POSITION OF NON-SIGNATORIES TO THE ARBITRATION AGREEMENT: EVOLVING DOCTRINE AND CORPORATE LAW IMPLICATIONS IN INDIA

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1. Introduction

Arbitration has become the preferred forum for resolving commercial disputes because it promises party autonomy, speed and confidentiality. Yet the rise of elaborate corporate structures and multi-party commercial transactions has tested a core assumption of arbitration law: that only the signatories to an arbitration clause are bound by it. In India, as across much of the globe, business transactions often involve parent and subsidiary companies, affiliates, and other third parties who are not formal signatories to the main contract.[1] Disputes arising out of such arrangements force the courts and arbitral tribunals to confront whether, and on what basis, non-signatories can be bound by or benefit from arbitration agreements.

Historically, the Indian legal landscape favoured the doctrine of strict privity, in which only parties expressly executing an arbitration agreement could be compelled to arbitrate or claim under it[2]. Yet, driven by commercial necessity and the evolution of Indian and comparative case law, the rigidity of privity has been substantially eroded. Indian courts, led by the Supreme Court, have recognised doctrines including "group of companies," "alter ego," "agency," and "estoppel" to justify the inclusion of non-signatory parties in appropriate cases[3]. The result is a nuanced judicial approach, balancing the contractual autonomy of parties against the complex realities of modern commerce and the need for finality in dispute resolution.

This evolution in India mirrors significant developments in other leading arbitration jurisdictions. For example, French and Brazilian courts have embraced liberal rules for extension, while English courts remain firmly committed to the principle of contract privity,

[1] Kumudini Chattopadhayay, 'EXTENSION OF ARBITRATION CLAUSE TO NON-SIGNATORIES: AN ANALYSIS OF ITS STATUS IN INDIA', (2015) 19 VJ 1 https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/vidjloi19&id=13&men_tab=srchresults accessed on 27/09/2025

[2] SAKSHI RAMAN, 'The Issue of Inclusion of Non-Signatories in Arbitration Proceedings' (2024), [Vol. 7 Iss 4; 1579] International Journal of Law Management & Humanities https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ijlmhs30&id=1597&men_tab=srchresults accessed on 27/09/2025

[3] Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc. (2013) 1 SCC 641.

rejecting the "group of companies" doctrine outright.[4] As a result, India's contemporary jurisprudence is marked by greater flexibility than the traditional common law approach, yet not without controversy regarding the boundaries of judicial intervention and the importance of consent.

The present research is thus situated at a vital intersection—where arbitration law overlaps with core corporate doctrines and the conceptual reach of party autonomy is tested by the practical demands of global commerce.

1.1. Research Methodology

This research employs a doctrinal and critical analytical methodology, focusing on the following:

- Doctrinal analysis of primary statutes: the Arbitration and Conciliation Act, 1996 (notably Sections 2(h), 7, 8 and 45), the Indian Contract Act, 1872, and the Companies Act, 2013.
- Examination of judicial precedent from the Supreme Court and leading High Courts, with particular attention to cases that defined, limited or expanded doctrines for including non-signatories (e.g., Chloro Controls, ONGC v Discovery Enterprises, Cox & Kings v SAP).
- Review of secondary literature: scholarly articles, law-review pieces and doctrinal treatments (authors cited in the text provide a representative bibliography).
- Comparative law inquiry: selective treatment of France, Germany, Switzerland, Brazil and the UK to highlight convergences and divergences.
- Critical-analytic approach: unpacking the doctrinal foundations — group of companies, alter ego, agency and estoppel — and assessing their policy and corporate-law consequences.

1.2. Research Objectives

- To trace and assess the doctrinal evolution of legal rules governing the inclusion of non-signatories in arbitration proceedings in India, with particular reference to statutory and

[4] Adyasha Samal, 'Extending Arbitration Agreements to Non-Signatories: A Defence of the Group of Companies Doctrine'Vol. 11, Issue 1 (2020), pp. 73-97, King's Student Law Review, https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/kinstul11&id=73&men_tab=srchresults accessed on 27/09/2025

judicial foundations.

- To examine the scope, structure, and operation of key doctrines, particularly the 'group of companies' doctrine, alter ego, agency, and estoppel, as articulated and applied by Indian courts.
- To analyse the practical and theoretical implications for corporate law, including the impact on parent companies, subsidiaries, group entities, and the sanctity of corporate personality.
- To compare Indian practices with international standards, identifying areas of alignment and divergence with global best practices in commercial arbitration.
- To identify the optimal balance between party autonomy and the realities of modern commercial dispute resolution in developing the Indian approach to non-signatory participation.

1.3.Statement of Problem

The research seeks to address a pressing problem: What are the doctrinal, statutory, and jurisprudential bases for including non-signatories in Indian arbitration, and how do these impact the autonomy of parties, the efficacy of dispute resolution, and the integrity of corporate structures? In India, corporate groups typically operate through affiliated entities with layered relationships, making purely privity-based arbitration both impractical and potentially unjust.^15^ The uncertainties and potential for conflicting judgments create substantial commercial risk.

Thus, this research intends to critically interrogate whether the Indian legal regime successfully navigates the tension between safeguarding contractual consent and meeting the practical needs of modern business, and whether current judicial interventions align with international best practices or demand further reform.

1.4.Research Questions

1. What are the legal and doctrinal principles that allow for the inclusion of non-signatories within Indian arbitration proceedings?
2. How have doctrines such as 'group of companies', agency, alter ego, and estoppel been defined, limited, or expanded by Indian courts?
3. What are the ramifications for corporate law, especially regarding the separate legal

personality of corporate entities and the piercing of the corporate veil?

4. How does India's position compare with, and learn from, foreign legal systems and international arbitral practice?
5. What improvements or clarifications if any, are necessary for a coherent and just application of these doctrines in India?

2. Statutory Framework in India

The Arbitration and Conciliation Act, 1996 ("the Act") constitutes the foundation of arbitration law in India. Its provisions are primarily inspired by the UNCITRAL Model Law on International Commercial Arbitration, seeking to promote streamlined and effective dispute resolution[5]. However, while the Act comprehensively governs arbitration agreements and procedures, it does not explicitly address the participation or binding nature of arbitration agreements on non-signatories, creating a statutory lacuna filled largely by judicial interpretation.

2.1. Definition of Parties and Arbitration Agreements

Section 2(h) of the Act defines an "arbitral agreement" as "an agreement by the 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." The term "party" under Section 2(h) refers simply to those signing or partaking in such an arbitration agreement[6]. This sets a formalist foundation restricting arbitration jurisdiction to signatories.

Section 7 empowers courts to refer parties to arbitration where a valid arbitration agreement exists. Section 8 requires courts to stay judicial proceedings when matters are referable to arbitration. However, these provisions inherently presuppose a bilateral or multilateral agreement between parties, and do not explicitly contemplate how or whether non-signatories may be bound or compelled to arbitrate.[7]

2.2.Interim Relief and Non-Parties

Section 45 grants courts discretionary powers to provide interim measures in relation to arbitral proceedings. Importantly, subsection (1) speaks of such relief "without prejudice to the powers conferred on the arbitral tribunal," and subsection (2) enables interim relief "notwithstanding

[5] Arbitration and Conciliation Act 1996 Section 1.
[6] Ibid s 2(h).
[7] Ibid ss 7, 8.

the existence of an arbitration agreement," including when sought by "a party or a person claiming through or under him.

This language has been interpreted broadly in some judgments as acknowledging the potential relevance of entities other than strict signatories, especially in provisional matters related to arbitration. It offers some statutory basis to protect and involve non-signatories, albeit indirectly, reinforcing judicial latitude in expanding arbitration's practical scope.

2.3.Statutory Ambiguity and Judicial Innovation

The act is silent and ambiguous on the issue of non signatories. This requires judicial intervention so that workable doctrine could be developed. Courts face ambiguities when corporate and multi party transactions are in issue. In such cases there are several entities who share commercial relationships without ever signing an agreement formally.

Indian courts have rigorously attempted to address these statutory gaps. In many judicial developments courts interpreted sections 2(h), 7, and 8, in context of commercial realities. They recognised exceptions to the mandatory requirement. This is reached by focussing on substance and not form. Also focussing on logical dispute management over rigid formalism.[8]

Interaction With Contract and Corporate Laws

The arbitration act and the Indian contract act 1872, function inter relatedly. One would understand this better by looking at concept of consent and estoppel. The doctrine relating to adding of non-signatory is based on these principles. They prevent parties from taking varying positions regarding arbitration obligations.[9]

Besides this, the principles of corporate law, that regulates different legal personalities, agencies etc influence judicial approach. This is more obvious in case of legal personalities under the Companies Act, 2013. Consider, for example the corporate doctrines like the "alter ego" or "lifting the veil" doctrines. These are basically corporate doctrines. They have been used in arbitration jurisprudence. The purpose is to bind non signatories who misuse corporate structures.[10]

[8] SAKSHI RAMAN, 'The Issue of Inclusion of Non-Signatories in Arbitration Proceedings' (2024), [Vol. 7 Iss 4; 1579] International Journal of Law Management & Humanities https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ijlmhs30&id=1597&men_tab=srchresults accessed on 27/09/2025

[9] Indian Contract Act 1872, ss 56, 62

[10] Companies Act 2013 (India), Part III

Judicial Interpretation and Statutory Compatibility

While expanding the non-signatory doctrine, courts have been careful not to contravene the Arbitration Act's essence. The Apex Court has reiterated that expansion must not dilute party autonomy under the Act. Evidence of intention to arbitrate, express or implied, is crucial for binding non-signatories. Courts have emphasized that these developments are judicially created exceptions consistent with the Act's spirit to promote efficient and just dispute resolution, rather than statutory amendments.[11]

This interpretation aligns with the Act's overarching objectives of reducing litigation and facilitating enforceable arbitration, ensuring that the judiciary's proactive approach supplements rather than supplants legislative intent.

3. Doctrinal Development and Judicial Approaches

The principle of party autonomy underpins arbitration agreements, fundamentally linking the obligation to arbitrate to those who have expressly consented. Traditionally, Indian arbitration law adhered closely to the doctrine of privity of contract, whereby only parties to an arbitration agreement could be compelled to arbitrate disputes arising under that agreement. This strict privity principle was reflective of classical contract law doctrines, emphasizing the inviolability of consent as manifested by signature or clear agreement[12]. Non-signatories were generally precluded from invoking or being bound by arbitration clauses, thereby limiting arbitration's reach in multi-entity or complex commercial transactions.

However, commercial realities, especially in corporate groups and multi-contract frameworks, challenged this traditional view. It became manifestly impractical and economically inefficient to isolate disputes to signatories alone when interconnected transactions and shared economic interests implicated numerous entities outside the formal contract[13]. This led to a gradual judicial openness towards evolving doctrines that could effectively bind non-signatories under certain factual circumstances, with the twin objectives of preserving the efficacy of arbitration and ensuring justice.

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[11] Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc (2013) 1 SCC 641

[12] Kumudini Chattopadhayay, 'EXTENSION OF ARBITRATION CLAUSE TO NON-SIGNATORIES: AN ANALYSIS OF ITS STATUS IN INDIA', (2015) 19 VJ 1 https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/vidjloi19&id=13&men_tab=srchresults accessed on 27/09/2025

[13] SAKSHI RAMAN, 'The Issue of Inclusion of Non-Signatories in Arbitration Proceedings' (2024), [Vol. 7 Iss 4; 1579] International Journal of Law Management & Humanities https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ijlmhs30&id=1597&men_tab=srchresults accessed on 27/09/2025

3.1.Early Judicial Hesitance and Gradual Intervention

In the initial phase, Indian courts—mirroring many common law jurisdictions emphasized the sanctity of contract and party autonomy. The role of arbitration was circumscribed as a consensual mechanism requiring explicit agreement. For instance, early rulings made it clear that non-signatory entities could not be involuntarily dragged into arbitration proceedings merely by virtue of commercial association or benefit derivation. This protective approach prioritized contractual certainty but often resulted in fragmented proceedings and increased litigation costs, prompting the judiciary to reconsider.

3.2.Emergence of the Group of Companies Doctrine

A landmark evolution occurred with the Supreme Court's decision in Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc (2013)[14]. The Court decisively endorsed the "Group of Companies" doctrine as an exception to rigid privity, enabling closely related corporate entities within a group to be bound by an arbitration agreement signed by one or more members.

The Court specified three important criteria for applying the doctrine:

1. Existence of a group of companies bound by common interest and economic purpose;
2. The non-signatory should have conducted itself in a manner clearly showing its intention to be bound by the arbitration agreement; and
3. The interests of justice warrant expansion of the arbitration clause to include the non-signatory to prevent abuse or multiplicity of proceedings.

This doctrine reflects a pragmatic understanding that the formalism of signatures must yield to the commercial substance where entities in a corporate group act in concert, share profits and losses, and participate actively in contract performance.

Crucially, the Court was cautious to emphasize that mere corporate affiliation was insufficient. There must be clear evidence, whether through conduct, contractual dealings, or other contextual factors, that the non-signatory intended to arbitrate disputes. This balanced approach preserves party autonomy while extending arbitration's reach to reflect the realities of group company operations.

[14] Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc (2013) 1 SCC 641.

3.3.Related Doctrines: Agency, Alter Ego, and Estoppel

The Supreme Court and several High Courts have further ameliorated the privity requirement through the application of doctrines such as agency and alter ego. The agency doctrine binds a principal through acts of the agent, including arbitration agreements entered into for their benefit or under their control, extending contractual obligations beyond formal signatories.[15]

Similarly, the "alter ego" doctrine, imported from corporate law principles, permits courts to treat a corporation and its controlling entities as the same, particularly where the corporate veil is used to perpetuate fraud, bypass obligations, or achieve injustice. In arbitration contexts, courts may regard the dominant company as bound by arbitration clauses signed by its controlled subsidiaries, especially where there is a conscious strategy to evade dispute resolution responsibilities.

Estoppel is another equitable doctrine employed effectively to bind non-signatories that have expressly or implicitly accepted benefits under contracts containing arbitration clauses but later seek to avoid arbitration obligations. In Oil and Natural Gas Corporation Ltd v Discovery Enterprises Pvt Ltd (2022), the Supreme Court highlighted this doctrine's importance in preventing inconsistent conduct and promoting fairness by compelling non-signatories who avail contractual benefits to arbitrate disputes arising therefrom.[16]

3.4.Judicial Caution and Limits

Even though the courts have widened the scope of arbitration in some cases, they still act carefully to keep arbitration a voluntary process. In Cox and Kings Ltd v SAP India Pvt Ltd (2023), the Supreme Court warned against forcing arbitration on parties who never clearly agreed to it. The Court said that a non-signatory can only be included if there is strong proof that they consented to or acted in a way that shows they accepted arbitration.[17]

The judiciary repeats that these doctrines are exceptions and must be evaluated circumstantially, with strict factual inquiry. Improper application risks undermining contractual certainty, eroding autonomy, and spawning litigation over arbitrability itself.

3.5.High Court Rulings Supporting Doctrine Application

Various High Courts, especially those of Delhi and Bombay, have played a contributory role in applying and refining these doctrines at the base level, often deliberating on the factual

[15] Oil and Natural Gas Corporation Ltd v Discovery Enterprises Pvt Ltd (2022) 8 SCC 42.
[16] Oil and Natural Gas Corporation Ltd v Discovery Enterprises Pvt Ltd (2022) 8 SCC 42.
[17] Cox and Kings Ltd v SAP India Pvt Ltd (2023) 8 SCC 1.

details involved in group structures, conduct of parties, and contractual expectations. These rulings serve as valuable predecessors and supplements to Supreme Court jurisprudence, contributing significantly to the doctrine's step-by-step progress.

4. Analysis of Leading Case Laws

The interpretation and application of non-signatories' roles in arbitration agreements in India have been decisively shaped by landmark judgments of the Supreme Court and influential High Court rulings. These cases collectively articulate the evolving contours of when an entity not formally party to an arbitration agreement may nonetheless be bound by it, reflecting the judiciary's endeavor to balance contractual sanctity, party autonomy, and the exigencies of complex commercial realities.

4.1. Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc (2013)

The Supreme Court's judgment in Chloro Controls stands as the seminal authority on the inclusion of non-signatories in arbitration agreements under Indian law.[18] Prior to this ruling, Indian jurisprudence largely adhered to a strict privity paradigm, limiting arbitration to formal parties to the contract. The Court emphatically recognized the practical difficulties and procedural inefficiencies created by such rigidity, especially given the rise of multinational corporations and complex corporate groups engaging in multi-entity transactions.

The Court articulated the "Group of Companies" doctrine as an exception, which allows one or more companies within a corporate group to be bound by an arbitration agreement entered into by another group member. The judgment laid down a tripartite test to apply the doctrine:

1. Existence of a group of companies with a shared business interest and close financial relationship;
2. Clear evidence that the non-signatory has either directly or indirectly consented to arbitrate disputes, demonstrated by its conduct or participation;
3. Inclusion of the non-signatory is necessary to prevent multiplicity of proceedings or abuse of process, serving the ends of justice.

The Court emphasized that application of this doctrine must be grounded in "clear and unequivocal" proof of consent or implication, ensuring the exception does not undermine

[18] Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc (2013) 1 SCC 641.

arbitration's consensual foundation. This ruling significantly expanded the arbitration framework, enabling courts and tribunals to bind connected corporate entities, provided these criteria are satisfied, effectively reducing fragmented litigation and fostering judicial economy.

4.2.Oil and Natural Gas Corporation Ltd v Discovery Enterprises Pvt Ltd (2022)

Building on Chloro Controls, the Supreme Court in ONGC v Discovery Enterprises broadened the judicial arsenal by recognizing the equitable doctrine of estoppel to bind non-signatories.[19] Here, the Court held that a party who knowingly seeks to benefit from the contractual relationship containing an arbitration clause cannot repudiate the clause's applicability to itself.

The Court reasoned that estoppel prevents unfair conduct such as accepting commercial gains while circumventing arbitration—thereby preserving the integrity of dispute resolution mechanisms. However, the Court applied estoppel cautiously and fact-specifically, requiring that the non-signatory's conduct unequivocally evidence acceptance of arbitration obligations.

This principle complements the group of companies doctrine, adding a powerful equitable safeguard against evasion of arbitration responsibilities while respecting the threshold for consent.

4.3.Cox and Kings Ltd v SAP India Pvt Ltd (2023)

The Supreme Court revisited the issue of non-signatory inclusion in the recent Cox and Kings judgment, elaborating on implied consent and evidentiary standards.[20] Deliberating on whether an implied consent to arbitration existed, the Court reinforced that extension of arbitration agreements must be anchored in clear proof of intention, avoiding presumptions or mechanical application of doctrines.

The Court insisted on painstaking fact scrutiny, rejecting any dilution of party autonomy by presumptive inclusion of non-signatories. It underscored that the fundamental principle behind arbitration agreements—mutual consent—remains sacrosanct.

This judgment also clarified that judicial extension of arbitration obligations is an exception, not the norm, necessitating dismissal of any attempts that fail to satisfy strict criteria, thus preserving arbitration's contractual sanctity.

[19] Oil and Natural Gas Corporation Ltd v Discovery Enterprises Pvt Ltd (2022) 8 SCC 42
[20] Cox and Kings Ltd v SAP India Pvt Ltd (2023) 8 SCC 1.

4.4.High Court Decisions Reinforcing the Doctrine

Besides the Apex court, the High Courts have contributed as well to refine the doctrine in India. In the case of Delhi High Court in Kvaerner Cementation India Ltd v Bajranglal Agarwala, the Delhi high court showed control principles. One can find a through evaluation of corporate relationship and non signatories' participation before binding them to arbitration.[21]

In the case of Reliance Naval and Engineering Ltd v Daewoo Shipbuilding & Marine Engineering Co Ltd, the High Court of Bombay highlighted the need for clear intention. The court also pointed on the conduct which indicates acceptance of arbitration obligations by non-signatories.[22]

If one goes through these High Court decisions, they may know the judiciary has continuously safeguarded contractual autonomy. They have also promoted arbitration efficiency through application of doctrines in diverse factual matrices.

4.5.Synthesized Judicial Criteria

From these detailed court decisions, several reliable criteria arise to guide non-signatory inclusion:

- Economic and corporate relationship: Entities must demonstrate a functional corporate or economic linkage within a group.
- Express or implied intention to arbitrate: Consent may be direct, implied through conduct, or related to prevent abuse.
- Equitable doctrines: Estoppel may prevent contradictory conduct negating arbitration.
- Judicial discretion attached in fairness and efficiency: Avoiding multiplicity of proceedings and practical abuse.
- Strict evidentiary values: Courts require clear, unambiguous proof to extend arbitration obligations.

4.6.Implications and Practitioner Guidance

India's flexibility reduces fragmentation and aligns dispute resolution with commercial reality. Yet courts protect autonomy by insisting on clear indicators of consent. Practitioners should therefore draft arbitration clauses with clarity on applicability across group entities, and include

[21] *Kvaerner Cementation India Ltd v Bajranglal Agarwala* (Delhi HC)
[22] *Reliance Naval and Engineering Ltd v Daewoo Shipbuilding & Marine Engineering Co Ltd* (Bombay HC)

express affiliate/party provisions where intended. Risk allocation, governance and internal mandates within corporate groups must be revisited to prevent unintended arbitration exposure.

5. Corporate Law Implications

The inclusion on non signatories in arbitration agreements brings new issues to corporate law principles. This is more highlighted in corporate groups. in doctrines like that of separate legal personality, creditor and shareholder rights, corporate governance etc the development brings more suggestions.

5.1.Impact on Separate Legal Personality

Idea of separate legal entity is a central idea in corporate law. This idea was first established in the case of Salomon v A Salomon & Co Ltd. Later on it was adopted and recognised in India's Companies Act, 2013. The implication is that every company in a corporate group is treated as a separate legal entity. They are responsible for their own debts and actions. Therefore, the companies liabilities are not automatically extended to sister or parent companies. This can only be done if there is a clear agreement to that effect.

However this principle is challenged by judicious extension of arbitration clauses to non signatories in corporate groups. The Group of companies doctrine that is operationally effective makes the strict separateness blurred. The reason being that non signatures are held liable to arbitrate. The rationale given is their economic affiliation.[23] This is in my opinion a risky approach. This can wear down the clear separation. This raises concerns about exposing companies to disputes and obligations. The ones that were not consented to when entering into contracts.

5.2.Lifting the Corporate Veil in an Arbitration Context

Closely related is the judicial willingness to pierce or lift the corporate veil in arbitration proceedings. The veil, a protective legal fiction, can be disregarded when it is used to conceal fraud, evade legal obligations, or achieve unjust ends.

The Indian judiciary has extended veil lifting to bind non-signatories that act as the "alter ego" of signatory entities, especially where a close-knit corporate structure masks the true party

[23] Adyasha Samal, 'Extending Arbitration Agreements to Non-Signatories: A Defence of the Group of Companies Doctrine'Vol. 11, Issue 1 (2020), pp. 73-97, King's Student Law Review, https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/kinstul11&id=73&men_tab=srchresults accessed on 29/09/2025

responsible.[24] This principle safeguards arbitration's effectiveness by preventing misuse of corporate separateness as a shield against dispute resolution obligations.

However, veil lifting in arbitration requires circumspection. Overuse risks undermining corporate enterprise autonomy and potentially exposing group members to uncertain liabilities, complicating risk management and credit evaluation.

5.3.Implications for Parent and Subsidiary Companies

Parent and subsidiary relationships require careful scrutiny because corporate groups often share resources, management and commercial objectives even while remaining distinct legal entities. When an arbitration clause signed by one group member is extended to others, the practical consequence is that a parent, subsidiary or sibling company may find itself drawn into proceedings it never expressly agreed to. This possibility alters how groups allocate legal and commercial risk: boards and executive teams must recognise that corporate affiliation alone may expose an affiliate to dispute-resolution obligations.

The empirical effect is twofold. First, parent companies that exercise effective control over subsidiaries should expect closer judicial attention to their role in contractual performance, financing and strategic decision-making; courts may treat control and participation as indicators of implied consent to arbitrate. Second, subsidiaries must tighten internal governance to ensure that any contract entered into on their behalf has appropriate approvals and that their commercial conduct does not create an appearance of consent to third-party arbitration clauses. Practically, this means formalising delegation of authority, recording approvals at board or committee levels, and keeping a clear paper trail of who negotiated, authorised and executed key agreements.

Governance mechanisms should anticipate the possibility that related entities could be drawn into arbitration and ensure appropriate board-level authorisations for agreements that might have cross-entity effects.

5.4.Contract Drafting and Risk Management

Contracts should expressly state which affiliates are bound, contain clear dispute-resolution provisions and, where necessary, include novation or guarantee clauses to allocate liability transparently. During M&A, restructuring or legacy-contract reviews, parties should identify

[24] Oil and Natural Gas Corporation Ltd v Discovery Enterprises Pvt Ltd (2022) 8 SCC

and renegotiate legacy arbitration clauses that unintentionally expose affiliates.

In mergers, acquisitions and group reorganisations, thorough due diligence is essential because old arbitration clauses can carry unexpected liabilities that reach beyond what the parties originally intended. Legacy agreements should therefore be reviewed and, where necessary, renegotiated so that the scope of arbitration and who can be bound by it are made explicit and manageable.

5.5 Strategic Dispute Resolution and Governance

Consolidation of many group companies in a single arbitration process is cost effective. It is more compatible. However there has to be a balance. The balance against the power imbalances in corporate groups. It is often seen that leading entities impose arbitration on other affiliates.

Equitable governance is upheld while using the arbitration and its benefits of dispute resolution. This is achieved by healthy internal controls, transparency in contractual transportations, consent mechanism etc.

6. Challenges and Critiques

The Indian judiciary is making approach to bind non signatories to arbitration contracts. This has many practical uses. However there are also significant challenges. This calls for both academic and commercial analysis.

6.1.Judicial Inconsistency and Unpredictability

Application across benches and fact patterns remains uneven. The discretionary and fact-sensitive nature of doctrines like group-of-companies and estoppel can produce divergent outcomes, creating uncertainty for business planning and legal risk assessment. This makes the dependence on precedent for risk assessment a complicated process for corporate entities.[25]

Application across benches and fact patterns remains uneven. The discretionary and fact-sensitive nature of doctrines like group-of-companies and estoppel can produce divergent outcomes, creating uncertainty for business planning and legal risk assessment.

6.2. Risk of Dilution of Party Autonomy

Extending arbitration obligations without explicit consent risks undermining arbitration's

[25] SAKSHI RAMAN, 'The Issue of Inclusion of Non-Signatories in Arbitration Proceedings' (2024), [Vol. 7 Iss 4; 1579] International Journal of Law Management & Humanities https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/ijlmhs30&id=1597&men_tab=srch results accessed on 29/09/2025

consensual foundation. Critics argue that judicially crafted exceptions may, if overused, erode the freedom to contract that arbitration rests upon. Courts respond by requiring strict proof, but the concern persists.

Critics warn that judicially stretching arbitration to cover non-signatories risks eroding its core principle of party autonomy, since it can impose arbitration obligations on entities that never expressly agreed to them. Courts therefore insist on robust evidence of consent or conduct before extending an arbitration clause, but doctrines such as the group-of-companies rule still create compliance burdens and uncertainty for businesses. The urgent priority is to curb overreach: exceptions should remain narrowly tailored and applied only where clear factual justification exists.

6.3.Procedural Complexities and Commercial Risks

Adding non signatories to arbitration processes creates complexity in the procedure. Several parties with different interests and corporate programs can make the tribunal more complicated. This also increases costs and is more time consuming. This also makes the arbitration ineffective.

Involving multiple related parties complicates proceedings, increases costs and may slow down an ostensibly faster dispute-resolution route. It can also produce unintended cross-liabilities and internal tensions among group entities.

6.4.Potential for Forum Shopping and Strategic Litigation

Doctrines can be used strategically to include or exclude parties, causing parallel proceedings and procedural wrangling. This undermines efficiency and can encourage tactical litigation.

6.5.Academic and Policy Critiques

There is a legitimate policy debate over whether courts should fashion these exceptions, or whether a clearer legislative framework would better serve predictability and democratic legitimacy. Many commentators favour statutory clarification rather than continuing ad hoc judicial development.

7. Conclusion and Suggestions

Indian jurisprudence has moved from strict privity towards a calibrated flexibility that recognises commercial realities while insisting on evidence of consent. Landmark rulings (Chloro Controls, ONGC v Discovery Enterprises, Cox & Kings) show a cautious expansion: doctrines like group of companies, estoppel, agency and alter ego are used as limited tools to

ensure arbitration remains effective and not easily evaded.

Choro Controls, ONGC v Discovery Enterprises, and Cox and Kings show a judicious balance. The prediction of arbitrations scope must be based on clear proof of conduct indicating consent.

Yet this evolution brings tensions — inconsistency, procedural complexity and potential dilution of autonomy. A legislative response would reduce uncertainty and lend legitimacy to the rules that bind non-signatories.

7.1 Suggestions for Legislative and Judicial Reform

1. Legislative Clarification – there must be amendments to The Arbitration and Conciliation Act, 1996. They should address the issue of non-signatories. There must be clear criteria for their role in arbitration proceeding. This would yield many positive results like predictability, limiting inconsistency etc.
2. Codification- there should be legislation on inclusion of non-signatory to arbitration proceeding. This would ensure uniformity and increase the reliability of parties.
3. Standards for consent evaluation uniformly- there must be uniform guidelines on assessing consent. The inconsistency in judicial decisions must be reduced.
4. Enhanced Contract Drafting Best Practices: Parties and corporate groups must seek clarification. There should be clarity on arbitration clause and its applicability. Encourage explicit drafting — name affiliates, define applicability, include guarantee or indemnity language where cross-entity obligations are intended.
5. Judicial Guidance on Procedure and Fairness: Courts should continue to apply doctrines sparingly, with emphasis on procedural efficiency and protection of weaker parties.
6. Education and Awareness: Train corporate counsel and boards on the consequences of group arrangements and the importance of internal approvals for agreements with arbitration clauses.

The Indian legal framework shows a positive evolution. It has through its decisions tried to strike a balance in between rigid legal doctrines and flexible realities of businesses today in dispute resolution. Judicial decisions have increased the practical scope of arbitrations. Still I feel there is a need for enactment of legislature. This would strengthen the development and reliability in the field. The legislations should focus on properly defining the rights and obligations of non- signatories.

An all inclusive reform is needed. This would reinforce Indian arbitration to continue its role in resolution of corporate disputes. This would enhance the efficiency, fairness and commercial reliability. These are the foundation of an evolving and developing economy like India.