

THE RULE OF COMPETENCE-COMPETENCE: A COMPARATIVE ANALYSIS OF INDIAN AND ENGLISH LAW

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ABSTRACT

The rule of competence-competence denotes the power of the arbitral tribunal to determine its own jurisdiction. This rule has found a place in the arbitration laws of several countries since it facilitates expeditious settlement of disputes by ensuring that pleas relating to jurisdiction are settled at the very beginning. Both the Indian and English arbitration statutes contain provisions relating to the rule of competence-competence. However, the scope of this rule as laid down in the respective statutes, and its application by the courts of these two States, differ in several respects. This article carries out a comparison of the doctrine under Indian and English law in four parts wherein the points of difference arising under the statute and the various decisions rendered by the courts will be examined. The article concludes that the differences present in the doctrine as enacted in India and in England are essential to serve the interests of the respective countries. In India, where expeditious dispute settlement is imperative in light of the backlog of cases in courts, the rule of competence-competence has been enacted in a way that ensures minimal court intervention and fewer opportunities for appeal. English law on the other hand, seeks to maintain greater party autonomy and hence, the rule of

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competence-competence in English law is far more flexible. It is suggested, however, that English law adopts a more balanced approach that would ensure that due regard is given to the arbitral tribunal's power to decide on its own jurisdiction.

KEYWORDS: *Competence-competence, Arbitration Act of 1996, Arbitration and Conciliation Act of 1996*