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CONTOURS OF ARBITRABILITY IN INDIA: NAVIGATING THE GREY AREAS OF FRAUD, INTELLECTUAL PROPERTY, AND EMPLOYMENT DISPUTES

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Abstract:
The concept of arbitrability lies at the heart of modern dispute resolution, determining which disputes are capable of being settled through arbitration and which remain within the exclusive jurisdiction of courts. In India, the contours of arbitrability remain a contested terrain, particularly concerning issues of fraud, intellectual property (IP), and employment disputes—often referred to as the "grey zones" of arbitrability. This article undertakes a critical examination of these grey areas through a doctrinal and comparative lens. Beginning with an overview of the evolution of arbitrability under the Arbitration and Conciliation Act, 1996, it explores the judicial interpretation of party autonomy and its limitations when disputes involve allegations of fraud that strike at the root of contractual relations. It then analyses how intellectual property disputes challenge the conventional public-private divide, given their overlap with statutory rights and public interest considerations. The section on employment disputes focuses on structural power imbalances and legislative constraints that hinder arbitration in employment contexts, particularly where statutory labour protections apply. Further, by drawing from foreign jurisprudence and comparative frameworks—such as the approaches of the United States, United Kingdom, and Singapore—the article highlights lessons that can guide Indian arbitration jurisprudence toward greater clarity and uniformity. The concluding sections propose institutional and structural reforms aimed at harmonizing Indian arbitral practice with international standards, emphasizing the need for a nuanced balance between contractual freedom, public policy, and access to justice. Ultimately, the article underscores that resolving these grey zones is critical to advancing India's credibility as a global arbitration hub.

Keywords: Arbitrability, Employment Disputes, Fraud, Intellectual Property, Party Autonomy.

INTRODUCTION

Arbitration's speed, confidentially, cost-effectiveness, and respect for party autonomy have made it the preferred method for resolving business disputes. As seen by recent amendments to the 1996 Arbitration and Conciliation Act and a growing body of court rulings supporting arbitration, Indian law has progressively adopted arbitration in recent years. The arbitrability of some issues, particularly those involving allegations of fraud, intellectual property (IP) rights, and employment, is still controversial notwithstanding the changes in Indian law. Such issues were traditionally deemed non-arbitrable due to the involvement of the public interest, statutory rights, or rights in rem. But Indian jurisprudence was moving more and more in the direction of a more sophisticated and contextual approach.

The idea of "arbitrability" refers to the arbitrability of a particular case. Despite the lack of a clear definition under the 1996 Arbitration and Conciliation Act, the Indian judiciary has defined arbitrability through court rulings. The Supreme Court clarified the fundamental idea that disputes pertaining to

rights in personam—those that are enforceable against specific individuals—are typically arbitrable, while those pertaining to rights in rem—those that are enforceable against the general public at large—are not. Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. is one notable case that illustrates this.[1] Despite being useful, this difference has highlighted weaknesses in handling the complex overlaps of contemporary business conflicts, particularly in the fields of labor law, intellectual property law, and fraud. It is typically challenging to apply the dichotomy test to distinguish between rights in personam and rights in rem because of the problematic convergence of the public and private sides of such conflicts.

THE INTERSECTION OF FRAUD AND PARTY AUTONOMY

At first, the Indian judiciary took a conservative stance when it came to fraud. The conservative stance was demonstrated by the Supreme Court's ruling in N. Radhakrishnan v. Maestro Engineers. The Court ruled that civil courts, not arbitral tribunals, should determine significant fraud allegations because of their complex concerns and substantial evidence. Arbitral tribunals were deemed insufficiently qualified to handle such complexities.[2] Because it permitted parties to use fraud accusations as a means of avoiding arbitration procedures, the ruling created a great deal of confusion in arbitration law. In Ayyasamy v. A. Paramasivam, the Court reexamined the subject and clarified the difference between basic and substantial fraud allegations, ending the confusion. The Court acknowledged that not all fraud situations would necessitate exclusion from arbitration, even though it reiterated that significant fraud that compromises the arbitration agreement's legality would render the matter non-arbitrable.[3]

This judicial position was reiterated in the case of Avitel Post Studioz Ltd. v. HSBC PI Holdings, in which the Court held that fraud claims are arbitrable provided they pertain to disputes between parties who have entered into an arbitration agreement and not to public wrongs or criminal offences. The Court reiterated that the plea of fraud does not necessarily exclude the jurisdiction of arbitration, particularly when the allegations pertain to contract breaches or misrepresentation between private parties.[4] Furthermore, in the case of K. Mangayarkarasi & Anr. v. N. J. Sundaresan & Anr, which was a dispute regarding a trademark assignment agreement of a popular South Indian food chain. The respondents alleged fraudulent misrepresentation on the part of the appellants regarding the assignment of trademark rights and sought a stay of arbitration on grounds of public policy under the Trade Marks Act, 1999. The Court, however, ruled that the charges of fraud were inextricably linked with the contractual agreement between the parties and did not require to be adjudicated upon a consideration of the validity or registration of trademarks, issues over which statutory authorities would generally exercise exclusive jurisdiction. Relying on Avitel, the Court ruled that the dispute involved rights in personam and was thus arbitrable.[5] This decision is significant since it brings the spheres of fraud, intellectual property, and arbitration into harmony, pointing out that where the core issue relates to commercial obligations arising out of a private pact, the plea of fraud or statutory frameworks may not be allowed to oust arbitration.

INTELLECTUAL PROPERTY RIGHTS: BRIDGING THE PUBLIC-PRIVATE DIVIDE

The question of arbitrability becomes increasingly complicated when dealing with intellectual property (IP) rights. Traditionally, the courts have treated IP rights, particularly those granted under statutes like the Trade Marks Act of 1999 and the Patents Act of 1970, as rights in rem with a bearing on the public in general. Consequently, controversies over the grant, registration, or validity of such rights were deemed not arbitrable and subject to competent statutory tribunals or civil courts. However, Indian judicial

[1] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd, MANU/SC/0533/2011.
[2] N. Radhakrishnan v. Maestro Engineers, MANU/SC/1758/2009.
[3] Ayyasamy v. A. Paramasivam, MANU/SC/1179/2016.
[4] Avitel Post Studioz Ltd. v. HSBC PI Holdings, MANU/SC/0601/2020.
[5] K. Mangayarkarasi & Anr. v. N. J. Sundaresan & Anr, MANU/SC/0688/2025.

bodies have increasingly realized that all IP-related controversies may not be necessarily non-arbitrable. In Eros International Media Ltd. v. Telemax Links India Pvt. Ltd., the Bombay High Court defined a crucial difference between disputes that are the aftermath of statutory rights and disputes that are the aftermath of private contracts. The Court held that disputes arising out of statutory rights are non-arbitrable, but disputes arising out of intellectual property licensing agreements are arbitrable.[6] This was also explained by the Delhi High Court in the case of Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd., where it held that disputes arising out of the ownership and use of trademarks, as regulated by family agreements and contractual obligations, are arbitrable because they relate to the obligations of the concerned parties. The law of the area is constantly evolving.[7] The courts have taken a functional approach where the dispute is about contractual arrangements concerning the exploitation of intellectual property rights, be it licensing, royalty arrangements, or exclusivity contracts, they fall within the category of involving rights in personam and are thus arbitrable. Where disputes challenge intellectual property registrations on validity or involve claims of infringement involving wider public interest, they are considered non-arbitrable. The pragmatic approach is to promote greater flexibility and follows norms accepted internationally, as in legal frameworks of countries like the US and Singapore.

BALANCING POWER AND JUSTICE IN EMPLOYMENT RELATIONS

In the realm of labor disputes, the initial judicial approach in India was premised on the perception that the disputes indicate an imbalance in bargaining power and require special protection by law as incorporated in legislations like the Industrial Disputes Act of 1947. Employment disputes, particularly of laborers, were not then typically seen to be within the realm of arbitration. *For instance*- In Kingfisher Airlines Ltd. v Capt. Prithvi Malhotra and Ors., the Bombay High Court ruled that employment issues in which an arbitrator's jurisdiction of awarding remedies is limited by the Industrial Disputes Act are outside the purview of arbitration. These issues are reserved in the exclusive jurisdiction of courts or tribunals established under the ID Act.[8]

The rationale for excluding them was that statutory bodies alone could ensure equitable resolution of such rights because of the risk of power imbalance between employers and employees. However, this rigid stance has gradually changed. In the decision Lalitkumar Sanghavi v. Dharamdas Sanghavi, the Supreme Court drew a line of distinction between a "contract of service," which signifies a master-servant relationship, and a "contract for service," which signifies an independent contractor agreement. The Court held that although the former is amenable to statutory labour legislation, the latter, being commercial in nature, could be suitably amenable to arbitration.[9] This judgement opened up doors for arbitration in disputes concerning senior executives, consultants, and managerial staff.

This rationale was further sustained in the case of Lily Packers Private Limited v. Vaishnavi Vijay Umak, wherein the Court needed to decide on the enforceability of lock-in provisions and negative covenants, for instance- confidentiality and non-compete covenants, integrated into an employment contract. The employee argued that such restraint was an infringement of fundamental rights as enshrined under Articles 19 and 21 of the Constitution. However, the Court upheld the validity of such provisions, observing that these were agreed mutually and were held reasonable in extent for the period of employment. Importantly, the Court directed that such contractual obligations giving rise to disputes are arbitrable, appointing a sole arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.[10] This decision is a reaffirmation that employment- related disputes involving senior personnel, where the

[6] Eros International Media Ltd. v. Telemax Links India Pvt. Ltd., MANU/MH/0536/2016.
[7] Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd., MANU/DE/0379/2021.
[8] Kingfisher Airlines v. Capt. Prithvi Malhotra and Ors., MANU/MH/1921/2012.
[9] Lalitkumar Sanghavi v. Dharamdas Sanghavi, MANU/SC/0166/2014.
[10] Lily Packers Private Limited v. Vaishnavi Vijay Umak, MANU/DE/4537/2024.

contract involves commercial and proprietary undertakings, are best decided by arbitration.
Collectively, these cases show that courts now look at the nature of the employment relationship and the dispute, rather than excluding all employment matters. This evolution accounts for the enforceability of arbitration agreements in high-level contract, particularly those involving confidentiality, non-compete, or compensation clauses, thereby recognizing their commercial character. In short, Indian jurisprudence is moving towards a more flexible and practical approach, unless a dispute affects public rights, involves crime or impacts third parties, arbitration is usually upheld.

COMPARATIVE JURISPRUDENCE AND INTERNATIONAL INSIGHTS

To better understand the path of Indian jurisprudence, it is insightful to consider how other jurisdictions that are arbitration-friendly have dealt with the arbitrability of labor disputes, IP disputes, and cases involving fraud.

1. Fraud:

In England, the overall policy has been liberal. In Fili Shipping Co Ltd. v. Premium Nafta Products Ltd., the House of Lords reaffirmed the principle that unless the arbitration clause is itself directly impeached by fraud, allegations of fraud relating to contractual performance are arbitrable.[11] In Westacre Investments Inc. v. Jugoimport SDPR, the Court of Appeal enforced an arbitral award against a charge of bribery, further supporting the notion that fraud does not exclude arbitration.[12]
In Tjong Very Sumito v. Antig Investments, the Singapore Court of Appeal observed that fraud charges did not necessarily overshadow the jurisdiction of an arbitral tribunal. The deciding factor would be whether the dispute in question can be settled through arbitration under the law and whether the arbitration clause is broad enough to cover it.[13] Such judgments, similar to India's Avitel judgment, are of the opinion that arbitral tribunals are competent enough to adjudicate cases of commercial fraud, subject only to such fraud not amounting to criminal offenses or charges making the arbitration agreement itself void.

2. Intellectual property:

Worldwide, courts prefer arbitration in contractual IP disputes like licensing, royalties, and distribution contracts. In America, the United States Supreme Court in Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., reaffirmed that even claims statutory in nature can be arbitrated if they develop out of a commercial relationship.[14] Which means the arbitration of patent and trademark licensing disputes under the Federal Arbitration Act can be enforced, provided they do not challenge the validity of the IP itself.
Singapore follows a similar approach. In Augsburg Marketing v. Rohlig Asia, the High Court acknowledged contractual exploitation of IP rights in contention being arbitrable, while issues of validity remain with statutory authorities.[15]

3. Employment:

In the United States, employment disputes arbitration has been widely accepted under Federal Arbitration Act. In Gilmer v. Interstate/Johnson Lane Corp., court held that statutory employment claims could be referred to arbitration, provided the employee had agreed to an arbitration clause in a contract.[16] Later, in Epic Systems Corp. v. Lewis, court held that arbitration proceedings that require individualized proceedings are enforceable, even against claims for collective actions under labour law.[17]
Similarly, arbitration has been applied increasingly in Singapore in the case of executive-level conflicts concerning proprietary matters or compensation arrangements. In Allianz Capital Partners GmbH,

[11] Fili Shipping Co Ltd. v. Premium Nafta Products Ltd., MANU/UKHL/0067/2007.
[12] Westacre Investments Inc. v. Jugoimport SDPR, (2000) QB 288.
[13] Tjong Very Sumito v. Antig Investments, (2009) SGCA 41.
[14] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., (1985) 473 U.S. 614.
[15] Augsburg Marketing v. Rohlig Asia (2013) SGHC 65.
[16] Gilmer v. Interstate/Johnson Lane Corp., (1991) 500 U.S. 20.
[17] Epic Systems Corp. v. Lewis, (2018) 584 U.S. 497.

Singapore Branch v Goh Andress, the Court of Appeal stated that arbitration provisions inserted in employment contracts could be extended to ancillary compensation arrangements, such as Long-Term Incentive Plans (LTIPs), where documents are part of a composite employment package.[18]

ALIGNING INDIAN ARBITRATION WITH GLOBAL STANDARDS: THE NEED FOR INSTITUTIONAL AND STRUCTURAL REFORMS

Indian arbitration law has developed extensively; however, it still remains marked by incoherence and doctrinal uncertainty. The fundamental test distinguishing "rights in rem from rights in personam" serves as an initial framework for examination; however, it frequently falls short of addressing the intricate intersections between commercial and public interests. Modern conflicts often straddle statutory frameworks and private agreement, complicating the straightforward classification of arbitrability.

In fraud cases, the Indian legal framework has developed from a traditional to a pragmatic approach. Avitel case focus on the ability of arbitral tribunals to rule on allegations of fraud unless the fraud is so serious as to invalidate the arbitration agreement itself. However, issues remain. The judiciary far too frequently lacks uniform parameters towards distinguishing between "serious" fraud and standard commercial misrepresentation, creating inconsistency in interim relief and facilitating strategic delay. In addition, interface between criminal proceedings and arbitration remains poorly addressed, with the absence of an open framework to decide upon the impact of criminal liability on ongoing arbitration proceedings or the enforceability of resulting awards.[19] Comparative jurisprudence in England and Singapore shows that a systematic preliminary evaluation can enhance efficiency while safeguarding valid claims, and India could benefit from similar codified thresholds.

The development of the arbitrability of intellectual property disputes is significant but not yet complete. Courts increasingly recognize that contractual IP-related disputes, like licensing agreements, transactions involving royalties, and commercialization of rights, are arbitrable, and this can be seen in Hero Electric Vehicles case. However, judicial reasoning often focuses on contractual arrangements without fully addressing the statutory and technical intricacies inherent in IP law. Mixed disputes that include both contractual obligations and disputes over statutory IP rights (e.g., validity or infringement claims) continue to raise doctrinal uncertainty. International precedents, as with specialized IP arbitration tribunals established by WIPO or U.S. courts ruling on patent licensing under the Federal Arbitration Act, offer potential blueprints for India. The incorporation of technical expertise into arbitration schemes and the use of IP-specific procedural rules would greatly enhance both the efficiency and the quality of the adjudicatory process.[20]

Employment arbitration in India reflects another imbalance, i.e., the conflict between commercial autonomy and protection under statute. The courts have upheld arbitration of senior managers and independent contractors as commercial in nature. But standardized employment contracts, lower- tier employees, or statutory labor protection cases fall short. Legislative ambiguity gives rise to inconsistent interpretations and risks exploitation through arbitration clauses favoring employers. Comparing examples from United States and Singapore reveals that arbitration can be limited to non-statutory employment grievances while preserving statutory rights in dedicated labor forums. India could adopt similar strategies, such as establishing eligibility threshold, selecting neutral seats, providing transparent appointment processes, and charging cost caps to provide fairness and accessibility to employees while

[18] Allianz Capital Partners GmbH, Singapore Branch v Goh Andress, (2023) SGHC(A) 18.
[19] Payal Chandra, *Arbitrability of Fraud Under the Indian Regime: A New Turn*, CADR BLOG (Oct. 17, 2024), https://www.rgnulcadr.in/post/arbitrability-of-fraud-under-the-indian-regime-a-new-turn?utm_source=chatgpt.com.
[20] *Guide to WIPO Arbitration*, WIPO ADR, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_919_2020.pdf?utm_source=chatgpt.com.

leaving arbitration as an option for resolving disputes.
Through these three spheres, a number of broad trends can be identified. First, the judicial approach is ad hoc, with pragmatism used but not under a clear framework. Second, the complex disputes, namely IP and employment, need specialist expertise to be resolved effectively. Third, courts need to continue to evolve the distinction between rights in rem and rights in personam and to address mixed disputes that have both public and private aspects. Lastly, institutional development is also important as India needs strong mechanisms, specialist panels, and capacity building for arbitrators to bring domestic arbitration procedures into line with international practice.

CONCLUSION

The Indian judiciary is gradually shifting away from broad exclusions and toward a more practical stance on the kinds of issues that can be arbitrated. Fraud, intellectual property, and employment issues are no longer barred; arbitration is typically accepted if the case primarily has a private and contractual nature. However, because of the ambiguity surrounding the distinction between "serious" and "simple" fraud, mixed intellectual property disputes, and the power disparity in employment contracts, the legal environment is still undeveloped. India needs stronger institutions, more specialized regulations, and subject-matter expertise, according to an analysis of arbitration strategies used by other nations. Arbitration in India has the potential to develop into a reliable, effective, and equitable method of settling even the most complicated conflicts if these shortcomings are filled.