autonomy, allowing the parties involved to define the scope of arbitration, including the choice of law, the seat of arbitration, and the issues to be resolved. The competence-competence principle further empowers arbitral tribunals by granting them the authority to determine their own jurisdiction, thereby enabling them to decide whether a valid arbitration agreement exists and whether the dispute at hand falls within their jurisdiction. This minimises court intervention, fostering a more efficient arbitration process. Nevertheless, certain limitations are imposed on arbitral jurisdiction, as tribunals cannot arbitrate matters that are explicitly excluded by law, such as specific family law issues or other non-arbitrable disputes. Challenges to the jurisdiction of arbitral tribunals can arise and must be raised promptly, adhering to the procedures outlined in the Arbitration and Conciliation Act. Courts retain the authority to intervene in such challenges to assess the validity of arbitration agreements. Moreover, the jurisdiction of arbitral tribunals extends to the enforcement of arbitral awards, which is primarily managed by courts where the assets of the losing party are located. The legal framework promotes minimal judicial oversight, allowing intervention only in cases of procedural irregularities, violations of public policy, or issues of jurisdiction.

**Keywords:** arbitration; competence-competence principle; enforcement of awards; jurisdiction; party autonomy.

### I. INTRODUCTION

Arbitration, initially conceived as a streamlined alternative to the complexities of civil litigation, has evolved into a cornerstone of dispute resolution in India. Its roots can be traced back to the indigenous system of panchayats, where respected individuals were entrusted with resolving conflicts, and their verdicts carried the weight of authority among the disputing parties. The formalisation of arbitration in India began under British rule, with the Bengal Regulations of 1772 and 1813<sup>1</sup> laying

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\* Advocate at High Court of Judicature, Allahabad, Uttar Pradesh, India. email: 500070272@stu.upes.ac.in, partho.banerjee07@outlook.com.

School of Law, University of Petroleum & Energy Studies (UPES), Dehradun, Uttarakhand, India.

\*\* Senior Associate Professor in School of Law, University of Petroleum & Energy Studies (UPES), Dehradun, Uttarakhand, India. email: gkaur@ddn.upes.ac.in.

\*\*\* Department of Scientific Research, Innovation and Training of Scientific and Pedagogical Staff, University of Economics and Pedagogy, Karshi 180100, Uzbekistan.

Postdoctoral Department, International Engineering and Technology Institute; Hong Kong, China. email: juraevdavron12@gmail.com.

\*\*\*\* European University Cyprus, Nicosia, Cyprus Scopus ID: 36607149900, 0000-0002-3004-6961. email: xgyue@ietj.net.

<sup>1</sup> Chattopadhyay, Amal Kumar. *Slavery in the Bengal Presidency Under East India Company Rule, 1772-1843*. University of London, School of Oriental and African Studies (United Kingdom), 1963.

down provisions for arbitration in disputes concerning immovable property. This was further cemented by the Arbitration Act of 1899<sup>2</sup>, which eventually gave way to the Arbitration Act of 1940.

However, the Arbitration Act of 1940<sup>3</sup>, though significant, quickly proved inadequate for a rapidly modernising nation. With the surge in cross-border trade and commercial disputes, there was an increasing demand for a robust legal framework that could cater to the dynamic needs of arbitration both domestically and internationally. This led to the enactment of the Arbitration and Conciliation Act of 1996, which aligned India's arbitration laws with the UN Model Law adopted by the United Nations Commission on International Trade Law (UNCITRAL)<sup>4</sup>.

The 1996 Act, consolidative yet not exhaustive in its approach, expanded the scope of arbitration in India, focusing on both domestic arbitration and the enforcement of foreign arbitral awards. It sought to address the gaps left by its predecessor and positioned India's arbitration regime on a global platform. This shift signified the beginning of a new era in which arbitration would no longer be seen as merely an alternative to litigation but as a crucial mechanism for resolving complex commercial disputes efficiently and effectively.

## II. RESEARCH METHOD

This research adopts a qualitative doctrinal methodology, rooted in the analysis of statutory law, case law, and academic literature to examine the jurisdictional authority of arbitral tribunals in India. The core legal framework scrutinized is the Arbitration and Conciliation Act, 1996, particularly Sections 11, 16, 34, and 37, which delineate the scope of jurisdiction, judicial review, and enforcement mechanisms applicable to arbitral proceedings.

A case law-centric approach is used to trace the evolution of judicial interpretation on key issues such as the competence-competence principle, the separability of arbitration clauses, and the scope of appeal. Landmark decisions of the Supreme Court and High Courts of India, including *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, *Konkan Railway Corp. v. Rani Construction*, and *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services*, serve as pivotal reference points in understanding the contemporary position of arbitral jurisdiction and its judicial boundaries.

Additionally, the paper utilizes a comparative perspective by engaging with international arbitration norms, including principles from the UNCITRAL Model Law, New York Convention and Geneva Convention, to contextualize India's arbitration regime within the broader global framework.

Secondary sources include textbooks on arbitration law, academic journal articles, Law Commission reports, and online legal commentaries, all of which support a critical evaluation of the law's effectiveness in practice. The methodology also encompasses a functional interpretation of arbitral procedures, enforcement trends, and appeal mechanisms, integrating doctrinal precision with policy-oriented insights.

Through this layered analytical structure, the paper aims to contribute to a deeper understanding of how arbitral tribunals operate within India's legal ecosystem, while also highlighting areas for procedural and legislative reform to enhance the autonomy and efficacy of arbitral dispute resolution.

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<sup>2</sup> Brahmabhatt, Krishna. "Evolution of Arbitration Act and Enforceability of an Arbitration Agreement along with Analysis of Judicial Intervention in Arbitration." *Jus Corpus LJ* 3 (2022): 556.

<sup>3</sup> Fanibanda, Parinaz, and Palak V. Mehta. "A Critical Study of Arbitration Law through Years: 1940-2019." *Supremo Amicus* 22 (2020): 153.

<sup>4</sup> Binder, Peter. *International commercial arbitration and mediation in UNCITRAL Model Law jurisdictions*. Kluwer Law International BV, 2019.

### III. DISCUSSION AND RESULTS

#### 3.1 Arbitration in India: A Historical and Legislative Evolution

Arbitration in India has deep historical roots, dating back to the ancient panchayat system where local community leaders resolved disputes through consensus. These informal practices laid the foundation for what would later evolve into modern arbitration. With the advent of British rule, arbitration began to take formal shape, first through the Bengal Regulations of 1772 and 1813, which recognised arbitration as a legal tool in property disputes. This was followed by the Arbitration Act of 1899, though it applied only to limited jurisdictions in India's presidency towns.

As India's economy developed, so did the need for a more robust arbitration framework. The Arbitration Act of 1940 was introduced to address this, but it quickly proved to be inefficient and overly procedural, hampering the swift resolution of disputes. The judiciary's involvement in arbitration under the Act often led to delays, defeating the purpose of using arbitration as an alternative to litigation.

Globalisation and the rise of international commerce prompted India to modernise its arbitration laws, culminating in the enactment of the Arbitration and Conciliation Act of 1996. This legislation, modelled after the United Nations Commission on International Trade Law ["UNCITRAL"<sup>5</sup>], was a significant improvement, harmonising Indian arbitration with global standards and minimising judicial interference. The 1996 Act brought both domestic arbitration and the enforcement of foreign arbitral awards under a single framework, marking a paradigm shift in India's arbitration regime.

Despite its progress, the 1996 Act has been subject to further amendments, most notably in 2015, to streamline processes, reduce court involvement, and encourage institutional arbitration. These reforms reflect India's ongoing efforts to strengthen its arbitration landscape and align it with international best practices.

The evolution of arbitration in India highlights the nation's journey from traditional dispute resolution mechanisms to a modern, structured legal framework. With continuous reforms, arbitration has emerged as a preferred method for resolving commercial disputes, positioning India as a potential hub for arbitration in the global arena. However, further enhancements are still necessary to address emerging challenges in an interconnected world.

#### 3.2 Jurisdiction of Arbitration Tribunals

The jurisdiction of arbitration tribunals is essential for defining their authority to hear and resolve disputes. This jurisdiction encompasses various dimensions, including the types of disputes eligible for arbitration, the principle of competence-competence, and the rules governing the appointment and conduct of arbitrators<sup>6</sup>.

The first aspect of jurisdiction is the nature of disputes that can be arbitrated. According to the Arbitration and Conciliation Act of 1996 in India, any dispute that can be mutually agreed upon is generally arbitrable. Key categories include:

- a. **Commercial Disputes:** Most agreements and transactions in commerce, such as contracts and joint ventures, fall under this category<sup>7</sup>.
- b. **Civil Disputes:** Many civil matters are arbitrable, with exceptions for certain cases like matrimonial and criminal disputes.

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<sup>5</sup> The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the U.N. General Assembly (UNGA) responsible for helping to facilitate international trade and investment. It was established in 1966 by the United Nations General Assembly.

<sup>6</sup> Amerasinghe, Chittharanjan F. *Jurisdiction of international tribunals*. Brill, 2002.

<sup>7</sup> Redfern, Alan. "Jurisdiction of an International Commercial Arbitrator, The." *J. Int'l Arb.* 3 (1986): 19.

- c. **Consumer Disputes:** Recent interpretations indicate that consumer disputes can also be arbitrated, provided the arbitration agreement is fair.<sup>8</sup>

Certain disputes, particularly those involving public policy or statutory prohibitions, are non-arbitrable, such as those pertaining to public rights or legal interpretations.

The principle of "competence-competence" allows arbitration tribunals to determine their own jurisdiction. This means they can decide on the validity of the arbitration agreement and their jurisdiction over a dispute. Courts typically respect this principle, intervening only in limited cases, such as when the agreement is clearly invalid.

The jurisdiction of an arbitration tribunal is closely linked to the arbitration agreement between the parties. This agreement must be clear, unequivocal, and in writing, reflecting the parties' intention to resolve disputes through arbitration. Ambiguities may lead to challenges regarding the tribunal's jurisdiction.

Key elements of a valid arbitration agreement include:

- a. **Clarity of Terms:** Explicitly stated terms and conditions.
- b. **Parties' Consent:** Voluntary agreement from both parties to submit to arbitration.
- c. **Scope of Disputes:** A clear outline of the types of disputes that will be arbitrated.

The jurisdiction of arbitration tribunals is also shaped by rules concerning the appointment and conduct of arbitrators. Parties can either mutually designate their arbitrators or adhere to institutional rules provided by organisations like the Indian Council of Arbitration or the International Chamber of Commerce<sup>9</sup>.

Once appointed, arbitrators possess the authority to conduct hearings, collect evidence, and issue awards while upholding principles of natural justice and due process. Their jurisdiction also includes ruling on procedural matters, further underscoring the autonomy of arbitration tribunals.

The judiciary's role in arbitration is mainly supportive, with limited intervention regarding the jurisdiction of arbitration tribunals. Courts may intervene to:

- a. **Enforce Arbitration Agreements:** Compelling arbitration if one party is unwilling to comply.
- b. **Set Aside Arbitral Awards:** Allowing parties to challenge the validity of an arbitral award on specific grounds as outlined in the Arbitration and Conciliation Act, including jurisdictional issues<sup>10</sup>.

### 3.3 Relevant Provisions Under the Act (Section 16)

Section 16 of the Arbitration and Conciliation Act, 1996, addresses the competence of arbitration tribunals regarding their jurisdiction.<sup>11</sup> It plays a crucial role in establishing the principles governing the determination of disputes that may arise concerning the validity and scope of the arbitration agreement<sup>12</sup>. The key aspects of Section 16 can be summarised as follows:

- a. **Competence of Arbitral Tribunal: Section 16(1)** empowers the arbitral tribunal to rule on its own jurisdiction. This includes the authority to determine any objections raised regarding the existence or validity of the arbitration agreement. The tribunal's ability to address these issues

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<sup>8</sup> Stewart, Karen, and Joseph Matthews. "Online arbitration of cross-border, business to consumer disputes." *U. Miami L. Rev.* 56 (2001): 1111.

<sup>9</sup> Feehily, Ronán. "Separability in international commercial arbitration; confluence, conflict and the appropriate limitations in the development and application of the doctrine." *Arbitration International* 34, no. 3 (2018): 355-383.

<sup>10</sup> Kronstein, Heinrich. "Arbitration is power." *NYUL Rev.* 38 (1963): 661.

<sup>11</sup> Abugu, Uwakwe, and Abiodun Oduwale. "An overview of the principle of competence-competence in international commercial arbitration." *CHUKWUEMEKA ODUMEGWU OJUKWU UNIVERSITY JOURNAL OF PRIVATE AND PUBLIC LAW* 2, no. 1 (2020).

<sup>12</sup> Ganguli, A. K. "THE PROPOSED AMENDMENTS TO THE ARBITRATION AND CONCILIATION ACT, 1996—A CRITICAL ANALYSIS." *Journal of the Indian Law Institute* 45, no. 1 (2003): 3-24.

emphasises the principle of competence-competence, allowing it to function independently and efficiently.

- b. **Objections to Jurisdiction:** Under *Section 16(2)*, parties can raise objections to the tribunal's jurisdiction before the tribunal itself. If a party wishes to contest the tribunal's jurisdiction, it must do so at the earliest opportunity, typically during the proceedings. This provision reinforces the need for parties to promptly address jurisdictional issues, ensuring that any challenges are made without undue delay.
- c. **Ruling on Jurisdiction:** *Section 16(3)* states that the arbitral tribunal must decide on its jurisdiction as a preliminary issue, unless the tribunal determines that the objection is of a nature that it should be considered together with the merits of the case. This procedural flexibility allows the tribunal to address jurisdictional concerns efficiently, either by resolving them quickly or integrating them into the broader context of the dispute.
- d. **Effect of Tribunal's Ruling:** As per *Section 16(4)*, if the tribunal rules that it has jurisdiction, it can continue with the arbitration proceedings. Conversely, if it finds that it lacks jurisdiction, the proceedings may be terminated. This provision ensures that the arbitration process remains streamlined and prevents unnecessary delays caused by unresolved jurisdictional challenges.
- e. **Judicial Review of Jurisdictional Rulings:** *Section 16(5)* specifies that any ruling by the tribunal concerning its jurisdiction can be challenged in court only after the final award is rendered. This limitation on judicial review preserves the autonomy of the arbitration process and prevents parties from circumventing the tribunal's authority by seeking judicial intervention at various stages of the proceedings.

### 3.4 Competence of the Arbitral Tribunal with Relevant Case Laws

The 1940 Arbitration Act did not empower tribunals to determine their jurisdiction, leaving such matters to the courts. However, Section 16 of the 1996 Act introduced the concept of *kompetenz-kompetenz*, empowering the arbitral tribunal to determine its own jurisdiction.

This section operates on two principles:

- a. The tribunal can decide on its jurisdiction without court intervention.
- b. Courts generally refrain from reviewing jurisdictional issues before the tribunal has addressed them.

*Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. & Ors.*<sup>13</sup>: The Reliance-Amazon arbitration case represents a critical intersection of corporate law and arbitration in India. The rulings reinforced the importance of arbitration as a dispute resolution mechanism, established the binding nature of arbitration agreements, and underscored the judiciary's role in supporting arbitration while respecting party autonomy. The case is often referenced in relation to multiple orders and interim rulings, and specific citations may vary depending on the particular ruling.

- a. **Jurisdiction of Arbitral Tribunal:** The Supreme Court upheld the jurisdiction of the arbitral tribunal constituted under the Arbitration and Conciliation Act, 1996, affirming that disputes arising out of the Shareholders' Agreement and related agreements were arbitrable. This highlighted the principle of competence-competence, allowing the tribunal to decide on its jurisdiction.
- b. **Enforcement of Foreign Award:** The Supreme Court ruled that the arbitration clause was binding on Future Retail Ltd. (FRL), and Amazon was entitled to seek enforcement of the

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<sup>13</sup> (2021) 1 SCC 1

arbitration award under the agreement. The court reiterated that the principles of the Arbitration and Conciliation Act would apply, enabling the enforcement of foreign awards.

- c. **Interim Relief:** The Supreme Court provided interim relief to Amazon, directing Future Retail to refrain from proceeding with the proposed sale of its assets to Reliance Industries. This was significant in protecting Amazon's interests while the arbitration proceedings were ongoing, demonstrating the court's willingness to intervene in cases where irreparable harm could occur.
- d. **Anti-Arbitration Injunction:** The court rejected the plea for an anti-arbitration injunction sought by the Future Group, stating that disputes should be resolved through arbitration rather than through judicial intervention. This upheld the integrity of the arbitration process and emphasised the autonomy of arbitral tribunals.
- e. **Public Interest:** The court acknowledged the potential public interest in the case, given the size and scale of the entities involved and the implications for the retail market in India. However, it clarified that such considerations should not impede the arbitration process, as it remains a preferred mechanism for resolving commercial disputes.

In the case of *Union of India v. M/s. East Coast Boat Builders & Engineers Ltd.*<sup>14</sup>, the Delhi High Court observed that the Act does not allow an appeal against a tribunal's decision to proceed with arbitration after rejecting a jurisdictional plea. This underscores the Act's intention to minimise court interference during arbitration.

Similarly, in *Nav Sansad Vihar Coop. Group Housing Society Ltd. v. Ram Sharma & Associates*<sup>15</sup>, the Delhi High Court reiterated that a tribunal's decision to reject a jurisdictional plea cannot be appealed immediately. The aggrieved party must wait until the final arbitral award is declared.

However, if the tribunal accepts a plea that it lacks jurisdiction, such a decision is appealable under Section 37(2) of the Act. For instance, in *Pharmaceutical Products of India Ltd. v. Tata Finance Ltd.*<sup>16</sup>, the Bombay High Court confirmed that while a tribunal can proceed with arbitration after rejecting a jurisdictional challenge, if the tribunal accepts that it lacks jurisdiction, the party may appeal under Section 37(2).

*Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*<sup>17</sup>: The Supreme Court held that disputes arising out of a non-compete agreement were arbitrable. The court established that the scope of arbitrable disputes includes all matters that can be settled by mutual consent, except for those specifically excluded by law. This case underscored the principle of competence-competence.

*K.K. Verma v. Union of India (1955)*<sup>18</sup>: This case recognised the principle of separability of arbitration agreements. The Supreme Court ruled that an arbitration clause can be considered independent of the main contract. This principle is vital in determining the jurisdiction of the tribunal, allowing it to ascertain its authority even if the main contract is found to be void.

*National Thermal Power Corporation Ltd. v. Siemens Atkeingesellschaft*<sup>19</sup>: In this landmark case, the Supreme Court affirmed the principle of competence-competence, emphasising that an arbitral tribunal has the authority to rule on its own jurisdiction. The court held that if an arbitration agreement exists, the courts should refrain from intervening, and the matter should be referred to arbitration.

*M/s. Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd.*<sup>20</sup>: The Supreme Court clarified that the jurisdiction of the arbitral tribunal must be established based on the terms of the

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<sup>14</sup> AIR 1999 DELHI 44, (1998)

<sup>15</sup> 2000IVAD(DELHI)614

<sup>16</sup> [2003]41SCL259(BOM)

<sup>17</sup> (2011) 5 SCC 532

<sup>18</sup> AIR 1955 SC 155

<sup>19</sup> (1992) 3 SCC 551

<sup>20</sup> (2009) 8 SCC 785

arbitration agreement. The case emphasised the importance of the agreement's clarity in defining the scope of disputes subject to arbitration.

*Hindustan Construction Company Ltd. v. Union of India*<sup>21</sup>: The Supreme Court ruled that disputes regarding the interpretation of an arbitration clause must be resolved by the arbitral tribunal. This case reinforced the tribunal's jurisdiction to decide its own competence and the binding nature of arbitration agreements.

*Indian Oil Corporation Ltd. v. Amritsar Gas Service (2009)*<sup>22</sup> The Supreme Court held that the jurisdiction of the arbitral tribunal can be determined based on the nature of disputes and the parties' intentions in the arbitration agreement. The case illustrated the importance of the parties' consent in establishing jurisdiction.

*Edelweiss Capital Ltd. v. T. S. R. Subramanian*<sup>23</sup> This case addressed the scope of judicial intervention concerning the jurisdiction of arbitration. The Supreme Court reiterated that the courts should minimise their interference in matters of arbitration, reinforcing the tribunal's jurisdiction as independent and self-governing.

*Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.*<sup>24</sup> The Supreme Court held that even non-signatories to the arbitration agreement could be bound by it if the relationship between parties is sufficiently close. This case expanded the understanding of jurisdiction, allowing for broader interpretations of who could be subject to arbitration.

### 3.5 Jurisdiction of the Arbitral Tribunal when Contract Containing an Arbitration Clause is Declared Void

The jurisdiction of an arbitral tribunal when a contract containing an arbitration clause is declared void depends on the validity and independence of the arbitration clause. A thorough understanding of legal principles, judicial interpretations, and case-specific facts is essential for determining whether the tribunal can assert jurisdiction and continue the arbitration process. This underscores the importance of drafting clear and independent arbitration clauses that can withstand challenges related to the underlying contract's validity<sup>25</sup>. When a contract containing an arbitration clause is declared void, the jurisdiction of the arbitral tribunal is significantly affected. Following are some situations in which how it is generally analysed:

#### a. Principle of Competence-Competence

The principle of competence-competence allows arbitral tribunals to determine their own jurisdiction. If the underlying contract is declared void, the tribunal must assess whether the arbitration agreement itself remains valid and enforceable. If the arbitration clause is inseparable from the contract, its validity may be questioned, leading to the tribunal lacking jurisdiction over the dispute.

#### b. Validity of the Arbitration Agreement

**Independent Arbitration Agreement:** In this, arbitration clauses may be treated as separate agreements. Courts may uphold the validity of the arbitration clause even if the main contract is void, provided the arbitration agreement clearly indicates the parties' intention to arbitrate disputes.

**Embedded Arbitration Clause:** In this, if the arbitration clause is intrinsically linked to the main contract, and that contract is declared void, the tribunal may lack jurisdiction. This is

<sup>21</sup> (2010) 8 SCC 321

<sup>22</sup> (2009) 8 SCC 766

<sup>23</sup> (2015) 1 SCC 96

<sup>24</sup> (2013) 1 SCC 641

<sup>25</sup> Redfern, Alan. "Jurisdiction of an International Commercial Arbitrator, The." *J. Int'l Arb.* 3 (1986): 19.

especially true when the clause does not specify that it remains valid despite the contract's void status.

**c. Judicial Interpretation**

Courts typically analyse the context of the arbitration clause within the void contract. Jurisdictions have held that parties may still be compelled to arbitrate if the arbitration agreement stands alone. The **Supreme Court of India** has clarified in cases like *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.*<sup>26</sup> (2002) that the validity of the arbitration agreement is distinct and must be evaluated separately.

**d. Grounds for Declaring a Contract Void**

A contract may be declared void for various reasons, such as lack of capacity, illegality, or impossibility of performance. Each ground may affect the enforceability of the arbitration clause differently. For instance, if a contract is void due to illegality, the arbitration clause may also be unenforceable if it pertains to the same illegal subject matter.

**e. Practical Implications**

If an arbitral tribunal determines it lacks jurisdiction due to the contract being void, parties may have to resort to litigation, resulting in delays and increased costs. Conversely, if the tribunal finds that the arbitration agreement remains valid, it can proceed with arbitration, honouring the parties' intention to resolve disputes outside of court.<sup>27</sup>

**f. Judicial Precedents**

In *Jawaharlal Burman v. Union of India*<sup>28</sup>, the Supreme Court noted that while a contract and its arbitration clause may theoretically stand apart, a challenge to one often implies a challenge to the other. If there is no concluded contract, the arbitration clause may also be invalid.

In *Waverly Jute Mills Co. Ltd. v. Raymon and Co. (India) Ltd.*,<sup>29</sup> the Court held that discussions about the legitimacy of a contract could also encompass an arbitration agreement, but this is only valid if the agreement is distinct from the disputed contract.

In *Jaikishan Dass Mull v. Luchhimirain Kanoria & Co.*,<sup>30</sup> the Supreme Court stated that if a contract is void and illegal, the arbitration clause must also be void. This aligns with Viscount Simon's view in *Heyman v. Darwins Ltd.*,<sup>31</sup> which emphasised that if one party claims a contract is void ab initio, the arbitration clause cannot operate.

**g. Impact of the Arbitration and Conciliation Act, 1996**

The enactment of the Arbitration and Conciliation Act, 1996 altered the legal landscape. Section 16(1) states that an arbitration clause, even if embedded in a contract, is independent from the rest of the contract. The tribunal's determination regarding the contract's invalidity does not automatically invalidate the arbitration clause.

In *Olympus Superstructures v. Meena Vijay Khaitan*,<sup>32</sup> the Supreme Court affirmed that the arbitral tribunal is empowered to reconsider its jurisdiction, including objections related to the validity of the arbitration agreement. Decisions regarding the invalidation of the main contract do not necessitate the invalidation of the arbitration clause.

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<sup>26</sup> 2010 1 SCC 72

<sup>27</sup> Daibu, Abdulrazaq Adelodun, and Ibrahim Kayode Adam. "Competence-Competence and Separability Under the Nigerian Arbitral Law: A Curse or Blessing?." *Yonsei LJ* 8 (2017): 31.

<sup>28</sup> [1962] A.I.R S.C 378

<sup>29</sup> AIR 1963 SUPREME COURT 90

<sup>30</sup> AIR1974SC1579, (1974)2SCC521, AIR 1974 SUPREME COURT 1579, 1974 2 SCC 521

<sup>31</sup> [1942] AC 356.

<sup>32</sup> (1999) 5 SCC. 651

### 3.6 Loss of Competence of an Arbitral Tribunal to Rule on its Jurisdiction

An arbitral tribunal can lose competence due to various legal and procedural issues, such as judicial intervention, invalidation of the arbitration agreement, or non-arbitrability of the subject matter. Decisions by the Chief Justice or courts regarding jurisdiction are often final, limiting the tribunal's ability to reconsider its jurisdiction.<sup>33</sup> Proper adherence to arbitration agreements and procedural rules is critical to avoiding jurisdictional challenges. The competence of an arbitral tribunal to rule on its own jurisdiction can be lost in certain legal or procedural circumstances, particularly when courts or judicial authorities intervene.

#### **Key Provisions and Judicial Interpretations**

##### **a. Section 11(6) & 11(7) of the Arbitration and Conciliation Act, 1996**

1. *Section 11(6)*: A party may appeal to the Chief Justice or their designate to take action when there is a failure in the arbitration appointment process, such as when a party or institution fails to act under the procedure.
2. *Section 11(7)*: Decisions made by the Chief Justice or their designate under Section 11 are final. This finality limits the tribunal's authority to reconsider its jurisdiction if the Chief Justice has already ruled on it.

##### **b. Judicial Interpretations**

1. *Konkan Railway Corporation Ltd. v. Rani Construction Pvt. Ltd.*<sup>34</sup>: The Supreme Court held that if the Chief Justice or their designate appoints an arbitrator prematurely (before the 30-day period for appointment expires), the tribunal may be improperly constituted and thus lack jurisdiction. Under Section 16, the aggrieved party can request the tribunal to rule on its jurisdiction.
2. *Sundaram Finance Ltd. v. NEPC India Ltd.*<sup>35</sup>: The Supreme Court ruled that the order passed by the Chief Justice under Section 11 is an administrative order, and no appeal can be made under Article 136(1) of the Constitution. This prevents the Chief Justice from adjudicating on issues such as the validity or existence of the arbitration agreement.
3. *Limitations of Section 16*: Section 16 empowers the tribunal to rule on its own jurisdiction, but it cannot disregard a decision made by a judicial authority or the Chief Justice regarding the arbitration agreement or tribunal jurisdiction before the reference is made. If the Chief Justice has already examined and decided on the validity of the arbitration agreement, the tribunal cannot revisit the issue.

##### **c. Situations Leading to Loss of Competence**

1. *Judicial Intervention*: Courts may intervene in arbitration, ruling that the tribunal lacks jurisdiction, thus stripping it of its competence to rule on the matter.
2. *Invalidation of the Arbitration Agreement*: If a court declares the arbitration agreement invalid or illegal, the tribunal loses jurisdiction.
3. *Expiry or Termination of the Arbitration Agreement*: If the arbitration agreement expires or is terminated, the tribunal can no longer proceed.
4. *Challenge to Arbitrators*: Successful challenges against arbitrators for bias or conflict of interest can lead to the tribunal losing jurisdiction.
5. *Res Judicata and Prior Judicial Decisions*: The principle of *res judicata* prevents the tribunal from arbitrating matters already settled by a competent court.

<sup>33</sup> Synková, Sandra. "Courts' Inquiry into Arbitral Jurisdiction at the Pre-award Stage." PhD diss., Department of Law, Business and Social Sciences, Aarhus University, 2012.

<sup>34</sup> (2002) 1 SCR 728

<sup>35</sup> (1999) 2 SCC 479.

6. *Non-Arbitrability of the Subject Matter*: Certain matters, such as criminal or family law disputes, are non-arbitrable. If the tribunal is asked to arbitrate such matters, it lacks competence.
7. *Non-Compliance with Procedural Rules*: Failure to follow procedural rules can result in the tribunal losing its competence, as parties may challenge the proceedings.
8. *Waiver or Abandonment by Parties*: If parties agree to abandon arbitration or waive their rights, the tribunal loses jurisdiction.
9. *Incapacity or Death of Arbitrators*: The tribunal may lose competence if arbitrators are incapacitated or pass away, unless replacements are appointed.

*Judicial Review (Post-Award)*: Parties may challenge the tribunal's jurisdiction post-award. If a court finds that the tribunal lacked jurisdiction, the award may be set aside.

### 3.7 Jurisdiction For Enforcement of Arbitral Awards

The jurisdiction for enforcing arbitral awards in India depends on whether the award is domestic or foreign. Courts play a crucial role in ensuring the enforcement of awards while balancing public policy considerations. Enforcement of arbitral awards, whether domestic or foreign, involves legal procedures outlined under the **Arbitration and Conciliation Act, 1996**, and international treaties such as the **New York Convention** and **Geneva Convention**. Jurisdiction refers to a court's authority to recognise and enforce these awards.

#### a. Enforcement of Domestic Arbitral Awards

Under **Part I** of the Arbitration and Conciliation Act, 1996, domestic awards are enforced similarly to court decrees.

1. *Section 36*: After a three-month waiting period (if no challenge is filed), the award is treated as a court decree and can be enforced.
2. *Competent Court*: Typically, the party seeking enforcement approaches the district court where the assets of the losing party are located. Jurisdiction may also be in the court where arbitration took place if it covers the subject matter.
3. *Challenges*: The losing party can challenge enforcement by applying under **Section 34**, citing grounds like fraud or violation of public policy.

#### b. Enforcement of Foreign Arbitral Awards

Foreign awards are governed by **Part II** of the 1996 Act, incorporating provisions from international conventions.

1. *Sections 47 & 48*: Applications for enforcement are filed in the High Court, usually in the jurisdiction where the award debtor's assets are located.
2. *New York Convention*: Awards from countries that are signatories to the Convention and reciprocated by India are enforced as domestic decrees.
3. *Grounds for Refusal (Section 48)*: Courts may refuse enforcement if the parties lacked legal capacity, the arbitration agreement was invalid, due notice wasn't given, the tribunal was improperly composed, or enforcing the award violates public policy.

#### c. Landmark Cases

In the case of *Sundaram Finance v. Abdul Samad* This case clarified that arbitral awards can be enforced in any court of competent jurisdiction without needing a transfer order. It expanded the authority of arbitral tribunals and streamlined the enforcement process.

*Renusagar Power Co. Ltd. v. General Electric Co. (1994)*<sup>36</sup>: Limited the grounds for refusing enforcement of foreign awards, emphasising a narrow application of the public policy defence.

*Shri Lal Mahal Ltd. v. Progetto Grano SPA (2013)*<sup>37</sup>: Reinforced that foreign awards should not be reconsidered on merits and that public policy defences must be limited to fundamental issues.

**d. Jurisdictional Considerations**

1. **Territorial Jurisdiction:** Courts where the losing party's assets are located handle enforcement actions.
2. **Subject Matter Jurisdiction:** Courts dealing with commercial matters, or special divisions of High Courts, may preside over enforcement.

**e. Enforcement Process**

*Application:* The party seeking enforcement submits the award and arbitration agreement to the appropriate court.

*Recognition and Execution:* Once recognised as valid, the award is enforced like a court decree, allowing actions such as asset attachment.

**f. Non-Convention Awards**

Awards from non-signatory countries to the New York or Geneva Conventions are not directly enforceable under the Arbitration Act. In such cases, enforcement may proceed under **Section 13 of the Code of Civil Procedure, 1908**, provided reciprocal treaties exist between the countries.

### 3.8 Appeal Of Arbitral Awards

While arbitral awards are designed to be final and binding, limited avenues for appeal exist under the Arbitration and Conciliation Act, 1996. Challenges are typically restricted to procedural defects, public policy violations, or jurisdictional issues. Courts are discouraged from interfering with the merits of arbitral awards, ensuring the effectiveness and finality of arbitration as a dispute resolution mechanism. Arbitral awards, while final and binding, can be challenged or appealed under limited circumstances, particularly focusing on procedural issues rather than the merits of the case. In India, the **Arbitration and Conciliation Act, 1996** governs the appeal process, emphasising minimal court interference.

**a. Limited Grounds for Appeal**

The **Arbitration and Conciliation Act, 1996** provides limited grounds for challenging arbitral awards to preserve the efficiency of arbitration. The primary grounds for appeal, outlined in **Section 34**, include:

1. *Incapacity of parties:* Either party lacks the legal capacity to arbitrate.
2. *Invalid arbitration agreement:* The arbitration agreement is deemed invalid.
3. *Improper notice:* Proper notice for arbitration or arbitrator appointments was not given.
4. *Tribunal misconduct:* The tribunal was improperly constituted, or the procedure violated the agreement.
5. *Award against public policy:* The award conflicts with public policy, such as involving fraud, corruption, or violating principles of justice.

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<sup>36</sup> 1994 AIR 860

<sup>37</sup> Civil Appeal No. 5085 of 2013.

Appeals are not meant to reconsider the merits or re-evaluate the evidence of the dispute. The challenge must be made within **three months** of receiving the award, with an additional **30 days** allowed in certain cases.

**b. Public Policy as a Ground for Appeal**

Public policy violations are commonly invoked to challenge awards, but Indian courts have narrowed its scope:

*ONGC Ltd. v. Saw Pipes Ltd.*<sup>38</sup> expanded this to include patent illegality but stressed that merits should not be re-examined.

**c. Challenging Foreign Arbitral Awards**

Foreign arbitral awards, governed by **Part II** of the Arbitration and Conciliation Act, 1996, can be challenged on grounds similar to domestic awards, including:

1. *Incapacity of parties.*
2. *Invalid arbitration agreement.*
3. *Violation of due process.*
4. *Public policy violations.*

These challenges are limited to ensure enforcement under the **New York Convention** and **Geneva Convention**.

**d. Appeal Against Section 34 Orders**

Under **Section 37**, appeals can be filed against orders passed by courts under **Section 34**, including:

1. *Setting aside or refusing to set aside an arbitral award.*
2. *Granting or refusing interim measures under Section 9 of the Act.*

**e. Finality and Limited Judicial Intervention**

The **Arbitration and Conciliation Act, 1996** is designed to ensure the finality of arbitral awards, minimising judicial interference. Courts are restricted from overturning awards based on re-appreciation of evidence or erroneous application of the law.

**f. Key Judicial Precedents**

*Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*<sup>39</sup>: The Supreme Court held that no second appeal lies against orders under **Section 37**, unless expressly provided by the Act.

*McDermott International Inc. v. Burn Standard Co. Ltd.*<sup>40</sup>: Clarified that courts cannot modify an arbitral award but can only set it aside or uphold it under **Section 34**.

**g. Estoppel in Award Challenges**

In *Brijendra Nath vs. Mayank*<sup>41</sup>, the Supreme Court held that if parties act upon the arbitral award during the pendency of a challenge, they are estopped from later attacking the validity of the award.

Encourage the inclusion of clear and precise arbitration clauses in contracts, specifying the scope of arbitrable issues, the applicable law, and the seat of arbitration to avoid jurisdictional disputes.

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<sup>38</sup> 2003(5) SCC 705

<sup>39</sup> AIR 2011 SUPREME COURT 2649, 2011 (8) SCC 333, 2011 AIR SCW 4047, 2011 (5) AIR BOM R 237, (2011) 105 ALLINDCAS 224 (SC), (2012) 1 CIVLJ 620, (2011) 6 MAH LJ 803, (2011) 3 ARBILR 82, (2011) 7 SCALE 513, (2012) 1 JCR 143 (SC), (2011) 7 MAD LJ 557, (2011) 4 MPLJ 554, (2011) 4 RECCIVR 775, AIR 2011 SC (CIV) 1750, 2011 (3) KLT SN 55 (SC), 2011 (88) ALR SOC 2 (SC)

<sup>40</sup> (2006) 11 SCC 181.

<sup>41</sup> 1994 AIR 2562 1994 SCC (6) 117 JT 1994 (5) 195 1994 SCALE (3)739

#### IV. CONCLUSION

The jurisdiction of arbitral tribunals is a crucial aspect of arbitration law, delineating their authority and scope under the Arbitration and Conciliation Act, 1996 in India. This Act emphasises party autonomy, allowing parties to determine the arbitration's scope, including the choice of law and the matters to be arbitrated, thereby tailoring the process to their specific needs. The principle of competence-competence enables tribunals to rule on their own jurisdiction, reducing the need for court intervention and enhancing efficiency. However, there are limits to this jurisdiction, as tribunals cannot arbitrate matters explicitly excluded by law, such as certain family law disputes. Challenges to jurisdiction must be promptly raised, with courts also having the authority to assess the validity of arbitration agreements. Additionally, jurisdiction encompasses the enforcement of arbitral awards, which is typically managed by the courts where the losing party's assets are located or where the arbitration occurred. The framework promotes minimal judicial interference, allowing court intervention primarily in cases of procedural irregularities or violations of public policy, thus preserving the integrity and finality of arbitral awards.

Hence, understanding these jurisdictional principles is essential for legal practitioners, as they significantly impact the efficacy of arbitration as a dispute resolution mechanism, emphasising the need for clear agreements and adherence to procedural norms.

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