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CONSENT AND THIRD PARTIES REVISITED: WHEN ARBITRATION BINDS THE UNBOUND

-Shaga Ashritha Reddy



INTRODUCTION

The Indian Contract Act, 1872, establishes the fundamental nature of consent in any contractual agreement, a principle that also extends to arbitration¹. The establishment of arbitration, as opposed to judicial remedy, is due to its consensual nature. Traditionally, only those parties who consented could participate in arbitration. Third parties or non-signatories could not

¹ The Indian Contract Act, 1872, §10 & §14.

participate, as they were rendered to be in contravention of the principles of the privity of contract or party autonomy².

However, there is an increasing need to redefine the understanding of consent within the arbitral framework to reflect the complexities of modern economic dynamics, contracts involving multiple parties, and the integration of global economies.

CONSENT AND PARTY AUTONOMY IN THE ARBITRATION FRAMEWORK

Arbitration agreements are the foundation for arbitration proceedings, where parties consent to resolve disputes, as provided in Section 7(1)³. Section 7(2) of the Arbitration Act further states that an arbitration agreement must be in writing⁴. Consequently, even in the absence of the explicit terms such as "arbitration" or "arbitrator"⁵, if the intention of the parties to refer the dispute can be clearly ascertained, it may be considered an arbitration agreement⁶. Halsbury's Laws of England further emphasizes that the intention and agreement of the parties shall be ascertained as a reasonable person with the requisite knowledge would perceive it⁷. The process of arbitration is fundamentally grounded in the principle of party autonomy, as stipulated in the UNCITRAL Model Law⁸. This principle translates to "the freedom to opt" and embodies, within itself, the consensual nature of arbitration, enabling parties to choose the seat of arbitration, governing conditions, and applicable law, and is regarded as the "guiding spirit" of arbitration⁹.

JUDICIAL EVOLUTION: FROM STRICT CONSENT TO FUNCTIONAL INCLUSION

While the cornerstone of arbitration lies in the consent of parties to arbitrate and the principle

² Harshit Batra, Arbitration: The Consenting Versus The Non-Consenting, The Arbitration Workshop, (Jun 25, 2025), <https://www.thearbitrationworkshop.com/post/arbitration-the-consenting-versus-the-non-consenting>.

³ The Arbitration and Conciliation Act, 1996, §7(1).

⁴ The Arbitration and Conciliation Act, 1996, §7(2).

⁵ State of Uttar Pradesh v. Sardul Singh Kulwant Singh, (1984) AIR 1985 All 67.

⁶ Rickmers Verwaltung GmbH v. Indian Oil Corpn. Ltd, (1999) 1 SCC 1.

⁷ The Halsbury's Laws of England, Vol. 2(3), 4th Edn., p. 15.

⁸ UNCITRAL Model Law on International Commercial Arbitration art.5, Jun. 25, 1985.

⁹ S&A Law Offices, Party Autonomy- A Grundnorm To Arbitration, Mondaq, (Jun 25, 2025), <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1132244/party-autonomy-a-grundnorm-to-arbitration>.

of party autonomy, the increasing complexity of modern disputes has led to significant developments in arbitration law, and the applicability of arbitration law in a foundational capacity in various jurisdictions concerning non-signatories has undergone evolution and expansion.

Consent and Party Autonomy can no longer be viewed through a singular lens; it must now encompass all its forms, allowing non-signatories to be impleaded into arbitration proceedings. In support of this, Brekouslakis has noted that “what matters is not whether a non-signatory can demonstrate consent for arbitration, but whether it is inextricably implicated in a dispute which is the subject matter of arbitration.”¹⁰ This also aligns with the recommendation in the 246th law report, which advocated that third parties who derive, or may derive, be considered as included in the capacity of a non-signatory party¹¹.

The recognition of non-signatory parties in India can be analyzed through the pre-chloro control case era and the post-chloro control era. In the former era, arbitration law placed a strict bar on the joinder of non-signatories¹². The Arbitration Act required parties to be named explicitly in the agreement to seek redress through arbitration¹³ which was interpreted strictly. Accordingly, judgments were rendered, such as *Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar*, which reinstated the standing that only those parties involved in the matter for which arbitration is sought can participate in arbitration proceedings¹⁴. Similarly, in *Yogi Agarwal v. Inspiration Clothes & U*, the court reaffirmed the stringent principle¹⁵.

However, no law can be laid without exceptions, as there exists an inherent duty for the law to account for all circumstances. This can be applied to understand why a non-signatory can be bound by arbitration agreements. In *Mahangar Telephone Nigam Companies*, the ‘doctrine of companies’ was established, stating that if an agreement includes both a parent, sister, or affiliated party and a corresponding non-signatory affiliate, such that a direct association exists,

¹⁰ Mohammad Atik Saiyed & Shukla Pooja Sunilkumar, Tangling the Non-Signatories without “Consent”: Rethinking the “Group of Companies” Doctrine, SCC TIMES, (Jun 25, 2025),

<https://www.sconline.com/blog/post/2023/05/31/tangling-the-non-signatories-without-consent-rethinking-the-group-of-companies-doctrine/>.

¹¹ *Id.*

¹² Abhinav Sharma & Mayank Bansal, Joinder of Non-Signatories in Arbitration: Resolving the Enigma, Chamber and Partners, (Jun 25, 2025), https://chambers.com/articles/joinder-of-non-signatories-in-arbitration-resolving-the-enigma?utm_source=chatgpt.com.

¹³ The Arbitration and Conciliation Act, 1996, §7(1).

¹⁴ *Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar*, (2011) 11 SCC 375.

¹⁵ *Yogi Agarwal v. Inspiration Clothes & U*, 2009 (1) SCC 372.

the non-signatory can be subjected to the arbitration agreement¹⁶. This doctrine enables the law to analyze relationships between parties to determine when a non-signatory can be bound by an arbitration agreement. Additionally, in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*, it was stated that under Section 45 of the Arbitration Act, the wording “any person claiming through or under him” allows the arbitration agreement to extend to non-signatories.¹⁷

Subsequently, although in *Cox and Kings*, the ability of law to bind a non-signatory was upheld, the ‘through and under’ principle upheld in the former case¹⁸ was it overruled. It emphasized the necessity of balancing the consensual nature of arbitration with the current framework involving non-signatory parties in commercial transactions¹⁹. Furthermore, it upheld the doctrine of companies and indicated that it does not contravene party autonomy²⁰. Two methods for applying an arbitration agreement to a non-signatory party were identified: the first, a consent-based method, which allows a non-signatory to demonstrate their agreement to join the arbitration through various means; the second, a non-consensual method, which permits the arbitration agreement to extend to a non-signatory, potentially involving piercing the corporate veil, principles of alter ego or agency, or considering novation and assignment²¹.

Following this, the scope of joinder of non-signatories was further expanded through judicial analysis, as seen in *RBCL v. Bholasingh Construction*, which held that joining a non-signatory should be permitted even when interconnected agreements exist, provided that performance under the main agreement relies on ancillary agreements²². Although the evaluations concerning the subject matter in consideration have not been uniform, it can be observed that the stance of non-signatory parties has evolved substantially, illustrating the endeavor to balance the need for consent with the realities of complex commercial relationships.

CONCLUSION: TOWARDS A PRAGMATIC ARBITRATION REGIME

Therefore, it can be asserted that the consensual nature and party autonomy shall remain the

¹⁶ Mahanagar Telephone Nigam Ltd. v. Canara Bank, AIR ONLINE 2019 SC 959.

¹⁷ Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc. (2013) 1 SCC 641.

¹⁸ Cox and Kings Ltd vs SAP India Pvt Ltd, 2024 SCC OnLine Bom 964.

¹⁹ *Id.*

²⁰ *supra note 18.*

²¹ *Id.*

²² RBCL Piletech Infra vs Bholasingh Jayprakash Construction & Ors, 2024 SCC OnLine Del 4913.

foundation of arbitration, and evolving exemptions recognize and reflect the growing complexity of modern business relationships. This shift is to ensure and accommodate the multi-dimensions of non-signatories, allowing for a more inclusive interpretation of arbitration agreements. Prospectively, adopting a case-by-case framework, determined by the party's intent and conduct, shall enhance the adaptability of arbitration outcomes. In essence, adopting such doctrinal developments preserves and enriches autonomy by reflecting the realities of interconnected commercial relationships, promoting justice, and aligning with international standards in dispute resolution.