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ARBITRABILITY OF COMMERCIAL DISPUTES IN INDIA: WHAT CAN AND CANNOT GO TO ARBITRATION

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ABSTRACT

Arbitrability means whether a dispute can be resolved by arbitration which depends on its subject matter and the relevant law. The Arbitration and Conciliation Act, 1996 does not itself expressly list which disputes cannot be arbitrated. Instead, Indian courts have developed this understanding through various judgments. This paper examines the concept of arbitrability with a specific focus on commercial disputes in India. It traces the evolution of the arbitrability doctrine through key Supreme Court rulings such as Booz Allen & Hamilton and Vidya Drolia. The paper systematically examines commercial disputes that are arbitrable and contrasts them with those are that are incapable of being resolved through arbitration. By exploring both statutory provisions and judicial decisions, this study shows how Indian arbitration law seeks to balance party autonomy with necessary legal limits, ensuring that commercial dispute resolution also serves the broader public interest.

***Keywords**: Arbitrability, Commercial Disputes, Rights in Personam, Non-Arbitrable Disputes, Vidya Drolia Test*

INTRODUCTION

Arbitration can be defined as a mechanism of dispute resolution wherein parties agree to submit their dispute to a neutral third party or tribunal, whose decision known as an award is binding and enforceable by law. It is an effective method of resolution of disputes of both commercial and non-commercial nature. In India, arbitration proceedings are governed primarily by the Arbitration and Conciliation Act, 1996. This act follows the Model Law on International Commercial Arbitration as proposed by The United Nations Commission on International Trade Law.

Today, with the rapid increase in international trade and investment, the contemporary commercial landscape demands dispute resolution mechanisms that are not only efficient but also adaptable to the complexities of cross-border transactions and sectoral diversity. Arbitration provides a private and largely autonomous process that aligns with these objectives. Its growing acceptance in India is driven by the imperative to decongest courts, reduce pendency and create a business friendly legal environment conducive to foreign investment and domestic enterprise alike.[1] Arbitration in commercial disputes also preserves business relationships to some extent and helps parties to the dispute benefit from the expertise of the Arbitrator appointed. In *A. Ayyasamy v. A. Paramasivam,*[2] the Supreme Court said that "Arbitration is essentially a voluntary assumption of an obligation by contracting parties to resolve their disputes through a private tribunal" and that "The duty of the court is to impart to that commercial understanding a sense of business efficacy."

Commercial arbitration arises out of commercial transactions like an international contract for the sale of goods or a construction project, usually between private parties, but sometimes involving states or state owned entities.[3] It can be further classified into two broad categories, Domestic Commercial Arbitration and International Commercial Arbitration. International Commercial Arbitration is an arbitration where the matter involved is a cross-border dispute and the parties do not want to get into filing of the case in national courts. §2(1)(f)[4] of The Arbitration and Conciliation Act, 1996, defines International Commercial Arbitration as '*an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India.'* The arbitration proceedings are governed by the arbitration agreement entered into by the parties either within the main contract or as a separate agreement.[5] In commercial Arbitration, the seat and the venue play an important role. The venue is the place where the proceedings take place and the seat decides the governing law which is made applicable to such proceedings.

Essentially, Arbitration stands an important tool for the success of international commerce in India's rapidly globalising economy by providing parties to international contracts a neutral forum to resolve their differences. Despite its advantages, not every commercial dispute can be

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[1] Tushar, *Historical Evolution and Modern Landscape of Arbitration: An Indian and International Perspective,* EUROPEAN ECON LETTERS, Vol 15, Issue 2 (2025).
[2] A. Ayyasamy v. A. Paramasivam, 2016 (10) SCC 386.
[3] LEXIS NEXIS, https://www.lexisnexis.co.uk/legal/glossary/commercial-arbitration (last visited Oct. 26, 2025).
[4] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), §2(1)(f).
[5] Richard H Kreindler, *Commercial Arbitration, International,* OXFORD PUBLIC INTERNATIONAL LAW (2013).

referred to arbitration. The doctrine of arbitrability acts as a threshold, determining whether a particular dispute falls within the tribunal's competence.

ARBITRABILITY & ITS EVOLUTION

Arbitrability means whether a dispute is "arbitrable", i.e. capable of being settled by arbitration. It answers the question of whether a subject matter of a claim is or is not reserved to the sphere of domestic courts under the provisions of national laws. If the dispute is not arbitrable, the arbitral tribunal is limited in its jurisdiction and the claim must instead be submitted to domestic courts. Arbitrability may be subjective or objective. Subjective arbitrability also known as *'arbitrability ratione personae'* and concerns certain individuals or entities that are considered to be unable to submit their disputes to arbitration due to their status or function such as states or local authorities.[6] Objective arbitrability, *'ratione materiae'* focuses on whether a certain subject matter can be settled through arbitration. In determining whether a matter is arbitrable one should consider both criteria.[7] The practitioner should look to relevant national or international law, depending upon where and at what stage of the proceedings the question arises.[8]

The non-arbitrability doctrine rests on the notion that some matters so pervasively involve public rights or the interests of third parties, which are subject of uniquely governmental authority, that agreements to resolve such disputes by private arbitration should not be effective.[9] Each state decides which matters may or may not be resolved by arbitration in accordance with its own political, social and economic policies.[10]

Booz Allen and Hamilton Inc v. *SBI Home Finance Ltd.*[11] was the foundational judgment on the question of arbitrability in India. It laid down the 'Booz Allen Test.' The court said that arbitrability is to be decided on the basis of the 'nature of rights' involved in the dispute. If the dispute involves a *right in rem,* i.e. a person's right against the world at large, the dispute is not arbitrable. On the other hand, if a dispute involves a *right in personam,* i.e. rights against specific individuals, the dispute is arbitrable. The Court also carved out well recognized

[6] Gary B. Born, *International Commercial Arbitration* (3d ed. Wolters Kluwer 2009).
[7] Muchlinski, P., Ortino, F. and Schreuer, C., *The Oxford Handbook of International Investment Law,* OXFORD UNIVERSITY PRESS, 928 (2014).
[8] Mistelis, L. and Brekoulakis, S., *Arbitrability: International & Comparative Perspectives*, KLUWER LAW INTERNATIONAL, 10 (2009).
[9] Gary B. Born, *International Commercial Arbitration* (3d ed. Wolters Kluwer 2009).
[10] Blackaby, N., Partasides, C., Redfern, A., & Hunter, M., *Redfern & Hunter on international arbitration*, OXFORD UNIVERSITY PRESS (2015).
[11] Booz Allen and Hamilton Inc v. SBI Home Finance Ltd. 2011 (5) SCC 532.

examples of non-arbitrable disputes such as disputes which give rise to or arise out of criminal offences, matrimonial disputes, guardianship matters, insolvency and winding up matters, testamentary matters and eviction or tenancy matters. Three facets of arbitrability relating to the jurisdiction of the arbitral tribunal were laid down:

i. Whether the disputes are capable of adjudication and settlement by arbitration
ii. Whether the disputes are covered by the arbitration agreement
iii. Whether the parties have referred the disputes to arbitration

The crux in most commercial cases is the first facet, whether substantive law or policy prohibits arbitration of certain disputes.

In certain cases, implicit non-arbitrability can also be established when by the application of mandatory law, the parties are quintessentially barred from contracting out and waiving the adjudicatory procedures of the Designated Court or the specified public forum. The parties in such circumstances do not have a choice and must resort to the forum stated in the applicable provisions of law and no other forum.[12] Therefore, the position of law pre-Vidya Drolia ruling on arbitrability of disputes was centred on two principles. First, the 'nature of rights' principle and second, the 'exclusive forum of adjudication' principle which bars disputes under legislations vesting exclusive jurisdiction upon specific or special forums or tribunals from being resolved through arbitration.

In *Vidya Drolia v. Durga Trading Corporation*,[13] a three judge bench of the Supreme Court has propounded a four-fold test to determine when a subject-matter is not arbitrable. It said that disputes are not arbitrable when the cause of action and/or subject-matter of the dispute:

i. relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;
ii. affects third party rights, have *erga omnes* effect, require centralized adjudication and mutual adjudication would not be appropriate;
iii. relates to inalienable sovereign and public interest functions of the State; and
iv. is expressly or by necessary implication non-arbitrable under a specific statute.

[12] 2023 SCC OnLine Blog Exp 57.
[13] Vidya Drolia v. Durga Trading Corporation, AIRONLINE 2020 SC 929.

An affirmative answer in respect to any of the above would render the dispute non-arbitrable. The Court clarified that although these tests are not watertight compartments, they would assist greatly in determining when a particular subject matter would be non-arbitrable under Indian law.

EXISTENCE OF A VALID ARBITRATION AGREEMENT

The existence of a valid arbitration agreement is the most essential pre-requisite for referring a matter to resolution by way of arbitration. §7[14] of the Arbitration and Conciliation Act, 1996 provides that an arbitration agreement means '*an agreement by parties to submit to arbitration all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not.'* Under the same, an arbitration agreement has to be in writing and can be in the form of an arbitration clause in a contract or a separate agreement.[15] It can also be contained in exchange of letters, telex, telegrams or other means of telecommunication which sufficiently establish the record of the agreement.

Moreover the Supreme Court[16] has also held that an arbitration agreement, in addition to the mandate under §7 of the Arbitration Act, must also satisfy the statutory mandate under §10[17] of the Contract Act. Thus an arbitration agreement which is not enforceable in law is void and not legally valid. In such cases, the disputes that may be sought to be referred to arbitration would be rendered non-arbitrable on account of the non-existence of a valid arbitration agreement. An arbitration agreement can be extensive and comprehensive, covering all disputes or it can be limited to specific disputes. The question of the Arbitral Tribunal's jurisdiction emerges when the parties in their arbitration agreement decide to carve out arbitrable disputes or exclude matters which are not amenable to arbitration.

SUBJECT MATTER ARBITRABILITY

§2(3)[18] of the act states that arbitration shall not apply to those disputes which cannot be submitted to arbitration by virtue of any other laws in force during the relevant time. Similarly, §34(2)(b)[19] and §48(2)[20] empower courts to set aside or refuse enforcement of arbitral awards if the subject matter is not capable of settlement by arbitration under Indian law. But there does

[14] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), §7.
[15] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), §7.
[16] Vidya Drolia vs Durga Trading Corporation, AIRONLINE 2020 SC 929.
[17] Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872 (India), §10.
[18] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), § 2(3).
[19] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), § 34(2)(b).
[20] The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India), § 48(2).

not exist any statutory classification expressly outlining which commercial disputes are arbitrable and which are not and this lack of definition necessitates us to turn to the judiciary. The determination of arbitrability in such matters has largely evolved through judicial interpretation and case law.

1. **Commercial Lease and Rental Disputes**

The Apex Court overruled *Himangni Enterprises* v. *Kamaljeet Singh Ahluwalia*[21] and established that landlord-tenant disputes governed by the Transfer of Property Act, 1882 are arbitrable, as they involve rights in personam arising from contractual relationships between lessor and lessee and that they do not have an *erga omnes* affect.[22] Further, in *Suresh Shah v. Hipad Technology*,[23] the Supreme Court explained that Vidya's tenancy result depends on which law governs the lease. It held that if a lease is purely under the Transfer of Property Act, it can be arbitrated but if it is governed by rent control statutes that provide special protection to tenants and exclusive jurisdiction to designated forums, it remains non-arbitrable.[24]

2. **Partnership and Joint Venture Agreements**

An arbitration clause in the partnership deed provides a valid mechanism for resolving disputes between partners regarding the contractual aspects and internal partnership matters. The Delhi High Court in *Opuskart Enterprises v. Kaushal Kishore Tyagi*[25] held that disputes arising from partnership deeds concerning business operations and misappropriation of partnership funds are arbitrable. Similarly, joint venture disputes involving commercial obligations between specific parties are arbitrable. However disputes involving genuine allegations of oppression[26] of minority shareholders or mismanagement of a company formed under the joint venture fall outside the scope of arbitration.

3. **Supply Chain, Manufacturing and Distribution Agreements**

[21] Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706.
[22] Vidya Drolia v. Durga Trading Corporation, AIRONLINE 2020 SC 929.
[23] Suresh Shah v. Hipad Technology, AIRONLINE 2020 SC 926.
[24] Ibrahim Syed, *Alternative Dispute Resolution in Tenancy & Commercial Leases*, 2 NUJS J. On Dispute Resolution 263 (2022).
[25] Opuskart Enterprises v. Kaushal Kishore Tyagi, 2204 DHC 290.
[26] Rakesh Malhotra v. Rajinder Kumar Malhotra, 2014 SCC OnLine Bom 1146.

Commercial disputes arising from supply agreements, manufacturing contracts and distribution arrangements, all are arbitrable in India. These are contractual and involve bilateral commercial obligations between specific or private parties. Disputes including a breach of supply contracts, non-delivery of goods or delayed payment and termination of distribution agreements are all arbitrable.[27]

4. Construction and Infrastructure Disputes

Construction and infrastructure disputes are highly arbitrable and are in fact, the most common type of commercial dispute referred to arbitration. Construction contracts being highly specialized and technical in nature are ideally suited for arbitration because arbitrators can be selected based on their expertise in construction engineering.[28] These disputes are arbitrable because they involve contractual rights and obligations between specific parties which are the employer, contractor and potentially subcontractors and do not involve rights that affect the world at large.

5. Intellectual Property Rights Disputes

Courts in India increasingly take a contract centred view. Disputes arising from IP licensing agreements and IP contracts are arbitrable in India but courts draw the line at validity challenges. Claims to invalidate or cancel a registration like patent revocation or trademark cancellation have an *erga omnes* effect on the public and are typically non-arbitrable. In *Eros International Media Limited v. Telemax Links India Pvt. Ltd.*[29] it was held that while the non-arbitrability of IP rights generally applies to issues of validity and grant, disputes arising from breach of contractual conditions such as licensing agreements are indeed arbitrable. Similarly, *Lifestyle Equities CV v. Qdseatoman Designs Pvt. Ltd.*[30] confirmed that patent license disputes are arbitrable as long as they do not impact the patent's validity.

6. Banking and Financial Services Disputes

Banking and financial services disputes involving contractual obligations between financial institutions and clients are arbitrable under Indian law. Disputes arising from loan agreements, credit facility contracts, securities transactions, forex dealings, derivative

[27] Vikash Kumar, *Supply Chain Dispute Resolution through Alternative Dispute* Resolution (Adr) Mechanism (Viz, Arbitration, Mediation, Conciliation, And Negotiation) in India, RUSSIAN LAW JOURNAL (2023).
[28] 2024 SCC OnLine Blog Exp 13.
[29] Eros International Media Limited v. Telemax Links India Pvt. Ltd, 016 SCC OnLine Bom 2179.
[30] Lifestyle Equities CV v. Qdseatoman Designs Pvt. Ltd, A. No. 3176 of 2017.

contracts and advisory services between banks and their customers are arbitrable. These disputes involve rights *in personam* between specific contracting parties and do not require adjudication by specialized tribunals. However, disputes concerning the recovery of debts due under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are not arbitrable. In *Tata Motors Finance Solutions Ltd. v. Naushad Khan*,[31] it was held that financial institutions under the RDB Act are compulsorily required to approach the DRT for determination of debt due, and arbitration clauses in loan agreements cannot override this statutory bar.

7. Export-Import and International Trade Disputes

Disputes arising from export-import transactions,[32] international carriage of goods and cross-border trade agreements are arbitrable in India. These disputes involve commercial transactions between specific parties and are governed by the principles of freedom of contract and party autonomy. Both domestic arbitration and international commercial arbitration are available for resolving export-import disputes. For international transactions involving foreign parties, international arbitration under institutions like the International Chamber of Commerce, Singapore International Arbitration Centre or the London Court of International Arbitration are commonly utilized.

8. Technology and Service Agreements

Disputes arising from technology development agreements, information technology services, business process outsourcing arrangements, software licensing, system integration contracts and consulting agreements are arbitrable commercial disputes.[33] These agreements involve bilateral contractual obligations between specific parties and do not implicate specialized statutory jurisdictions.

9. Fraud Allegations in Commercial Disputes

In subsequent cases, such as *Ayyasamy v. A. Paramasivam*[34] and *Avitel Post Studioz v. HSBC PI Holdings*[35], the Booz-Allen test was applied and it was held that simple allegations of fraud between parties that involve internal affairs and has no implication in

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[31] Tata Motors Finance Solutions Ltd. v. Naushad Khan, NO.8654 OF 2022.
[32] Atlas Export Industries v. Kotak & Company, AIR 1999 SC 3286.
[33] Cox and Kings Ltd. v SAP India Pvt. Ltd., 2023 INSC 1051.
[34] Ayyasamy v. A. Paramasivam, 2016 (10) SCC 386.
[35] Avitel Post Studioz v. HSBC PI Holdings, 2020 SCC OnLine SC 656.

the public domain, are arbitrable, but serious allegations of fraud or fraud involving the state or public would render the dispute non-arbitrable which would have to be adjudicated only by a court. The Supreme Court in *Rashid Raza v. Sadaf Akhtar*[36] further refined this doctrine by establishing two working tests for determining whether fraud allegations are arbitrable. Firstly, whether the fraud plea permeates the entire contract and the arbitration agreement itself, rendering it void and secondly, whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain. If fraud allegations relate only to the internal affairs of the parties without requiring public investigation or criminal prosecution, they are arbitrable. For example, allegations of misappropriation of partnership funds or fraudulent representations in commercial transactions are arbitrable if they do not require criminal investigation. However, fraud allegations involving forgery affecting the validity of the arbitration agreement itself, systemic fraud requiring criminal prosecution or fraud implicating public authorities remain non-arbitrable.

10. Consumer Protection Disputes

Consumer disputes under the Consumer Protection Act, 2019 are categorically non-arbitrable in India, a position firmly established by the Supreme Court. The landmark judgment in *Emaar MGF Land Ltd. v. Aftab Singh*[37] held that consumer disputes, being welfare legislation matters, are assigned to public consumer forums as a measure of public policy and consumers cannot be compelled into arbitration by virtue of an arbitration clause in the contract. The Act provides consumers with access to specialized consumer forums that have wider powers than arbitral tribunals, including the power to impose penalties and award compensation. Importantly, the Court held that even if parties have included an arbitration clause in a consumer contract, the arbitration clause cannot circumscribe the jurisdiction of consumer forums.

11. Insolvency and Bankruptcy Disputes

Disputes under the Insolvency and Bankruptcy Code, 2016 are generally non-arbitrable in India. The statutory framework of the IBC provides an exclusive mechanism for resolution of insolvency matters through the specialized National Company Law Tribunal. Once the

[36] Rashid Raza v. Sadaf Akhtar, (2019) 8 SCC 710.
[37] Emaar MGF Land Ltd. v. Aftab Singh, 2018 SCC OnLine SC 2378.

Corporate Insolvency Resolution Process is initiated and admitted by the NCLT, §14[38] imposes an automatic moratorium on all legal proceedings, including arbitration proceedings. The rationale for non-arbitrability of insolvency disputes is that insolvency involves collective interests of all creditors and stakeholders, not merely bilateral contractual rights between parties. This is clearly encapsulated in §238[39] which establishes that the provisions of the IBC shall prevail over any conflicting provisions contained within other laws, including the Arbitration Act.

12. Corporate Oppression and Mismanagement Disputes

Disputes involving allegations of oppression and mismanagement under the Companies Act, 2013 are non-arbitrable in India. The Bombay Highcourt in *Rakesh Malhotra* v. *Rajinder Malhotra*[40] settled this. Such disputes fall under the exclusive jurisdiction of the National Company Law Tribunal and cannot be referred to arbitration, even if the parties have included an arbitration clause in the shareholders agreement. This is because statutory remedies under the Companies Act cannot be waived by private agreement and they affect the rights of minority shareholders and other stakeholders, not merely the contracting parties.

13. Competition Law Disputes

Adam Smith in his writings in the 18th Century noted that, 'people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.'[41] Competition law disputes are generally non-arbitrable in India. The Competition Commission of India has exclusive jurisdiction over such matters. Competition law protects overall competition and consumer welfare, thus involving public interest considerations. Anti-competitive agreements and abuse of dominant position have market wide effects that go beyond bilateral contractual relationships between parties. *In American Safety Case,*[42] the court noted that a claim under antitrust laws was not merely a private matter and affected so many people and therefore the only place where such disputes could be settled amicably was in the courts of law. Further, the High Court of Delhi in *Union of India v. Competition Commission of India*[43]

[38] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), §14.
[39] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India), §238.
[40] Rakesh Malhotra v. Rajinder Malhotra, MANU/MH/1309/2014.
[41] Adam Smith, *The Wealth of Nations* (1776).
[42] American Safety Case, 2nd Circuit 1968.
[43] Union of India v. Competition Commission of India, AIR 2012 DELHI 66.

observed that the arbitral tribunal would neither have the mandate, nor the expertise, nor the wherewithal to prepare the investigation report necessary to decide the dispute in question.

14. Criminal Offences

In India, disputes linked to criminal offences are non-arbitrable, including commercial matters involving serious criminal conduct that require state prosecution. Examples include fraud through forgery or fabrication, embezzlement, criminal misappropriation, breach of trust, cheating, bribery, corruption and counterfeiting. The key test is whether the conduct amounts to a criminal offence necessitating public investigation. While minor contractual breaches or misrepresentations may be arbitrable, acts constituting criminal wrongdoing must be resolved by criminal courts, not arbitral tribunals as said in *N. Radhakrishnan v. Mastero Engieers.*[44]

15. Matrimonial and Personal Law Disputes

Matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, and child custody matters are non-arbitrable under Indian law. These disputes involve personal status and public policy considerations that require adjudication by specialized family courts. While commercially relevant disputes with matrimonial ramifications such as division of business assets upon divorce may have arbitrable components, the core matrimonial relief itself cannot be arbitrated. Similarly, guardianship matters and disputes concerning welfare of minors are non-arbitrable. *Guru Nanak Foundation v. Radha Vallabh Das*[45] held guardianship of a disabled adult to be non-arbitrable.

16. Testamentary and Succession Matters

Disputes concerning testamentary matters such as the grant of probate, issuance of letters of administration and succession certificates are non-arbitrable in India. These matters involve rights *in rem* and require public adjudication to bind all potential claimants to the estate. While disputes regarding the construction of a will between beneficiaries and executors regarding property distributed under the will might have some arbitrable dimensions, the fundamental question of the testamentary disposition itself cannot be arbitrated.

[44] N. Radhakrishnan v. Mastero Engieers, 2010 AIR SCW 331.
[45] Guru Nanak Foundation v. Radha Vallabh Das, IA No. 171884/2023.

17. Trust Disputes

Disputes concerning trusts, trustees' obligations, and rights of beneficiaries under the Indian Trusts Act are generally non-arbitrable. The Supreme Court in *Vimal Kishor Shah v. Jayesh Dinesh Shah*[46] held that trust disputes cannot be referred to arbitration as they involve fiduciary obligations and rights that extend beyond the immediate parties. Trusts create a unique legal relationship involving obligations owed to the world in certain contexts and disputes regarding the discharge of fiduciary duties cannot be relegated to private arbitration.

18. Labour and Industrial Disputes

Labour and industrial disputes under the Industrial Disputes Act, 1947 are generally non-arbitrable, as they involve statutory protections and social welfare considerations that cannot be waived by private arbitration agreements. The Industrial Disputes Act provides a specialized framework for resolution of industrial disputes through conciliation, labour courts and industrial tribunals. Disputes involving wrongful termination, unfair labour practices, wage disputes and disputes regarding conditions of employment involve public policy considerations regarding worker protection and cannot be entirely subjected to private arbitration. The courts have held that matters of social justice and public policy relating to workers' rights cannot be resolved solely through private arbitration as held in *Kingfisher Airlines Limited v. Prithvi Malhotra Instructor.*[47]

CONCLUSION

Indian law on the arbitrability of commercial disputes is anchored in a nuanced framework that balances party autonomy with public policy and statutory exclusions. The current judicial approach is shaped by landmark judgments such as Vidya Drolia that affirm that most commercial disputes arising from contractual and business relationships can go to arbitration ensuring efficiency and expertise in dispute resolution. However, certain disputes remain non-arbitrable due to their inherent nature. Arbitration is unsuitable when rendering a decision has *an erga* omnes effect, i.e. it affects the rights and liabilities of persons who are not bound by the arbitration agreement. They require adjudication by specialized statutory forums. As India continues its transition to a more arbitration friendly jurisdiction, these principles pave the way

[46] Vimal Kishor Shah v. Jayesh Dinesh Shah, 2016 8 SCC 788.
[47] Kingfisher Airlines Limited v. Prithvi Malhotra Instructor, AIR 2003 SC 2252.

for an effective commercial dispute resolution mechanism all the while safeguarding statutory mandates and societal interests.