

JURISDICTION VERSUS ADMISSIBILITY IN INDIAN ARBITRATION: THE CASE FOR A COHERENT DOCTRINAL FRAMEWORK

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Introduction

One of the key developments in modern international arbitration is the distinction between jurisdiction and admissibility. Although both raise preliminary objections to the adjudication of a dispute, the two concepts have very different procedural effects. Jurisdiction raises the question of whether the arbitral tribunal has the legal authority to decide a dispute.¹ Admissibility, on the other hand, focuses on whether a claim is appropriate for determination by an arbitral tribunal that has jurisdiction to resolve the dispute. Such matters are typically within the exclusive purview of the arbitral tribunal and are not open to judicial intervention.² The distinction has become highly relevant in the context of limitation, contractually mandated pre-arbitral procedures, and tiered dispute resolution clauses.

Although Indian courts have been reaching conclusions akin to those in international arbitration jurisprudence, they have rarely used the language of jurisdiction and admissibility in support of their decisions. Instead, they have relied on contractual construction, the distinction between mandatory and directory provisions, or the nature of judicial scrutiny under the Arbitration and Conciliation Act, 1996³ [**“Arbitration Act”**]. It could therefore be said that the difference between the two is recognised by India, but not the nomenclature used for it. This article first sets out the conceptual distinction between jurisdiction, admissibility and arbitrability before analysing the legal position within the context of the Arbitration Act. Then, it analyses the Indian legal position

¹ Andrew Tweeddale, ‘Jurisdiction and Admissibility in Dispute Resolution Clauses’ (2021) *Construction Law International* <<https://www.ibanet.org/article/57470714-a3f7-4db9-9dab-69dfbcb156c9>> accessed 10 July 2026.

² Slaughter and May, ‘Distinction Between a Challenge to the Admissibility of a Claim in Arbitration and a Challenge to Jurisdiction Confirmed in C v D’ (*Slaughter and May*, 23 June 2022) <<https://www.slaughterandmay.com/insights/importedcontent/distinction-between-a-challenge-to-the-admissibility-of-a-claim-in-arbitration-and-a-challenge-to-jurisdiction-confirmed-in-c-v-d/>> accessed 14 July 2026.

³ Arbitration and Conciliation Act 1996.

regarding the requirement of pre-arbitral procedures and concludes that, although there have been recent judicial developments, the law remains doctrinally unresolved.

Conceptual Framework

The dichotomy between jurisdiction and admissibility is rooted in the nature of the objection. An objection challenging the tribunal's power to entertain a matter is jurisdictional. Conversely, an objection that accepts the tribunal's competence but objects to the hearing of the claim due to a procedural deficiency or other unfilled prerequisites is an objection to the claim's admissibility. According to the Oxford Handbook of International Arbitration, *"In particular, it considers the question of whether there are any conditions attached to the exercise of the right to arbitrate which have not been fulfilled. Those conditions might be, for example, a limitation period applicable to the right to commence arbitration, or a requirement to mediate and/or negotiate before arbitral proceedings may be commenced."*⁴

The former relates to the tribunal, while the latter relates to the claim itself. This approach, based on the *"tribunal v claim"* dichotomy, has gained increasing acceptance across major arbitration jurisdictions and is now used as an analytical tool for deciding whether an objection concerns a reviewable question of jurisdiction or a non-reviewable question of admissibility. As Gary Born observes, *"The best approach is to presume, absent contrary evidence, that pre-arbitration procedural requirements are not jurisdictional, but matters better determined by the Arbitrators."*⁵

Arbitrability falls into its own category, alongside but conceptually distinct from the above dichotomy. It does not concern itself with whether the specific parties have agreed to arbitrate or whether a dispute is ripe for arbitration, but whether the subject matter of the dispute is something which the law allows to be determined privately through arbitration. This distinction was made by the Supreme Court in *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd.*,⁶ in which the Court drew a distinction between *rights in rem*, which are normally not arbitrable, and *rights in personam*, which normally are arbitrable. The court in *Vidya Drolia v Durga Trading Corp*⁷ came up with a four-part test to determine arbitrability and clarified that in the ordinary course of things, the arbitral tribunal would have competence over deciding the issue of arbitrability except when non-arbitrability was evident at the stage of referral. This legal position has evolved significantly following the Supreme

⁴ Thomas Schultz and Federico Ortino (eds), 'The Oxford Handbook of International Arbitration' (Oxford University Press 2020).

⁵ Gary Born, 'International Commercial Arbitration' (3rd edn, Kluwer Law International 2021).

⁶ *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd* (2011) 5 SCC 532.

⁷ *Vidya Drolia v Durga Trading Corp.* (2021) 2 SCC 1.

Court's ruling in *SBI General Insurance Co. Ltd. v Krish Spinning*.⁸ Under the current standard, once a court at the referral stage *prima facie* establishes the existence of an arbitration agreement, all questions regarding arbitrability are left to the arbitral tribunal under Section 16 of the Arbitration Act, except a narrow exception.⁹ Arbitrability has not always been conceptually distinguished from jurisdiction in Indian judgments because both can affect the tribunal's competence in resolving a dispute.

Why the Distinction Matters

This classification is not merely theoretical but is of practical importance, because it will affect the future of the award. Under Indian law, if a jurisdictional objection is accepted by the tribunal under Section 16, the arbitration proceedings terminate and that decision is appealable under Section 37 of the Arbitration Act,¹⁰ where a court may undertake a broad review. Conversely, if the tribunal rejects a jurisdictional objection, the aggrieved party cannot appeal immediately and must wait until the passing of the final award to challenge that finding under Section 34 of the Arbitration Act.¹¹ In a Section 34 challenge, the court confines its scrutiny strictly to the circumscribed grounds enumerated under Section 34.¹² Sections 34(2)(a)(i) and (iii), which allow an award to be set aside where the arbitration agreement is invalid, or where the award exceeds the scope of the parties' submission, are jurisdictional in substance because they concern the tribunal's power to decide the dispute. This is not a peculiarity of Indian law alone: the same two grounds recur in Article V(1)(a)¹³ and Article V(1)(c)¹⁴ of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This reinforces that they are treated as jurisdictional in both domestic and international planes.

Statutory Interpretation

The enforcement procedure under the Arbitration Act emerges as the principal point of contention in the classification problem. Under Section 36, an arbitral award is enforceable as a decree of the Court after the period of challenging the award under Section 34 expires, or once such an

⁸ *SBI General Insurance Co Ltd v Krish Spinning*, 2024 INSC 532.

⁹ Arbitration and Conciliation Act 1996, s 16.

¹⁰ Arbitration and Conciliation Act 1996, s 37(2)(a).

¹¹ Raphael Ren, 'The Dichotomy Between Jurisdiction and Admissibility in International Arbitration' (2024) 73(2) *International & Comparative Law Quarterly* 417.

¹² Arbitration and Conciliation Act 1996, s 34(2).

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38, art V(1)(a).

¹⁴ New York Convention (n 13) art V(1)(c).

application has been dismissed.¹⁵ Under Section 36, the court purely executes the award as a decree and possesses no statutory mandate to review the merits or findings of the arbitral award.¹⁶ A defect arising prior to the arbitration proceedings, if erroneously classified as jurisdictional in nature, may enable the aggrieved party to challenge the award under Section 34 (or, in the case of a foreign award, resist the enforcement under Section 48)¹⁷ which should be left to the arbitral tribunal, thus enabling an admissibility objection to become a jurisdictional objection at the post award stage and thereby delaying an award that would otherwise be final under law. In case it is correctly classified as an admissibility defect, the finality of the award under Section 36 will not be affected, and the ruling of the tribunal regarding the admissibility precondition will remain undisturbed.

The issue is reflected in the very structure of the Act itself, where Section 7, 8, 11(6A), and 16 establish the framework for determining the respective roles of courts and arbitral tribunals at the referral and jurisdictional stages. Section 7¹⁸ defines the arbitration agreement, Section 8¹⁹ mandates that a court shall refer the parties to arbitration unless it is *prima facie* convinced that no valid agreement exists, and Section 11(6A)²⁰ limits the inquiry of the referring court to this issue alone at the time of appointment. Finally, section 16²¹ completes this framework by empowering the arbitral tribunal to decide issues relating to its own jurisdiction. Taken together, these provisions constitute a clear legislative decision to keep the judicial function limited in the first instance and allow the tribunal to do all that follows.

Sections 34, 36, and 37 govern the post-award phase, and it is at this point that the classification becomes highly relevant. Section 34²² contains the grounds upon which a domestic award may be set aside, including the invalidity of the arbitration agreement, and these grounds are jurisdictional in substance. Section 36²³ provides that, upon the expiry of the period for filing a Section 34 application, the award becomes enforceable as a decree. Such enforcement is subject only to a conditional stay if a challenge remains pending. Section 37²⁴ introduces a procedural asymmetry:

¹⁵ Arbitration and Conciliation Act 1996, s 36(1).

¹⁶ Arbitration and Conciliation Act 1996, s 36.

¹⁷ Arbitration and Conciliation Act 1996, s 48.

¹⁸ Arbitration and Conciliation Act 1996, s 7.

¹⁹ Arbitration and Conciliation Act 1996, s 8.

²⁰ Arbitration and Conciliation Act 1996, s 11(6A).

²¹ Arbitration and Conciliation Act 1996, s 16.

²² Arbitration and Conciliation Act 1996, s 34.

²³ Arbitration and Conciliation Act 1996, s 36.

²⁴ Arbitration and Conciliation Act 1996, s 37.

whereas an order confirming jurisdictional objections can be directly appealed, an order rejecting such an objection cannot be challenged until the final award is rendered. This is one of the reasons why the defeated party, once the award has been rendered against it, would have a strong incentive to call the admissibility objections jurisdictional under Section 34.

The Indian Position

India has, in fact, approached the question of non-compliance with a pre-arbitral condition through two separate doctrinal vocabularies. The first focuses on whether such a clause is mandatory or merely directory. The second concerns whether an objection goes to jurisdiction or admissibility. In *Visa International Ltd. v Continental Resources (USA) Ltd.*,²⁵ the Supreme Court held a conciliation requirement to be directory, reasoning that where the parties' correspondence already showed opposing positions, insisting on further settlement efforts would serve no practical purpose. In *Ravindra Kumar Verma v BPTP*,²⁶ the court said that treating a mutual-discussion precondition as mandatory would extinguish the valuable right to have disputes resolved by arbitration. However, in *Centaurus Green Energy Private Ltd. v Rajshree Educational Trust*,²⁷ the court directed the parties to undertake the agreed conciliation procedure within a time-bound period, enforcing the precondition rather than dispensing with it. A court holding a precondition “*directory*” is essentially saying non-compliance does not take away the authority of the tribunal. This suggests that such issues are a matter of “*admissibility*”. On the other side, a court holding a precondition “*mandatory*” is essentially saying non-compliance bars arbitration altogether, suggesting that it is a “*jurisdictional*” issue.

The insertion of Section 11(6A) to the Arbitration Act²⁸ confined the referral court's inquiry to the bare existence of an arbitration agreement. Cases like *Duro Felguera, S.A. v Gangavaram Port Ltd.*,²⁹ and *Mayavati Trading Pvt. Ltd. v Pradyut Deb Burman*,³⁰ reiterated this position. *Bharat Sanchar Nigam Ltd. v Nortel Networks (India) Pvt. Ltd.*,³¹ [“**Bharat Sanchar**”] imported the “*tribunal v claim*” test from Singapore jurisprudence and stated, as a general proposition, that an objection alleging a claim is time-barred or prohibited until some precondition is fulfilled is a challenge to admissibility,

²⁵ *Visa International Ltd v Continental Resources (USA) Ltd* (2009) 2 SCC 55.

²⁶ *Ravindra Kumar Verma v M/s BPTP Ltd & Anr.* 2014 SCC OnLine Del 6602.

²⁷ *Centaurus Green Energy Pvt Ltd v Rajshree Educational Trust* 2024 SCC OnLine Del 3570.

²⁸ Arbitration and Conciliation Act 1996, s 11 (6A).

²⁹ *Duro Felguera, S.A. v Gangavaram Port Ltd* (2017) 9 SCC 729.

³⁰ *Mayavati Trading Pvt Ltd v Pradyut Deb Burman* (2019) 8 SCC 714.

³¹ *Bharat Sanchar Nigam Ltd v Nortel Networks (India) Pvt Ltd* (2021) 5 SCC 738.

not jurisdiction. *SBI General Insurance Co. Ltd. v Krish Spinning*,³² went a step ahead, and held that even a defence of accord and satisfaction does not affect the existence of the arbitration agreement, and must be left entirely to the tribunal. *Arif Azim Co. Ltd. v Aptech Ltd.*,³³ confirmed this specifically for limitation, treating it generally as an issue of admissibility rather than jurisdiction. *Office for Alternative Architecture v IRCON Infrastructure and Services Ltd.*³⁴ went further, holding that once a court is satisfied that an arbitration agreement exists, it should not dissect claims into arbitrable and non-arbitrable categories at the Section 11 stage at all, and that all such objections should ordinarily go to the tribunal.

Why This Isn't Solved Yet

It could be considered that *Bharat Sanchar*³⁵ has resolved the jurisdiction-admissibility question in India. However, the jurisprudence discussed thus far is confined to the Section 11 stage alone. It says nothing about how a court reviewing a final award under Section 34 (setting aside) should treat the same categorization question. At that later stage, a party dissatisfied with an adverse award has every reason to pose an admissibility ruling as a jurisdictional issue, because jurisdictional findings are subject to *de novo* review by the court.³⁶ In *Lion Engineering Consultants v State of Madhya Pradesh*,³⁷ the Supreme Court held that a jurisdictional objection can be raised for the first time in a Section 34³⁸ challenge, even if it was never raised before the arbitral tribunal. When read together with the Supreme Court's more recent clarification in *M/s. MCM Worldwide Private Ltd. v Construction Industry Development Council*,³⁹ which states that a tribunal's rejection of a Section 16 jurisdictional plea cannot itself be appealed until the final award, the overall picture is one in which jurisdictional characterization claim emerges in the post-award stage.

Why It Matters

Firstly, the parties drafting conditional arbitration clauses and investment treaties that require prior domestic litigation or negotiation cannot predict with certainty whether a failure to satisfy the

³² *SBI General Insurance Co Ltd v Krish Spinning* 2024 INSC 532.

³³ *Arif Azim Co. Ltd v Aptech Ltd* (2024) 5 SCC 313.

³⁴ *Office for Alternative Architecture v IRCON Infrastructure and Services Ltd* 2025 INSC 665.

³⁵ *Bharat Sanchar Nigam Ltd v Nortel Networks (India) Pvt Ltd* (2021) 5 SCC 738.

³⁶ Gracious Timothy Dunna, 'Standard of Review in Set-Aside and Enforcement Proceedings Relating to Arbitral Awards in India' (2019) 14 National Law School Journal 252 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437302> accessed 9 September 2026.

³⁷ *Lion Engineering Consultants v State of Madhya Pradesh* (2018) 16 SCC 758.

³⁸ Arbitration and Conciliation Act 1996, s 34.

³⁹ *M/s. MCM Worldwide Pvt Ltd v Construction Industry Development Council* 2026 INSC 425.

condition will keep the dispute out of arbitration altogether or simply go to the merits before the tribunal.

Secondly, if the defect relates to jurisdiction, the arbitral award may be open to challenge or refusal of enforcement pursuant to Article V(1)(a)⁴⁰ and Article V(1)(c)⁴¹ of the New York Convention and to Section 34 and Section 48 of the Arbitration Act.⁴² However, errors relating to admissibility normally fall squarely within the decision-making powers of the tribunal and do not stand alone as matters of review for judicial authorities. Thus, a party seeking to delay enforcement can re-litigate a ruling that should otherwise be final.

Furthermore, this harms India's stated ambition to establish itself as a preferred seat for international commercial arbitration. Persisting doctrinal uncertainty on a question that comparator jurisdictions like Singapore, England, and the United States have already answered with reasonable consistency sits uneasily with that ambition.

Conclusion

Rather than focusing on whether a negotiating clause was mandatory or directory, the Indian arbitration jurisprudence should expressly embrace the jurisdiction versus admissibility test in case of pre-arbitration procedure requirements. In the scenario where there is an established basis of jurisdiction arising out of a legitimate arbitration agreement, the failure to comply with contractual preconditions should generally be regarded as an issue of admissibility to be decided by the arbitral tribunal. Applying the "*tribunal v claim*" analysis in *Bharat Sanchar* to pre-arbitration requirements will ensure consistency between Indian case law and international jurisprudence without being contrary to the competence-competence doctrine found in the Arbitration Act.

⁴⁰ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38, art V(1)(a).

⁴¹ New York Convention (n 40) art V(1)(c).

⁴² Arbitration and Conciliation Act 1996, s 34, 48.