The Indian Securities Fraud Class Action: Is Class Arbitration The Answer?
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Proposition

1. The Companies Act, 2013 introduced the concept of class action suits by shareholders and depositors against the company.
2. The class action suit remedy relies on the Indian judicial system.
3. An alternative forum for enforcement of similar rights is a class arbitration proceeding against the company.
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Potential

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3. Achieve largely the same outcomes as a class action suit without having to rely on courts.
Points to include in the analysis

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   ▶ Data on class arbitration in the United States shows the average time for disposal is just under two years.
   ▶ Success of securities fraud class action arbitration
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4. Reconciling class arbitration with Indian jurisprudence:
   - If the relief sought is non-monetary, jurisdiction of the tribunal cannot be ousted merely because there is an arbitration agreement.
   - If there is an arbitration clause, “dressed-up” oppression and mismanagement proceedings to pre-empt arbitration, have been frowned upon.
5. Long line of contrary judgements on arbitrability of fraud.
   ▶ *Radhakrishnan v. Maestro Engineers (2010)*: Issues of fraud not arbitrable.
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   - *A. Ayyasami v. A. Paramasivam (2016)*: Distinguishes between issues of “mere allegations of fraud” and “issues of serious fraud”:
     
     “very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence”
Thank you