
THE SCOPE AND APPLICATION OF EQUITABLE RELIEFS IN ARBITRATION PROCEEDINGS

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EQUITABLE RELIEFS: CONCEPTUAL FRAMEWORK AND LEGAL NATURE

In the contemporary economic landscape, characterized by rapid development and increasing complexity, disputes often encompass issues that extend well beyond monetary claims. The efficacy of dispute resolution mechanisms depends upon their capacity to deliver comprehensive and equitable justice. While arbitration was once primarily viewed as a forum for commercial specialists to resolve factual disagreements, it has notably evolved in response to changing needs. This transformation is particularly evident in the expanding recognition of arbitral tribunals' authority to grant equitable remedies, not merely financial awards.¹ Still, judicial authority in this area is not boundless. It operates at the complex intersection of private contracts and public law, balancing individuals' freedom to contract with the judiciary's duty to intervene.

This article examines the scope and limits of such powers within the Indian legal system. The analysis delves into the framework of the Arbitration and Conciliation Act, 1996, with a particular focus on the judiciary's dynamic role in defining its boundaries. By placing India's developments alongside international experiences, it becomes clear that while the capacity to deliver equitable outcomes is essential for arbitration to fulfil its purpose of justice, reliably exercising this authority is far from straightforward.

To appreciate this development, the unique nature of these remedies must be recognized. While monetary compensation typically follows automatically when a breach is proven, equitable relief is rooted in a different tradition originating from the English Court of Chancery.² These remedies are inherently discretionary, non-monetary, and operate in personam; they are directed at specific individuals, compelling them either to do something or to stop doing it. For

¹ Indulia, B., Editor and Ridhi (2023) *The role of equity in decision-making by arbitrators*, SCC Times. Available at: <https://www.sconline.com/blog/post/2023/07/15/the-role-of-equity-in-decision-making-by-arbitrators/> (Accessed: 01 August 2025).

² Samuel L. Bray, *The system of equitable remedies* - *UCLA Law Review*. Available at: <https://www.uclalawreview.org/wp-content/uploads/2019/09/Bray-63-3.pdf> (Accessed: 01 August 2025).

instance, with an order of specific performance, the court requires a party to fulfil their contractual obligations when the subject matter is unique and financial compensation would not be sufficient.

Consider a scenario where a dispute arises over the sale of a company that owns an irreplaceable patent. In such cases, monetary damages are not adequate; the buyer would lose access to a unique business opportunity that cannot be measured in cash alone. This is where injunctions come into play. An injunction acts as a court order, either compelling a party to act upon or, more commonly, to refrain from certain actions.³ Additionally, remedies such as rectification and rescission exist to address problems like mistakes or fraud in contractual agreements. Rectification allows parties to correct errors in the contract, while rescission enables the contract to be cancelled altogether. The adaptability of these remedies makes them particularly valuable in complex business disputes, where a straightforward monetary award often fails to fully restore the injured party to their original position before the breach.⁴

THE GROWTH OF ARBITRATION AND THE EMERGING RELEVANCE OF EQUITY

The emergence of these remedies can be traced directly to the changing nature of arbitration itself. Initially, merchants appreciated arbitration primarily for its efficiency and the involvement of experts who understood the practical aspects of disputes, whether about quality, quantity, or payment. The core objective was to secure a workable solution that allowed businesses to proceed, rather than to generate a lengthy legal opinion.

Arbitration, at its core, is rooted in the parties' agreement, but it also inherently pursues a sense of justice⁵. This is why arbitrators frequently weigh equitable considerations when making decisions. For example, the maxim "one who seeks equity must do equity"⁶ comes into play: a tribunal is unlikely to grant specific performance unless the requesting party demonstrates genuine readiness and willingness to uphold its contractual duties. In this way, arbitration

³ *Injunction*, Legal Information Institute. Available at: <https://www.law.cornell.edu/wex/injunction> (Accessed: 01 August 2025).

⁴ Judex Tutorials, *Rectification, and rescission of contract in Specific Relief Act, 1963*, Judex Tutorials. Available at: <https://judextutorials.com/blog/rectification-and-rescission-of-contract> (Accessed: 01 August 2025).

⁵ Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV), 2024 INSC 857.

⁶ Arunima Baruah v. Union of India and Ors., 2007 INSC 490.

intertwines contractual obligations with equitable principles to ensure outcomes that are legally sound as well as substantively just.

The “clean hands” doctrine essentially bars parties who have engaged in misconduct or unethical behaviour from obtaining relief through a tribunal.⁷ In practice, arbitrators are expected to weigh considerations of fairness, even when such standards are not explicitly outlined in the rules. Equity remains fundamental to arbitration reasoning; it is not simply about adhering to the letter of the law, but ensuring that outcomes are just.

EQUITABLE RELIEFS IN INDIA- STATUTORY FRAMEWORK, JUDICIAL ROLE, AND ARBITRAL DISCRETION

The application of this legal concept takes shape within national frameworks, notably through India’s Arbitration and Conciliation Act, 1996. Rooted in the UNCITRAL Model Law, the Act establishes a substantial legal framework that underpins principles of fairness and balanced authority in arbitration proceedings.⁸

Interim relief fundamentally rests on two key provisions: Sections 9 and 17. Section 9 serves as a mechanism for parties to seek urgent, protective intervention from the court, situations where a party needs an immediate injunction to prevent assets from being moved, even before the arbitral tribunal is formally in place.⁹ The Supreme Court, in *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.*, clarified that proceedings under Section 9 are governed by the Civil Procedure Code, 1908¹⁰. As a result, any party seeking such relief must convincingly demonstrate a strong prima facie case.

The 2015 amendment to Section 17 marked a pivotal shift in the landscape of arbitration law. Before this change, interim orders issued by arbitral tribunals lacked practical enforceability. Essentially, parties seeking to enforce such orders had no choice but to approach the courts again under Section 9, which undermined the efficiency and autonomy of arbitral

⁷ *Supreme Today AI - Enhance the power of Artificial Intelligence for your Legal Research and Drafting.* Available at: <https://supremetoday.ai/issue/Petitioner-cannot-see-reliefs-with-unclean-hands> (Accessed: 01 August 2025).

⁸ Mundi, J. (2024) *Recent amendments in Indian Arbitration and Conciliation Act, Daily Jus.* Available at: <https://dailyjus.com/world/2024/04/recent-amendments-in-indian-arbitration-and-conciliation-act-the-winds-have-begun-to-blow-for-the-resolution-of-complex-construction-disputes> (Accessed: 01 August 2025).

⁹ *Unwinding and rewinding the clock: Revisiting interim reliefs under Section 9 of the Arbitration Act (2023) IndiaCorpLaw.* Available at: <https://indiacorpLaw.in/2023/09/09/unwinding-and-rewinding-the-clock-revisiting-interim-reliefs-under-section-9-of-the-arbitration-act/> (Accessed: 01 August 2025).

¹⁰ *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.*, (2007) 7 SCC 125.

proceedings.¹¹ With the amendment, however, orders under Section 17 became directly enforceable, putting them on equal footing with court orders. This development significantly enhanced the independence of arbitration and reduced unnecessary recourse to the courts. The Supreme Court, notably in *Alka Chandewar v. Shamshul Ishrar Khan*, confirmed that the powers granted under Section 17 now mirror those available under Section 9.¹²

Further, Section 28 of the Act specifically governs the application of substantive law within the context of domestic arbitration. It mandates that arbitral tribunals resolve disputes in accordance with the substantive laws of India.¹³ This is significant because Indian statutes, such as the Contract Act and the Specific Relief Act, already embed principles of equity within their framework. Therefore, when an arbitrator orders specific performance, they are not acting arbitrarily but are instead drawing upon provisions found in the Specific Relief Act, much like a conventional court would. This ensures that the powers of the arbitrator remain consistent with and anchored to the established legal system of India.

Section 28(2) of the Act essentially serves as a safeguard, ensuring that arbitral awards maintain a foundation in established legal standards rather than drifting into subjective notions of justice. The provision limits the tribunal's authority to decide cases purely on equitable grounds unless both parties have agreed to such an approach. In other words, unless there is explicit consent, the tribunal must adhere to legal principles and cannot rely solely on what it personally deems fair or just. If the parties do expressly authorize it, the tribunal may resolve disputes *ex aequo et bono*¹⁴ or as an *amiable compositeur*. These terms refer to deciding "in justice and fairness; according to what is right and good; according to equity and conscience" (*ex aequo et bono*), and to an arbitrator who is "empowered to mitigate the rigour of the law in favour of natural equity" (*amiable compositeur*).

¹¹ Indulia, B., Editor and Ridhi (2024) *Interim reliefs in arbitration: Emerging judicial trends in India*, *SCC Times*. Available at: <https://www.sconline.com/blog/post/2024/03/27/interim-reliefs-arbitration-emerging-judicial-trends-india/> (Accessed: 01 August 2025).

¹² *Violation-of-interim-order-passed-by-arbitrator-constitutes-*. Available at: <https://mmullaassociates.com/publications/violation-of-interim-order-passed-by-arbitrator-constitutes-contempt-of-court.pdf> (Accessed: 01 August 2025).

¹³ Indulia, B., Editor and Ridhi (2023) *Competence-competence doctrine in Indian Arbitration Law Jurisprudence: An in-depth analysis*, *SCC Times*. Available at: <https://www.sconline.com/blog/post/2023/11/01/competence-competence-doctrine-indian-arbitration-law-jurisprudence-in-depth-analysis/> (Accessed: 01 August 2025).

¹⁴ Malat, J. (2025) *Ex aequo et bono: The Justice route in the International Court of Justice "law" Cambridge core blog*, Available at: <https://www.cambridge.org/core/blog/2025/01/21/ex-aequo-et-bono-the-justice-route-in-the-international-court-of-justice/> (Accessed: 01 August 2025).

While arbitrators do have significant authority, their power is not unlimited. Section 34 outlines the specific grounds in which courts can intervene and set aside an arbitral award. Courts may set aside awards conflicting with public policy or tainted by patent illegality. In *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn Ltd. (2023)*,¹⁵ the Supreme Court made it clear that the concept of “patent illegality” is not a backdoor for courts to conduct a merits-based review. Judges are not supposed to overturn an award just because they interpret the contract or evidence differently from the arbitrator.

Indian courts have played a defining role in clarifying the extent of these powers. Notably, in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, the court supported the idea that the arbitration process can provide urgent relief, as the court found that an Emergency Arbitrator's award constitutes an enforceable order under Section 17.

This was a significant step in aligning Indian arbitration with global standards and reaffirming the parties' autonomy to agree to such terms. On the other hand, courts also protect public policy. In instances where a tribunal has directed specific performance of a contract that can be legally terminated (for example, a personal service or agency contract), courts have occasionally set aside the award as being contrary to Section 14 of the Specific Relief Act and, therefore, contrary to fundamental public policy in India. This shows that the courts underpin and support arbitration, but at the same time ensure that it simply does not cross certain thresholds and protections inherent in all laws.

This judicial oversight places the arbitrator in a position comparable to that of an equity judge. Their jurisdiction is governed by the arbitration agreement, the arbitral institution rules, and the governing law. Arbitrators must remain within their jurisdiction and act as per the substantive law and a fair process¹⁶. Most importantly, they must observe proportionality; any equitable relief must be narrowly tailored to address the specific damage and not be overly burdensome.

¹⁵ Webnet, Z. (2023) *Case analysis: Batliboi Environmental Engineers Limited V. Hindustan Petroleum Corporation Limited - S&A Law Offices- ISO 9001:2015 Certified*. Available at: <https://sandalawoffices.com/batliboi-environmental-engineers-limited-v-hindustan-petroleum-corporation-limited/> (Accessed: 01 August 2025).

¹⁶ *Indian courts have jurisdiction where arbitration agreement is governed by Indian law (2025) Supreme Court Observer*. Available at: <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/indian-courts-have-jurisdiction-where-arbitration-agreement-is-governed-by-indian-law/> (Accessed: 01 August 2025).

COMPARATIVE JURISDICTIONAL APPROACHES TO EQUITABLE RELIEFS IN ARBITRATION

Considering the Indian experience within a global landscape shows a clear trend of different legal frameworks taking similar steps. Jurisdictions such as England & Wales statutorily confer the same powers to tribunals as the High Court by statute, as seen in Section 48 of the English Arbitration Act 1996.¹⁷ The United States generally has upheld arbitrators' broad authority in its court decisions, showing strong deference to the arbitrator's remedy. With customary reluctance to give such power to private personality, civil law countries like France and Switzerland also now predominantly accept that this authority comes from the parties' agreement.¹⁸ The general belief is that for arbitration to be effective, tribunals must give a full range of remedies. However, as some scholars have pointed out, the differences in the enforcement of these awards from country to country also create some uncertainty for businesses, as enforcement may vary across jurisdictions due to local public policy.

WAY AHEAD FOR EQUITABLE RELIEFS: RECOMMENDATIONS AND CONCLUSION

Further, the effectiveness of equitable reliefs in arbitration will require more refinement and collaborative efforts. Foreign equitable awards can be implemented better if legislation makes the enforcement criteria clear, thereby reducing ambiguity and litigation. For the judiciary, the continued minimal intervention approach emphasized by decisions like *Batliboi* is decisive. Courts must remain supervisors and not appellate courts, intervening only in apparent public policy breaches. There is a heightened duty of care for the arbitrators. Knowing the law is not enough; they must also devise practical and precise orders that can be enforced easily. This may necessitate conceptual shifts that appreciate the enforcement challenges and may require further training.¹⁹ Ultimately, the global community is tasked with fostering consensus towards enforcement criteria, using soft law and judicial dialogues to serve international business demand for certainty.

¹⁷ KC, T.S., Bhattacharya, S. and Petch, L. (2024) *International Arbitration Laws and Regulations Report 2024-2025 England & Wales, International Comparative Legal Guides International Business Reports*. Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/england-and-wales> (Accessed: 01 August 2025).

¹⁸ *Cox and Kings Ltd. v. SAP India Pvt. Ltd. & Anr.*, 2023 INSC 1051.

¹⁹ Waldron, J. (2016) *The rule of law*, *Stanford Encyclopedia of Philosophy*. Available at: <https://plato.stanford.edu/entries/rule-of-law/> (Accessed: 01 August 2025).

In conclusion, the authority to grant equitable relief has, in essence, transformed arbitration into a system capable of providing non-monetary, effective, and equitable remedies. This is the greatest form of trust that the legal sector has bestowed on arbitration. It acknowledges that a private and contractual process can reach a degree of justice that a public court would render. The Indian legal framework, with its enabling legislation and its more progressive judges, has been an encouraging environment in which these powers can develop. While there are considerable gaps, especially about enforcement, these challenges can be addressed. The success of arbitration in the future rests on a careful balance between arbitrators exercising their powers with prudence and the courts honouring the finality of the arbitral process. It is within that balance that the ability of equity to arbitrate works in favour of incorporating more considerable arbitration powers in the process, solidifying its position as the primary instrument for complete and final justice in the intricate contemporary world.