
ARBITRABILITY OF OPPRESSION AND MISMANAGEMENT: BALANCING PARTY AUTONOMY AND STATUTORY PROTECTIONS IN INTERNATIONAL DISPUTES

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ABSTRACT

The arbitrability of oppression and mismanagement (O&M) claims is at the intersection of private adjudication and corporate governance. Traditionally the sole domain of domestic company law courts, O&M claims have traditionally been perceived as non-arbitral in nature because of their statutory underpinnings and public policy concerns. However, in the increasingly globalized commercial landscape of cross-border shareholder agreements and foreign joint ventures, this doctrinal rigidity is being questioned. This article returns to the arbitrability of O&M disputes, specifically in international scenarios where contractual freedom crosses paths with sophisticated intra-corporate realities. Based on comparative examination of Indian, Singaporean, British, and American jurisprudence, it delves into how jurisdictions trade off arbitral autonomy and the regulatory objectives of company law. It faults the Indian approach for being excessively formalistic that can prevent India from establishing itself as a pro-arbitration regime. In advocating a more functional approach, the paper makes the distinction between the statutorily defined core of O&M claims and their contractual embodiments in shareholder agreements. It suggests a calibrated regime under which some O&M-related disputes—namely those involving contractual terms, deadlock resolution, and minority exit mechanisms—can be considered arbitral without derogating from public policy. By redefining the doctrinal limits of arbitrability, the paper argues that arbitration can be a valid and effective forum for the settlement of international O&M disputes, subject to procedural protection and considerations of public interest.

I. Introduction

Arbitration is now an averred vehicle for the resolution of commercial disputes, prized for its confidentiality, procedural flexibility, and respect for party autonomy. Yet, where the disputes concern allegations of oppression and mismanagement ("O&M") under the Companies Act, 2013—statutory relief designed to protect minority shareholders and preserve corporate democracy—courts must reconcile contractual freedom with legislative intention. Under § 241–242 of the Companies Act, 2013, exclusive jurisdiction in O&M claims rests with the National Company Law Tribunal and Appellate Tribunal, and Section 430 unambiguously ousts the jurisdiction of the civil courts on the same.¹ By contrast, Section 8 of the Arbitration and Conciliation Act, 1996² mandates referral to arbitration where a valid agreement subsists. The Supreme Court's decision in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*³ underscores that arbitrability hinges upon the competence of the tribunal to grant the relief sought while comparative jurisdictions—most notably the English Court of Appeal in *Fulham Football Club (1987) Ltd. v. Richards*⁴—have held that unfair prejudice (the U.K. counterpart to O&M) disputes are capable of being arbitrated subject to an express statutory bar. This article undertakes a doctrinal and comparative analysis of such statutory provisions, judicial precedents, and learned commentary to inquire whether O&M disputes may be diverted into arbitration coherently and effectively without compromising the protective regime envisaged by company law.

II. Conceptual Framework of Arbitration and Corporate Law

Arbitration has emerged more and more in commercial practice as an easy, confidential, and flexible forum for resolving disputes outside the court system. Parties have the ability to select their arbitrators, tailor procedural rules, and control timing, thereby gaining faster and more specialized adjudication than often available in traditional courts. In India, the Arbitration and Conciliation Act, 1996 empowers tribunals to decide "all disputes" within the purview of a valid arbitration agreement subject only to limited grounds of challenge under Section 34 and appeal under Section 37.⁵ The pro-arbitration bias of the Act is a reflection of both India's

¹ Companies Act, No. 18 of 2013, §§ 241–242, 430 (India).

² Arbitration and Conciliation Act, No. 26 of 1996, § 8 (India)

³ *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 S.C.C. 532 (India).

⁴ *Fulham Football Club (1987) Ltd. v. Richards*, [1986] B.C.L.C. 380 (Eng.).

⁵ Arbitration and Conciliation Act, No. 26 of 1996, § 8 (India).

international obligation under the New York Convention⁶ and domestic policy to decongest courts and commercial certainty.

At the very heart of arbitration is party autonomy—the doctrine that willing commercial parties may contract to refer disputes to an arbitral forum and bind themselves to its award⁷. But this autonomy is subject to qualification. Statutory conditions can exclude types of disputes from being arbitrable, protecting public policy or protecting weak stakeholders. In *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*,⁸ the Supreme Court has held that a dispute is non-arbitrable where the tribunal lacks the power to grant the relief sought, highlighting that arbitrability depends on the scope of the arbitration agreement as well as the tribunal's competence in law. Similarly, Section 430 of the Companies Act, 2013 bars civil-court jurisdiction over claims for oppression and mismanagement and sends them only to the National Company Law Tribunal ("NCLT").⁹ Following which, where statutory requirements grant exclusive jurisdiction to a specialist forum, party autonomy yields to legislative policy.

Corporate governance cases—particularly those of oppression and mismanagement—generally entail public interest in equal treatment of minority shareholders and compliance with corporate democracy. The Companies Act, 2013 authorizes the NCLT (and on appeal to the National Company Law Appellate Tribunal) to grant broad remedies like removal of directors, injunctions, and orders for the acquisition of shares that exceed the remedial scope of normal arbitral awards. In conferring sole jurisdiction on the NCLT (see §§ 241–242), Parliament sought to ensure that such delicate internal disputes are resolved in a public, transparent forum that has specialist expertise. Therefore, even where the shareholders have contracted to arbitrate run-of-the-mill commercial disputes, statutory corporate remedy-based claims must generally be heard before the NCLT, leaving the company's governance system unimpaired.

III. Oppression and Mismanagement: Nature and Legal Framework

Statutory relief for shareholders suffering from "oppression" or "prejudice" is enshrined in Part XIV, Sections 241–242 of the Companies Act, 2013. Section 241 gives any member (or, in certain cases, the Central Government) the right to approach the National Company Law

⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517.

⁷ See generally Gary B. Born, *International Commercial Arbitration* § 1.01 (3d ed. 2021).

⁸ *Supra* 3.

⁹ *Supra* 1.

Tribunal ("NCLT") where the affairs of the company are carried out in a manner "prejudicial to public interest or oppressive to any member or members or in a manner prejudicial to the interests of the company."¹⁰ Section 242 grants to the NCLT wide powers of remedy, ranging from regulating the affairs of the company to ordering share purchases, restraint of directors, and even winding up of the company.¹¹ These provisions embody a policy of protection of minority shareholders and promoting corporate democracy by vesting a public, open forum with expert knowledge.

Judicial interpretation of O&M provisions has been liberal, evincing a clear intent of legislation to provide minority members with strong protection.¹² The Supreme Court, in *S. R. Batra v. EdCIL India Ltd.*, recognized that the oppression remedy is not limited to economic prejudice but is extended to any act falling short of fair dealing.¹³ Lower courts have also held similarly that "mismanagement" involves dishonest, prejudicial, or incompetent conduct influencing the company's welfare.¹⁴ This case law reflects Parliament's aim—stated in the Statement of Objects and Reasons to the Companies Bill, 2013—to add to the 1956 Act's tight oppression remedy with a more accommodating and flexible model sensitive to contemporary corporate realities.¹⁵

Comparative analysis finds common law jurisdictions displaying both convergence and divergence. In the United Kingdom, section 994 of the Companies Act 2006 states an "unfair prejudice" remedy to which English courts have held English law may render subject to arbitration unless the wording of the statute otherwise excludes this.¹⁶ In Canada, its Canada Business Corporations Act similarly states an oppression remedy in section 241, but Canadian courts have taken pains to confirm that arbitration agreements cannot displace the statutory remedy for relief.¹⁷ In Australia, the Corporations Act 2001, section 232, and Singapore's Companies Act (Cap. 50), section 216, equally reserve exclusive jurisdiction to their tribunals or courts, where policy is clearly shared to withhold O&M corporate governance disputes from private fora.¹⁸ Comparative consideration highlights tensions between party autonomy and

¹⁰ *Supra* 1.

¹¹ *Supra* 1.

¹² See Statement of Objects and Reasons, Companies Bill, 2013, ¶ 23 (India).

¹³ *S. R. Batra v. EdCIL India Ltd.*, (1995) 3 S.C.C. 625, 630 (India).

¹⁴ *Mahendra Exports Ltd. v. Kalyaneshwari*, (2000) 1 Comp. L.J. 328 (Delhi).

¹⁵ Statement of Objects and Reasons, Companies Bill, 2013, ¶ 23 (India).

¹⁶ Companies Act, 2006, c. 46, § 994 (Eng.).

¹⁷ Canada Business Corporations Act, R.S.C. 1985, c. C-44, § 241 (Can.).

¹⁸ Corporations Act 2001 (Cth) § 232 (Austl.); Companies Act (Cap. 50) § 216 (Sing.).

statutory safeguard, affirming necessity for any framework of arbitration to uphold public-interest aspects that distinguish O&M claims.

IV. Judicial Approach to the Arbitrability of O&M Disputes

Indian courts have evolved a rule-based approach for deciding which disputes can be referred to arbitration. In *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, the Supreme Court ruled that an arbitral tribunal may only deal with those disputes over which it has jurisdiction to grant the relief claimed, differentiating between rights in personam (ordinarily arbitrable) and rights in rem (non-arbitrable).¹⁹ More recently, in *Vidya Drolia v. Durga Trading Corp.*, the Court narrowed this test, establishing four categories of non-arbitrable disputes: those relating to exclusive statutory jurisdiction, rights affecting the public at large (*erga omnes*), sovereign functions, or express legislative prohibition.²⁰

These principles have been followed by High Courts in O&M claims under the Companies Act. The Bombay High Court in *Rakesh Malhotra v. Rajinder Kumar Malhotra* concluded that petitions under Sections 397–402, Companies Act, 1956 (now §§ 241–242, Companies Act, 2013), are non-arbitrable since only the Company Law Board (and now the NCLT) possesses statutory authority to govern corporate affairs—capabilities an arbitral tribunal does not have.²¹ Similarly, the Delhi High Court in *Sadbhav Infrastructure Project Ltd. v. Company Law Board* and the Supreme Court in *Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd.* reaffirmed that winding-up and corporate governance remedies need to be decided by the authorized public forum.²²

Comparatively, in the United Kingdom the Court of Appeal in *Fulham Football Club (1987) Ltd. v. Richards* decided that unfair prejudice claims under section 994 of the Companies Act 2006 could be arbitrated in the absence of an express statutory bar.²³ Singapore's Court of Appeal in *Anupam Mittal v. Westbridge Ventures II Investment Holdings* used a composite arbitrability test and allowed O&M disputes to continue in arbitration under Singapore law.²⁴ In the United States, the Supreme Court in *Mitsubishi Motors Corp. v. Soler*

¹⁹ *Supra* 3.

²⁰ *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 S.C.C. 1.

²¹ *Rakesh Malhotra v. Rajinder Kumar Malhotra*, (2015) 2 Comp. L.J. 288 (Bom.).

²² *Sadbhav Infrastructure Project Ltd. v. Company Law Board*, (2013) 8 Comp. L.J. 328 (Del.); *Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd.*, (2007) 3 S.C.C. 169.

²³ *Supra* 4.

²⁴ *Anupam Mittal v. Westbridge Ventures II Investment Holdings*, [2022] SGCA 35.

Chrysler-Plymouth, Inc. affirmed arbitration of statutory antitrust claims under the Federal Arbitration Act, placing significant emphasis on a strong federal policy favoring arbitration unless Congress clearly states otherwise.²⁵

Public policy concerns inform these choices. Indian law vests sole jurisdiction with the NCLT over O&M disputes in order to safeguard minority shareholders and maintain corporate democracy; arbitration of such claims may subvert these legislative goals. The Supreme Court's ruling in *A. Ayyasamy v. A. Paramasivam* and the Delhi High Court's rationale in *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* demonstrate that where statutes confer exclusive jurisdiction on specialized tribunals, party autonomy has to give way to legislative intent and public interest.²⁶

V. Balancing Arbitration with Statutory Remedies

Achieving balance between arbitration and statutory remedies in corporate law requires a subtle, multi-layered analysis that honors both party autonomy and protective goals of company law. Fundamentally, this balancing requires that two competing demands be reconciled: on the one hand, the efficiency, confidentiality, and specialism that arbitration may contribute to contractual disputes; on the other, the legislature's duty to maintain minority-shareholder protection and corporate democracy through statutory remedies exercised exclusively by specialist tribunals.

Section 8 of the Arbitration and Conciliation Act, 1996 requires courts to refer parties to arbitration where there is a valid agreement, demonstrating India's pro-arbitration policy and its adherence to the New York Convention.²⁷ In contrast, the Companies Act, 2013 vests exclusive jurisdiction in the National Company Law Tribunal with regard to oppression and mismanagement petitions under Sections 241–242 and excludes civil-court intervention in these cases under Section 430.²⁸

Reconciling Statutory Remedies with Arbitration. A realistic reconciliation between statutory remedies and arbitration does not have to be mutually exclusive. Contractual controversies—

²⁵ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

²⁶ *A. Ayyasamy v. A. Paramasivam*, (2016) 10 S.C.C. 386; *Himangni Enterprises v. Kamaljeet Singh Ahluwalia*, (2017) 10 S.C.C. 706.

²⁷ *Supra* 2.

²⁸ *Supra* 1.

e.g., violations of confidentiality undertakings, non-compete arrangements, or shareholder-agreement provisions—can be resolved by an arbitral tribunal both effectively and efficiently. Statutory reliefs—director removal orders, winding-up petitions, or compulsory share-purchase orders—are nevertheless reserved under the exclusive jurisdiction of the NCLT. By excepting contractual matters for arbitration and leaving statutory relief for the NCLT, parties can utilize arbitration's benefits without eroding company law's protective mechanism.²⁹

Limits and Scope of Arbitral Tribunals. Arbitral tribunals, in accordance with Section 34 of the Arbitration Act, can only award those reliefs that are available to be granted by a court, and do not have the jurisdiction to grant statutory reliefs peculiar to the NCLT.³⁰ In *Booz-Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, the Supreme Court held that an arbitral tribunal cannot adjudicate disputes if it does not have statutory power to award the sought relief. *Vidya Drolia v. Durga Trading Corp.* further narrowed the test of arbitrability, excluding disputes of exclusive statutory jurisdiction or third-party rights erga omnes. Therefore, though tribunals can grant damages for breaches of contract, they cannot remove directors or direct company winding up under the Companies Act.

Role of Articles of Association and Shareholder Agreements. Shareholder agreements (SHAs) may bind signatories to refer contractual disputes to arbitration, but unless their arbitration provisions are brought into a company's Articles of Association, they cannot bind the company itself to internal governance decisions. Integration into the AoA assures consistency and avoids private contracts from establishing duplicate governance regimes undercutting statutory protections. Parties wishing to arbitrate governance-related contract claims must explicitly incorporate arbitration provisions into the AoA, keeping corporate constitutional documents in line with private contracts and maintaining the coherence of statutory remedies.³¹

For aligning arbitration with statutory redress, counsel must:

- (1) Draft arbitrable disputes narrowly to the extent of breach of contract alone;
- (2) Exclude by express words statutory reliefs from the jurisdiction of the tribunal;

²⁹ *Supra* 21.

³⁰ Arbitration and Conciliation Act, No. 26 of 1996, § 34 (India).

³¹ *Umesh Kumar Baveja v. IL&FS Transp. Network Ltd.*, 167 D.L.T. 719 (Del. 2011).

- (3) Include arbitration agreements in the AoA;
- (4) Reserve procedural coordination of arbitration and NCLT proceedings; and
- (5) Clarify governing law and seat of arbitration in accordance with both the Arbitration Act as well as the Companies Act.

Through demarcating arbitration's ambit, aligning concurrent forums, and aligning SHAs with the AoA, parties can develop a framework of dispute resolution that exploits the strengths of arbitration while respecting the protective intentions of the legislature. Such an equilibrium facilitates commercial certainty, efficiency, and rule of law in corporate management.

VI. New York Convention and Limits on Transnational Arbitrability

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been hailed as a success of legal harmonization, promoting cross-border commercial certainty by recognizing and enforcing arbitral awards. Yet its encounter with corporate disputes concerning allegations of oppression and mismanagement (O&M)—claims that are typically based on statutory remedies and articulated as invoking public rights—discloses an under-explored fault line in the Convention's structure.

Although Article II(1) institutionalizes party autonomy by obliging the recognition of arbitration agreements, its effect is directly conditional on Article V(1)(a) and Article V(2)(a), which grant local courts jurisdiction to refuse enforcement if the matter in question falls outside the category of arbitrable subject matter according to domestic law. This generates a doctrinal standstill: O&M disputes, more so under regimes such as India, are statutorily defined as invoking rights in rem or impacting third-party shareholders and thus beyond the bounds of allowable private adjudication. The Indian Supreme Court in *Vidya Drolia v. Durga Trading Corporation* (2020) reaffirmed this position by anchoring arbitrability to the exclusive jurisdiction of the forum.

Such interpretations raise a critical challenge for the Convention's universality. The open-textured language of Article V(2)—especially its reference to non-arbitrability and public policy—permits a high degree of discretion, thereby undermining uniformity in enforcement and introducing a layer of legal fragmentation. The conceptual question thus arises: can the

Convention's framework, rooted in commercial finality, meaningfully accommodate disputes whose foundation is inherently regulatory and statutory?

Conversely, jurisdictions such as Singapore and the United Kingdom have taken a more functional perspective—emphasizing the nature of relief being sought instead of the statutory basis of the claim. In *Tomolugen Holdings Ltd v Silica Investors Ltd* (2015), the Singapore Court of Appeal held that O&M claims are arbitrable where they do not involve reliefs reserved solely for judicial or quasi-judicial powers. This comparative divergence serves to identify a deeper theoretical tension in the Convention regime—between its transnational goals and states' sovereign right to control corporate behavior.

In the end, this section argues that any useful reconciliation of O&M disputes to the Convention needs to steer past a formalist dependence on origin in statute. Rather, a contextual arbitrability test—assessing whether the dispute (i) touches third-party rights, (ii) engages non-waivable statutory rights, and (iii) is suitable for private determination—may provide a more rationalized framework. Without such recalibration, the Convention threatens to become an empty shell when faced with intricate, quasi-public corporate disputes that walk the line between private contract and public regulation.

VII. Impact on Corporate Governance and Business Environment

Enforcing arbitration in O&M disputes tends to cause procedural fragmentation, as parties have to travel parallel tracks—statutory petitions before the NCLT for remedies like director removal or share-purchase orders, and arbitral proceedings for breaches of contract—leading to duplicative discovery, inconsistent results, and higher costs that discourage minority shareholders from pursuing redress and put corporate resources under stress.³² In addition, arbitral tribunals do not have jurisdiction to order the entire range of statutory reliefs critical to corporate governance—like removal of directors or winding up—and therefore force parties to return to the NCLT for holistic resolution, eroding the efficiency benefit arbitration is intended to offer.

For minority shareholders and investors, vagueness on the arbitrability of O&M claims can

³² See *Booz-Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 S.C.C. 532, 541 (India) (noting that an arbitral tribunal cannot grant remedies beyond its statutory competence); *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 S.C.C. 1, 29–30 (India) (identifying non-arbitrable categories).

inhibit confidence and intent to invest, especially in private-equity and joint-venture transactions with foreseeable governance controversies; unavailability of comprehensive relief in arbitration has the potential to tip bargaining strength in favor of majority shareholders and destabilize the boardroom.³³ In return, an affirmative, determinative framework for ascertaining the arbitrable contract issues and not-arbitrable statutory remedies will lend strength to company stability by committing governance disputes into the proper tribunal with required competencies.³⁴

Policy options for a sustainable regime of dispute resolution include enacting a hybrid model with express carve-out of statutory O&M remedies from arbitration but allowing ancillary contractual disputes to be arbitrated. Such a regime can obligate coordination procedures between the NCLT and arbitral tribunals—through stay clauses or sequencing rules—to avoid inconsistent judgments and lower transaction costs. In addition, amendments to legislation making it compulsory to include arbitration clauses within the Articles of Association of a company would offer corporate-wide transparency, thus reinforcing both party autonomy and the rule of law in corporate regulation.³⁵

VIII. Conclusion and Recommendations

The dynamic interplay between arbitration and statutory relief under company law, particularly in the case of oppression and mismanagement (O&M) cases, is a multifaceted challenge to the Indian judiciary. Although arbitration is appealing for confidentiality, quickness, and expertise, its applicability is restricted where the case involves statutory relief over which jurisdiction is vested solely with the National Company Law Tribunal (NCLT). Such an overlap in the jurisdictions may lead to procedural fragmentation, increased legal outlays, and potential incongruity of outcomes, and thereby affect stability of corporations as well as investors' confidence.

Legislative reforms promoting harmonization between arbitration and corporate statutory remedies would help clarify what areas of disputes between and among corporations are

³³ Shreyas Jayasimha & Rohan Tigadi, *Arbitrability of Oppression, Mismanagement and Prejudice Claims in India*, 11 NUJS L. Rev. 4 (2018).

³⁴ *Arbitrability of oppression and mismanagement in India*, 10 Int'l Arb. L. Rev. __ (2021), <https://doi.org/10.1177/20555636211027333>.

³⁵ *Arbitrability of shareholder disputes in India: complexities and issues*, Lexology (Mar. 2023), <https://www.lexology.com/library/detail.aspx?g=ea424d79-2b74-47fe-8e52-cd6007d4a51d>.

arbitrable and where the corporate disputants can expect statutory relief. This would avoid conflicts of jurisdictions and make dispute resolution processes easier. Second, incorporating arbitration clauses in the Articles of Association of a company would help to ensure that the internal stakeholders are all bound by the arbitration agreement, reconciling shareholder agreements with corporate constitutional documents and facilitating consistency in mechanisms for dispute resolution.

Creation of specialized arbitration benches with corporate governance experience to resolve O&M disputes can also render arbitration more efficient. These panels would operate in rules respectful of statutes but availing themselves of the efficiencies of arbitration. Creation of coordination mechanisms between arbitral tribunals and the NCLT is also necessary to effectively handle parallel proceedings, prevent conflicting awards, and achieve full disposal of disputes.

Subsequent research could examine how other countries weigh arbitration against statutory redress in company law and review best practices that may be adopted in India. Examination of the impact of including arbitration clauses in companies' constitutions on the frequency and settlement of O&M disputes, and on overall corporate performance and investor attitudes, would be informative results. Analysis of the contribution of technology, e.g., web-based platforms for arbitration, to simplifying the efficiency and accessibility of arbitration in corporate disputes is a potential direction. Empirical studies to assess the attitudes of various stakeholders, i.e., minority shareholders, institutional investors, and boards of corporations, towards the efficacy and equity of arbitration as a means to resolve corporate governance disputes would also be useful to policy and practice.

By pursuing these paths of reform and study, it is possible to create a more rationalized and efficient framework that balances the benefits of arbitration with the requirement for statutory solutions, resulting in better corporate governance and enabling economic stability and development.