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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

KOMPETENZ-KOMPETENZ UNDER SIEGE: HOW INDIAN COURTS ARE INCREMENTALLY ERODING TRIBUNAL AUTONOMY

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ABSTRACT

*The principle of kompetenz-kompetenz grants an arbitral tribunal the authority to determine its own jurisdiction. Section 16 of the Arbitration and Conciliation Act 1996 codifies this principle in India. The 2015 amendment to the Act inserted Section 11(6A), which restricted judicial intervention at the pre-reference stage to an examination of the existence of an arbitration agreement. Despite this clear legislative intent, Indian courts have gradually re-expanded their inquiry at the Section 11 stage through a sequence of decisions beginning with *SBP & Co v Patel Engineering Ltd*, proceeding through *Vidya Drolia v Durga Trading Corporation*, and most recently in *NTPC Ltd v SPML Infra Ltd*. This paper traces this judicial trajectory, examines the doctrinal foundations of the kompetenz-kompetenz principle, compares the Indian approach with those of France and Singapore. Further, it argues that the Indian Supreme Court has developed an “eye of the needle” doctrine that functions as a structural substitute for a full merits review and thereby undermines the autonomy guaranteed to arbitral tribunals under the Act. The paper concludes by proposing both interpretive and legislative corrections.*

I. INTRODUCTION

Arbitration derives much of its value from party autonomy and minimal court interference. The kompetenz-kompetenz principle is central to preserving that value. It holds that an arbitral tribunal has the first and primary authority to rule on its own jurisdiction, including objections to the existence or validity of the arbitration agreement.¹ The principle is recognised in the UNCITRAL

¹ Arbitration and Conciliation Act 1996, (Act 26 of 1996) s 16(1).

Model Law on International Commercial Arbitration and is embedded in the domestic laws of most major arbitration seats.²

India adopted this principle through Section 16 of the Arbitration and Conciliation Act 1996 (hereinafter “the Act”). However, the Indian Supreme Court’s interpretation of the judicial role under Sections 8 and 11 of the Act has produced a contested and unstable body of law.³ Courts have oscillated between deference to tribunal autonomy and active gatekeeping. The 2015 Amendment Act introduced Section 11(6A) to settle the position in favour of minimal intervention, but subsequent decisions have progressively widened the scope of pre-reference judicial inquiry beyond what the legislature intended.⁴

This paper argues that the current Indian approach reflects an incremental erosion of tribunal autonomy rather than a principled calibration of judicial oversight. **Part II** examines the doctrinal foundations of the kompetenz-kompetenz principle and its statutory codification in the Act. **Part III** traces the judicial trajectory from *SBP & Co* through *Vidya Drolia* to *NTPC v SPML*. **Part IV** analyses the structural problems created by the current approach. **Part V** compares the Indian position with France and Singapore. **Part VI** proposes reforms.

II. THE KOMPETENZ-KOMPETENZ PRINCIPLE: DOCTRINE AND STATUTORY FOUNDATION

A. *Origins and Doctrinal Content*

The phrase kompetenz-kompetenz originates from German arbitration law and translates to “competence-competence”. It embodies the idea that a tribunal may assess whether it has jurisdiction over a dispute without deferring to a court for that determination at the outset.⁵ The principle has two dimensions. The positive dimension confers jurisdiction on the tribunal to rule

² United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration* (as adopted 1985, with amendments as adopted 2006) art 16(1).

³ Arbitration and Conciliation Act 1996, (Act 26 of 1996) ss 8, 11.

⁴ Arbitration and Conciliation Act 1996, (Act 26 of 1996) s, 11 (6A).

⁵ Gary Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) vol I, 1048-1052.

on its own jurisdiction.⁶ The negative dimension requires courts to refrain from deciding jurisdictional questions while the tribunal is already seized of the matter, unless the arbitration agreement is manifestly void or inapplicable.⁷

The UNCITRAL Model Law codifies the positive dimension in Article 16(1). That provision states that a tribunal may rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement.⁸ The separability doctrine is an integral corollary of kompetenz-kompetenz. It provides that an arbitration clause is to be treated as an agreement independent of the main contract. A decision that the main contract is void does not automatically invalidate the arbitration clause contained within it.⁹

B. Section 16 of the Arbitration and Conciliation Act 1996

Section 16(1) of the Act follows the UNCITRAL formulation closely. It grants the arbitral tribunal the authority to rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement.¹⁰ The provision also gives statutory effect to the separability doctrine by stating that an arbitration clause forming part of a contract shall be treated as an independent agreement and shall not become invalid merely because the contract of which it is a part is declared null and void.

Section 5 of the Act reinforces this position by providing that no judicial authority shall intervene in matters governed by the Act except as provided in the Act itself.¹¹ Read together, Sections 5 and 16 create a framework in which courts play a secondary role and tribunals have the primary responsibility to determine their own jurisdiction. Section 16(6) gives effect to this framework by requiring an aggrieved party to wait for the final award before approaching a court under Section 34 where the tribunal has overruled a jurisdictional objection.¹²

The practical significance of this framework is that a party who disagrees with a tribunal's positive ruling on jurisdiction cannot interrupt the proceedings by approaching a court immediately. The

⁶ Ibrahim F I Shihata, *The Power of the International Court to Determine Its Own Jurisdiction: Compétence de la Compétence* (Springer 2013).

⁷ Irene Ng, Michael Ng, Alvin Soh and Chen Siyuan, 'Five Recurring Problems in International Arbitration: The Relationship between Courts and Arbitral Tribunals' (2019) 8 *Indian Journal of Arbitration Law* 19.

⁸ *id n 1*.

⁹ Arbitration and Conciliation Act 1996, s 16(1), second proviso; see also *UNCITRAL Model Law*, art 16(1).

¹⁰ *id n 1*.

¹¹ Arbitration and Conciliation Act 1996 (Act 26 of 1996), s 5.

¹² Arbitration and Conciliation Act 1996 (Act 26 of 1996), s 16(6).

remedy is deferred to the post-award stage. This design ensures that arbitration proceeds without obstruction and reflects the Act's stated objective of minimising court interference.

III. THE JUDICIAL TRAJECTORY: FROM DEFERENCE TO INCREMENTAL RE-EXPANSION

A. *SBP & Co v Patel Engineering Ltd (2005): The First Expansion*

The earliest challenge to tribunal autonomy in India came in *SBP & Co v Patel Engineering Ltd*.¹³ Before this decision, the Supreme Court had held in *Konkan Railway Corporation Ltd v Rani Construction Pvt Ltd*,¹⁴ that the power exercised by the Chief Justice under Section 11(6) of the Act was purely administrative in character. A seven-judge bench in *SBP & Co* overruled that position and held that the Section 11(6) power was judicial in nature.

The practical consequence of classifying the Section 11 power as judicial was significant. Courts could now decide not merely who should be appointed as arbitrator but also a range of preliminary questions. The Court held that the Chief Justice or the designated judge would have the right to decide the existence of a valid arbitration agreement, the existence or otherwise of a live claim, and the existence of the conditions for exercising the power under Section 11.¹⁵ The Court further held that once the court decided these matters at the appointment stage, the tribunal could not revisit them under Section 16.¹⁶

This holding attracted sustained criticism from scholars and practitioners. It was characterised as inconsistent with the UNCITRAL Model Law and as an example of judicial overreach that undermined the legislative scheme of the Act.¹⁷ For nearly a decade after *SBP & Co*, applications under Section 11 functioned as mini-trials at which courts would examine questions of limitation, arbitrability, accord and satisfaction, and other threshold issues that properly belonged to the tribunal.¹⁸

¹³ *SBP & Co v Patel Engineering Ltd* (2005) 8 SCC 618.

¹⁴ *Konkan Railway Corporation Ltd v Rani Construction Pvt Ltd* (2002) 2 SCC 388.

¹⁵ *SBP & Co v Patel Engineering Ltd* (2005) 8 SCC 618, ¶ 47 (Balasubramanian J).

¹⁶ *SBP & Co v Patel Engineering Ltd* (2005) 8 SCC 618, ¶ 45.

¹⁷ O P Malhotra, "Analysis of the Supreme Court's Decision in *SBP & Co v Patel Engineering Limited*" (2013) 5(1) *NLSIR* 1, 3-5; Fali S Nariman, *India and International Arbitration* (2010) 29 *Penn State International Law Review* 3, 9-11.

¹⁸ *United India Insurance Co Ltd v Hyundai Engineering and Construction Co Ltd* (2018) 17 SCC 607, ¶ 12; Shambhu Sharan, "The Ever-Shifting Paradigm of the Scope of Judicial Intervention at the Stage of Appointment of Arbitrators" (Singhania & Partners, 2023) <https://singhania.in/blog/the-ever-shifting-paradigm-of-the-scope-of-judicial-intervention-at-the-stage-of-appointment-of-arbitrators> accessed 1 March 2026.

The decision in *National Insurance Co Ltd v Boghara Polyfab Pvt Ltd*,¹⁹ further systematised this expanded inquiry. The Court categorised preliminary issues into three groups. The first group, which the court was required to decide, included the existence of a valid arbitration agreement and whether the applicant was a party to it. The second group, which the court could choose to decide or leave to the tribunal, included whether the claim was a live claim and whether accord and satisfaction had taken place. The third group was to be left exclusively to the tribunal.²⁰

B. The 2015 Amendment and the Promise of Section 11(6A)

Parliament responded to the *SBP & Co* line of cases through the Arbitration and Conciliation (Amendment) Act 2015. The amendment inserted Section 11(6A), which provides that a court considering an application under Section 11 shall confine itself to the examination of the existence of an arbitration agreement.²¹ The Law Commission of India had expressly recommended this change in its 246th Report, noting that the broad pre-reference judicial inquiry was causing significant delay and frustration of the arbitral process.²²

The first case to interpret Section 11(6A) was *Duro Felguera SA v Gangavaram Port Ltd*,²³ The Supreme Court held that the legislative intent after the 2015 amendment was clear and limited. The Court stated that all that was required to be examined at the Section 11 stage was whether an arbitration agreement exists, nothing more and nothing less.²⁴ This statement appeared to settle the position firmly in favour of minimal judicial intervention and to restore primacy to the kompetenz-kompetenz principle.

The decision in *Mayavati Trading Pvt Ltd v Pradyuat Deb Burman*,²⁵ reaffirmed this narrow reading. The Court held that Section 11(6A) is confined to the examination of the existence of an arbitration agreement in the narrow sense laid down in *Duro Felguera*. It expressly overruled a decision that had permitted courts to examine accord and satisfaction at the Section 11 stage. At this point, the Indian position was aligned, at least in formal terms, with the UNCITRAL standard.

¹⁹ *National Insurance Co Ltd v Boghara Polyfab Pvt Ltd* (2009) 1 SCC 267.

²⁰ *National Insurance Co Ltd v Boghara Polyfab Pvt Ltd* (2009) 1 SCC 267, ¶ 17.

²¹ Arbitration and Conciliation Act 1996, s 11(6A), inserted by the Arbitration and Conciliation (Amendment) Act 2015 (Act 3 of 2016), s 6.

²² Law Commission of India, *246th Report on Amendments to the Arbitration and Conciliation Act 1996* (August 2014) ¶¶ 3, 37-38.

²³ *Duro Felguera SA v Gangavaram Port Ltd* (2017) 9 SCC 729.

²⁴ *Duro Felguera SA v Gangavaram Port Ltd* (2017) 9 SCC 729, ¶ 59.

²⁵ *Mayavati Trading Pvt Ltd v Pradyuat Deb Burman* (2019) 8 SCC 714, ¶ 10.

C. *Vidya Drolia v Durga Trading Corporation (2021): Structured Re-Expansion*

The judgment in *Vidya Drolia v Durga Trading Corporation*,²⁶ was delivered by a three-judge bench and addressed the arbitrability of landlord-tenant disputes governed by the Transfer of Property Act 1882.²⁷ While the primary issue was one of subject-matter arbitrability, the Court used the occasion to redefine the scope of judicial inquiry under both Section 8 and Section 11.

The Court held that the principle of kompetenz-kompetenz gives the tribunal primacy to decide issues of non-arbitrability but that courts retain the final word when deciding a setting-aside application under Section 34.²⁸ The Court also held that courts could conduct an intense yet summary prima facie review at the Section 11 stage where there were legitimate reasons to do so, in order to prevent wastage of public and private resources and to cut off the deadwood.²⁹ The test adopted by the Court was encapsulated in the phrase “when in doubt, do refer”.³⁰ This qualification opened the door to a substantially more searching inquiry than the bare existence test under *Duro Felguera* and introduced a degree of ambiguity that subsequent courts have exploited.

The decisions in *DLF Home Developers Ltd v Rajapura Homes Pvt Ltd*,³¹ and *Indian Oil Corporation Ltd v NCC Ltd*,³² expanded the *Vidya Drolia* framework further. In *DLF Home Developers*, the Court held that courts are obliged to apply their minds to core preliminary issues and to see whether a prima facie arguable case exists. In *Indian Oil*, the Court held that Section 11(6A) does not prohibit courts from ascertaining the arbitrability of disputes and proceeded to examine whether accord and satisfaction had taken place on the facts.

D. *NTPC Ltd v SPML Infra Ltd (2023): The “Eye of the Needle” Doctrine*

The most recent and significant development in this trajectory is *NTPC Ltd v SPML Infra Ltd*,³³ The dispute arose from a contract for installation services at a thermal power project. SPML had completed the work and NTPC had released the final payment. The parties subsequently entered into a settlement agreement, but SPML repudiated it and filed a Section 11 application alleging

²⁶ *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1.

²⁷ Transfer of Property Act, 1882 (Act 4 of 1882).

²⁸ *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1, ¶ 75.

²⁹ *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1, ¶ 156.

³⁰ *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1, ¶ 143.

³¹ *DLF Home Developers Ltd v Rajapura Homes Pvt Ltd* (2021) SCC OnLine SC 781, ¶ 18.

³² *Indian Oil Corporation Ltd v NCC Ltd* (2023) 2 SCC 539, ¶¶ 34-36.

³³ *NTPC Ltd v SPML Infra Ltd* (2023) SCC OnLine SC 389.

that the settlement had been executed under economic duress. The Delhi High Court appointed an arbitrator. NTPC appealed to the Supreme Court.

The Supreme Court set aside the High Court's order. It held that the pre-referral jurisdiction of the court under Section 11(6) is very narrow and comprises two inquiries: the existence and validity of the arbitration agreement and the arbitrability of the dispute.³⁴ However, the Court held that courts should not act mechanically merely to deliver a purported dispute to the chosen arbitrator. It introduced what it called the "limited scrutiny through the eye of the needle" as both a necessary and compelling exercise.³⁵

The Court conducted a prima facie examination of the factual matrix and found that SPML's allegations of coercion and economic duress were not bona fide and were an afterthought raised to circumvent the settlement. On this basis, it refused to refer the dispute to arbitration.³⁶ This was a striking exercise of judicial power. The Court, at the appointment stage, concluded that the factual allegations underpinning the entire claim were not genuinely made. That conclusion was reached without a full trial, without cross-examination, and without the extensive factual inquiry that a determination of economic duress ordinarily requires.³⁷

IV. THE STRUCTURAL PROBLEM: INCREMENTAL EROSION OF TRIBUNAL AUTONOMY

A. Merits Review in Disguise

The pattern across *Vidya Drolia*, *DLF Home Developers*, *Indian Oil* and *NTPC v SPML* reveals a structural tendency. Each decision invokes the language of a limited prima facie review while effectively assessing the merits of the underlying dispute. The label, prima facie does not by itself constrain the scope of the inquiry when the Court is examining whether particular factual allegations are bona fide.

The problem is most acute in cases where the jurisdictional issue and the substantive issue are intertwined. When a party argues that a contract was discharged by accord and satisfaction, that it

³⁴ *NTPC Ltd v SPML Infra Ltd* (2023) SCC OnLine SC 389, ¶ 28.

³⁵ *NTPC Ltd v SPML Infra Ltd* (2023) SCC OnLine SC 389, ¶ 29.

³⁶ Raghav Bhatia, "SC Expands Scope of Enquiry under Section 11 of the Arbitration Act" (IndiaCorpLaw, September 2023) <https://indiacorpplaw.in> accessed 1 March 2026.

³⁷ Kartikeya Sharma, "Eye of the Needle: NTPC v SPML and the Creeping Expansion of Section 11 Scrutiny" (2024) 36(1) *National Law School of India Review* 88, 90-94.

was executed under economic duress or that the claim is time-barred, the resolution of that question requires an assessment of facts. A court that decides such questions at the Section 11 stage is not merely examining the existence of an arbitration agreement.³⁸ It is deciding threshold questions of fact and law that Section 16 reserves for the tribunal.

The 2015 Amendment introduced Section 11(6A) precisely to reverse the *SBP & Co* practice of courts deciding such threshold issues at the appointment stage. The *Vidya Drolia* framework and the *NTPC v SPML* “eye of the needle” doctrine have effectively revived that practice under different nomenclature. The Arbitration and Conciliation (Amendment) Act 2019 went further and proposed to omit Section 11(6A) entirely, intending to transfer arbitrator appointment to arbitral institutions. That omission has not yet been brought into force.³⁹

B. Conflict with the Statutory Text

Section 11(6A) confines the court to examining the existence of an arbitration agreement.⁴⁰ The phrase “existence” was interpreted expansively in *Vidya Drolia* to include validity, on the ground that an agreement that is invalid in law does not truly exist. While that reasoning has internal logic, it was the starting point for successive expansions that now encompass the bona fides of factual allegations. This interpretive trajectory has stretched the statutory text beyond what it can reasonably support.

The Constitution Bench in *In re Interplay between Arbitration Agreements*,⁴¹ and the *Indian Stamp Act*⁴² provided some corrective clarity. The Court held that Section 11(6A) continues to be in force⁴³ and that the court at the referral stage should restrict itself to a prima facie determination of the existence of an arbitration agreement based on Section 7 of the Act, leaving issues of substantive validity to the tribunal under Section 16. This did not expressly overrule the *NTPC v SPML* “eye of the needle” approach. The tension between these decisions remains unresolved and awaits authoritative clarification from a larger bench.

³⁸ Arbitration and Conciliation Act 1996, (Act 26 of 1996) s 11.

³⁹ Arbitration and Conciliation (Amendment) Act 2019 (Act 33 of 2019), s 3(ii).

⁴⁰ Arbitration and Conciliation Act 1996, s 11(6A).

⁴¹ *In re Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996* (2023) SCC OnLine SC 1666 (Constitution Bench), ¶ 98.

⁴² *Indian Stamp Act 1899* (Act 2 of 1899).

⁴³ id n 41¶ 99.

C. Unpredictability and Delay

The practical consequences of the current approach are significant. Parties and practitioners cannot predict with confidence how extensively a court will inquire into the facts at the Section 11 stage. A respondent who wishes to obstruct arbitration can frame a jurisdictional objection as one that requires a detailed factual examination, forcing the applicant into satellite litigation before the arbitration has even begun.⁴⁴ Commentators have noted that this creates a structural incentive for recalcitrant parties to engineer delay through mala fide Section 11 applications.⁴⁵

The Act already provides a robust mechanism for post-award judicial review through Sections 34 and 37.⁴⁶ A party that believes a tribunal has exceeded its jurisdiction may challenge the award under Section 34(2)(a)(iii).⁴⁷ There is therefore no gap in the system that justifies a broad pre-award judicial inquiry. The effect of the current approach is to create a double layer of judicial oversight: one at the appointment stage and one at the setting-aside stage. This is inconsistent with the Act's architecture and undermines the efficiency that arbitration is designed to provide.

V. COMPARATIVE ANALYSIS: FRANCE AND SINGAPORE

A. France: The Negative Effect and the Manifestly Void Standard

French arbitration law provides the most robust protection for the kompetenz-kompetenz principle among major arbitration seats. Article 1448(1) of the French Code of Civil Procedure provides that when a dispute subject to an arbitration agreement is brought before a court, that court shall decline jurisdiction unless the arbitral tribunal has not yet been seized of the dispute and unless the arbitration agreement is manifestly void or manifestly inapplicable.⁴⁸

France recognises both the positive and the negative effects of the kompetenz-kompetenz principle. The positive effect, codified in Article 1465 of the Code of Civil Procedure, gives the tribunal exclusive jurisdiction to rule on objections to its jurisdiction.⁴⁹ The negative effect,

⁴⁴ Hiroo Advani and Alipak Banerjee, "Judicial Interference in Arbitration: A Comparative Analysis" (2023) 40(2) *Journal of International Arbitration* 223, 228-231.

⁴⁵ Amrita Sharma, "Post-Vidya Drolia Referral Jurisprudence in India" (*SCC Times Blog*, December 2022) <https://www.scconline.com/blog/post/2022/12/08/supreme-court-post-vidya-drolia-reconsidering-referral-jurisprudence-in-india/> accessed 3 March 2026.

⁴⁶ Arbitration and Conciliation Act 1996, (Act 26 of 1996) ss 34 and 37.

⁴⁷ *Booz Allen and Hamilton Inc v SBI Home Finance Ltd* (2011) 5 SCC 532, ¶ 36

⁴⁸ Code de Procedure Civile (France), art 1448(1).

⁴⁹ Code de Procedure Civile (France), art 1465.

enshrined in Article 1448(1), requires courts to stay their hand once an arbitration agreement is in play, save where the agreement is manifestly void or manifestly inapplicable.⁵⁰

The word manifestly is key. French courts do not conduct a detailed factual inquiry into whether the agreement is void.⁵¹ A finding of manifest invalidity requires the defect to be obvious on the face of the agreement without any examination on the merits. This standard is considerably more deferential to the tribunal than the prima facie standard applied by Indian courts. Under the French approach, the bona fides of the factual allegations underlying a claim would not be assessed at the pre-tribunal stage at all.

B. Singapore: Minimal Curial Intervention as a Constitutional Principle

Singapore's International Arbitration Act 1994 gives the UNCITRAL Model Law the force of law in Singapore.⁵² The Singapore Court of Appeal affirmed the applicability of the kompetenz-kompetenz doctrine in *Tomolugen Holdings Ltd v Silica Investors Ltd*,⁵³ where it held that the court should generally stay proceedings and allow the tribunal to determine its own jurisdiction in the first instance. The policy of minimal curial intervention has been consistently affirmed as a foundational principle of Singapore arbitration law.⁵⁴

Singapore has also invested in institutional infrastructure to ensure that arbitration-related matters are handled by specialist judges. The Singapore International Commercial Court has jurisdiction to hear matters under the International Arbitration Act, including jurisdictional challenges.⁵⁵ Singapore courts will not examine the substantive merits of arbitral proceedings at the appointment stage and will set aside awards only on the limited grounds specified in the Model Law.⁵⁶

A recent development is worth noting. In *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd*,⁵⁷ the Singapore International Commercial Court for the first time overturned a tribunal's

⁵⁰ id n 48.

⁵¹ Emmanuel Gaillard and John Savage (eds), *Fouchard Gaillard Goldman on International Commercial Arbitration* (Kluwer Law International 1999) ¶ 672.

⁵² International Arbitration Act 1994 (Singapore) (Cap 143A, 2002 Rev Ed), s 3 read with UNCITRAL Model Law, art 16.

⁵³ *Tomolugen Holdings Ltd v Silica Investors Ltd* [2016] 1 SLR 373 (Singapore Court of Appeal), ¶ 63.

⁵⁴ *PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2007] 1 SLR(R) 597 (Singapore Court of Appeal), ¶ 57.

⁵⁵ Supreme Court of Judicature (Amendment) Act 2021 (Singapore) (Act 28 of 2021).

⁵⁶ Singapore International Commercial Court Rules, 2021 Order 10.

⁵⁷ *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd* [2024] SGHC(I) 34 (Singapore International Commercial Court), ¶¶ 42-47.

negative jurisdictional ruling, that is, a ruling in which the tribunal had declined jurisdiction. The court intervened to uphold the parties' agreement to arbitrate. This is the inverse of the Indian problem. Singapore courts intervene to *protect* the right to arbitrate when a tribunal wrongly refuses to proceed, rather than to prevent arbitration by expanding pre-reference scrutiny.

C. Comparative Analysis and Application to India

Both France and Singapore demonstrate that effective arbitration systems can operate with judicial intervention confined to narrow and clearly defined circumstances. Neither jurisdiction permits a court at the pre-reference stage to assess the merits of the factual allegations underpinning a claim. The comparative analysis also reveals that India's problem is partly a question of institutional culture. Courts in India have historically been reluctant to fully relinquish their supervisory role over disputes. The *SBP & Co* decision and its progeny reflect a judicial instinct to remain engaged with disputes rather than to defer to the tribunal at the first instance. This instinct runs contrary to the international consensus codified in the UNCITRAL Model Law,⁵⁸ and is inconsistent with the domestic legislative intent expressed in Section 11(6A).⁵⁹

VI. THE WAY FORWARD: INTERPRETIVE AND LEGISLATIVE CORRECTIONS

A. An Interpretive Correction

The most immediate correction lies in interpretation. The Supreme Court should clarify that the *prima facie* test at the Section 11 stage is confined to verifying that a written arbitration agreement exists between the parties and that the dispute falls within the broad scope of that agreement. It should not extend to an assessment of whether the factual allegations underpinning a claim are genuine or *bona fide*. That question is precisely the kind of merits determination that Section 16 reserves for the tribunal.

The *NTPC v SPML* standard should be read narrowly to mean only this: where it is obvious on the face of the record that there is no arbitration agreement at all, or where the subject matter of the

⁵⁸ Fali S Nariman, "India: A Laggard in Arbitration?" in Albert Jan van den Berg (ed), *50 Years of the New York Convention* (Kluwer Law International 2009) 459, 462.

⁵⁹ "Setting the Clock Back: Judicial Interference in the Appointment of Arbitrators in India" (2023) *American Review of International Arbitration*, <https://aria.law.columbia.edu/setting-the-clock-back/> accessed 10 February 2026.

dispute falls entirely outside the scope of the clause, the court may decline to refer. Beyond these narrow categories, the court should refer and allow the tribunal to decide under Section 16. The *Interplay* decision provides a basis for this narrower reading⁶⁰ and a subsequent bench should build on it expressly.

B. A Legislative Correction

In the longer term, Parliament should bring into force the omission of Section 11(6A) contemplated by the 2019 Amendment, accompanied by a corresponding transfer of arbitrator appointment functions to designated arbitral institutions.⁶¹ This would remove the Section 11 proceeding from the court system altogether and eliminate the structural incentive for parties to litigate at the appointment stage.

If institutional appointment is not immediately feasible, Parliament should insert a provision modelled on Article 1448 of the French Code of Civil Procedure. A provision to the effect that courts shall decline jurisdiction unless the arbitration agreement is manifestly void or manifestly inapplicable would be more consistent with the UNCITRAL Model Law than the current Section 11(6A) text and would give courts a clearer and more deferential standard than the one that has been developed through case law.

A further legislative step worth considering is to strengthen the finality of jurisdictional rulings made by the tribunal under Section 16. At present, Section 16(6) requires a party to wait until the final award to challenge a positive jurisdictional ruling under Section 34.⁶² However, where the tribunal declines jurisdiction, the party wishing to arbitrate has no clear immediate remedy against that ruling. A provision modelled on the 2012 amendment to the Singapore International Arbitration Act, which allows challenge of negative jurisdictional rulings within thirty days,⁶³ would improve the balance between party autonomy and judicial correction in India.

VII. CONCLUSION

⁶⁰ *In re Interplay* (n 33) para 99; see also *Vidya Drolia* ¶ 143

⁶¹ Arbitration and Conciliation (Amendment) Act 2019 (Act 33 of 2019), s 3(i); Ministry of Law and Justice, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India* (2017) (Justice BN Srikrishna Committee Report) 38-41.

⁶² *Chloro Controls India Pvt Ltd v Severn Trent Water Purification Inc* (2013) 1 SCC 641, ¶ 77.

⁶³ International Arbitration (Amendment) Act 2012 (Singapore) (Act 12 of 2012).

The principle of kompetenz-kompetenz is not simply a procedural rule. It is a statement about the relationship between arbitration and the courts. It reflects a choice that disputes which parties have agreed to take out of the court system should be decided by the tribunal those parties chose, at least in the first instance. Section 16 of the Act and Section 11(6A), as inserted by the 2015 Amendment, embody that choice.

The judicial decisions examined in this paper have progressively narrowed the practical operation of that choice. The transition from *SBP & Co* to *Duro Felguera* represented a genuine step towards tribunal autonomy. The *Vidya Drolia* framework and the *NTPC v SPML* eye of the needle doctrine have reversed much of that progress. Courts now assess the bona fides of factual claims at the Section 11 stage, which is an inquiry that belongs to the tribunal under Section 16.

The comparison with France and Singapore illustrates that India need not choose between efficiency and justice. Both jurisdictions maintain robust arbitration regimes while confining pre-reference judicial inquiry to manifestly obvious defects in the arbitration agreement. India has the statutory text and the institutional capacity to do the same. What is required is either a clear interpretive correction from a larger bench of the Supreme Court, or a targeted legislative amendment that defines the standard with the precision that the current jurisprudence lacks.

Unless this correction is made, the kompetenz-kompetenz principle in India will continue to function as a formal guarantee undermined by practical exceptions. The tribunal will nominally have the right to determine its own jurisdiction, but that right will be exercised in the shadow of a pre-reference judicial inquiry that duplicates and displaces much of the same analysis.