Page: 482-506 *URL: www.lijdlr.com*

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 3 | Issue 3

2025

DOI: https://doi.org/10.70183/lijdlr.2025.v03.102

THE SCOPE FOR EQUITABLE RELIEFS IN ARBITRATION PROCEEDINGS

Deepti[1] **& Khushi Dubey**[2]

I. ABSTRACT

Arbitration has gone on to become a favourite dispute resolution mechanism that is fast, confidential, and flexible in contrast to the traditional litigation. nevertheless, it is its contractual structure that tends to restrain tribunals to the explicit content of agreements, and does not allow much consideration with regard to fairness. This essay focuses on the increasing trend towards equitable forms of relief (including injunctions, specific performance, rectification and rescission) in arbitration, specifically in the context of international commercial dispute. It relies on the references made to Indian and international practice to emphasise that equity can fall between the inflexible legalities and justice in more complicated dealings. The analysis includes statutory provisions in the Indian Arbitration and Conciliation Act 1996, case law interception of decisions as in the case of Sundaram Finance Ltd. v. NEPC India ltd., and comparative approaches of jurisdiction as in UK, US and Singapore. It also takes into consultation the issue of enforceability, jurisdictional gaps and lack of standardized precedents. After all, the paper concludes that fair remedies ceased being a sideshow; they are gradually becoming legitimate in arbitral practice. They make sure that arbitration is not only a tool of fast resolving a dispute but also it can produce the results that are based on the conscience, fairness, and substance of justice.

II. KEYWORDS

Arbitration, Equitable reliefs, Specific Performance, International commercial arbitration, Indian Arbitration Law, Dispute resolution, Injunctions, Interim measures, Tribunal powers, Comparative Arbitration Law.

[1] BALLB, 7th semester student at MERI Professional and Law Institute (India). Email: deeptictp8@gmail.com.
[2] BALLB, 7th semester student at MERI Professional and Law Institute (India). Email: dkhushi800@gmail.com.

 (ISSN: 2583-7753)

III. INTRODUCTION

Arbitration has become a favoured way of deciding about commercial conflicts, because it is fast, confidential and flexible in comparison with conventional litigation. Arbitration is however at times criticized as being too contractual and rigid, because the tribunals are usually constrained by the terms that the parties have agreed on. This prohibition has caused more and more to focus on the role of equitable reliefs in arbitral proceedings i.e., reliefs that exist on the basis of fairness, justice and conscience.

As the international commercial disputes have taken a more complex dimension, the distinction between legal rights and fairness considerations has been obscured. Remedies granted by party now most of the time includes remedies in the form of specific performance, injunction, rectification and rescission that are beyond money. These fair remedies do not only protect rights, but they put into place results that are of substantive justice, as opposed to formal ones.

Nevertheless, its significance has attracted minimal discourse, so that on the one hand, existing scholarship tends to be more concerned with the practical efficiencies attributed to arbitration, or, concurrently, on the enforceability of monetary judgments, rather than offering reflection on substantive application of equitable remedies. In addition, Indian law on the topic is immature, and in fact, recognition of equitable powers is irregular relative to other mature arbitration jurisdiction, the UK, US, and Singapore.[3]

A. Research Objectives

The analysis aims at achieving four objectives which are interrelated:

1. To examine the statutory and jurisprudential evolution of India in the context of equitable reliefs in arbitration and especially with reference to the 2015 Amendment of the Arbitration and Conciliation Act, 1996 and later jurisprudence of the Supreme Court.

[3] Gary B. Born, International Commercial Arbitration 3458-66 (3d ed. 2021)

2. To study the enforcement issues related to tribunal-imposed equitable remedies, such as the part of courts under the Act, Sections 9 and 17, and the interpretive problem relating to the New York Convention in identifying the non-monetary awards.
3. In order to contextualise the Indian approach in a comparative framework one can apply the lessons of the United Kingdom, Singapore, the United States, and arbitral institutional rules including the ICC, LCIA and SIAC in a bid to analyse the best practices being applied globally.
4. To develop reform-based advice to legislators, arbitral institutions, and practitioners in order to enhance the legality and efficiency of equitable reliefs in arbitration.

These objectives not only help the paper offer a descriptive mapping of the existing law but also provide normative information on how the law and agencies can be developed in future. By so doing, it makes equitable reliefs indispensable to the integrity of the arbitration process so that it provides an efficient and equitable process of administering justice.

B. Methodology

This paper will use a doctrinal and comparative approach to law which aims at assessing the extent of equitable reliefs in arbitral cases. The doctrinal aspect entails a meticulous looking into the statutory provisions, the Arbitration and Conciliation Act of 1996, as amended in 2015, the Specific Relief Act of 1963, and specific legislation of the UNCITRAL Model Law. The important cases of the Indian Supreme Court like Sundaram Finance Ltd. v. NEPC India Ltd., Alka Chandewar v. Shamshul Ishrar Khan. They are also accompanied by comparative jurisprudence of the United Kingdom (Channel Tunnel), Singapore (Tjong Very Sumito) and the United States (Karaha Bodas), thus putting Indian practice in the bigger picture of international arbitration.

The comparative element is extended to the institutional sources. The ICC, LCIA, and SIAC rules are evaluated to show the ways of how the major arbitral institutions organize

fair reliefs such as emergency arbitration. Secondary literature will consist of major treatises (Born; Gaillard; Redfern & Hunter), commentaries on debates in the field (van den Berg, Paulsson), and recent journal articles, to be sure to approach the classical theory as well as the current discussion.

This approach is normative and descriptive. It is descriptively a chart of how Indian and international principles governing equitable reliefs are changing. Normatively, it defines the doctrinal and procedural gaps, especially in regards to the enforcement of the equitable awards under the New York Convention and presents reforms to the legislators, courts, and arbitral institutions. The methodology is both scholarly and practical, providing the analysis with the rigor of the doctrine and the relevance to the interests of the practitioners and policymakers.

As a research methodology, this paper assumes the doctrinal approach involving a study of statutory provisions, case law, and inner-arbitration rules in India and another jurisdiction.[4] The analysis addresses gaps in the statutory and judicial framework in India and comparing it with international best practices makes a relevant contribution to the arbitration literature by showing that equitable reliefs are no longer mere accessory, but are becoming part and parcel of the arbitral jurisprudence. It contends that equity is a valid part of arbitration and that the integration of equity would reinforce its legitimacy, not only making it efficient, but substantively just as well.

IV. BEYOND CONTRACTS: WHY EQUITY MATTERS IN ARBITRATION

Contracts remain to be the beginning and termination of arbitration as they define what has been put in agreement, how an obligation is defied and how the compensation should be given. However, the disputes of the real life seldom exist within the black and white lines of contractual material. There are common examples when a purely contractual

[4] See Alan Redfern et al. Law and Practice of International Commercial Arbitration 347-49 (6th ed. 2015)

solution yields a result which is legally satisfactory but substantially unfair. In this matter, equity plays the predominant role.

Equitable reliefs can be seen as those reliefs that exceed damages in form of money, which happens because of equity and conscience. They are characterized, in the meaning of Snell, as operating, to mitigate by reduction the severity of the common law, by enjoinment or enforcing of action of conduct where damages could not suffice.[5] These are remedial namely, specific performance, injunction, rectification and rescission and thus are discretionary and the adage that equity will not with impunity sanction a wrong should be herein illustrated.

Jurisprudence Equity is grounded on a body of maxims that were formed in English courts of Chancery, the onus being that equity operates in personam, that it denies unjust enrichment and that it is fair rather than formal. Such tenets have been transferred into the modern practice of arbitrations, giving the tribunals the authority to consider underlying intentions and the conduct of the parties in question, as opposed to remaining bound by a strictly literal interpretation of the contract. As an example, a party can utilize a technical default to avoid the substantive duties; though it may be fair to construct the contractual interpretation, equity jumps in and avoids unfairness to one of the parties.

Courts have given good examples of allowing fair principles to moderate contractual formalism. Walsh v. In Lonsdale, (1882) 21 Ch D 9 (CA)[6], the question arose when the tenant entered possession of property on an agreement that had not been made as a deed so that only, at common law, a periodic tenancy had been created. The Court of Appeal however found that, equity would apply on the agreement by passing the agreement as a lease duly executed because, as the jurisprudence said, equity regards as done that which ought to be done. This doctrine inherently entrenched the enforcement capacity of equity to enforce agreements in particular, even where technical formalities of a contract

[5] John McGhee, Snell's Equity 5 (34th ed. 2020)
[6] Walsh v. Lonsdale (1882) 21 Ch D 9 (CA)

had not been fully met and this is how equitable operation averts injustice that ensures in conformity with writ law.

In Lumley v. Wagner, (1852) 42 ER 687; (1852) 1 De G M & G 604[7], Johanna Wagner, a well-known opera singer, entered into an agreement to sing only in Lumley theatre but subsequently tried to sing in other theatres. Although in theory damages could be awarded in case of breaching of the agreement, the court was aware that her services were unique and unreplaceable. It ordered a prohibitory injunction against singing to anyone, but was not able to require her to sing to Lumley. This case also demonstrates that injunctions are equitable remedies to ensure the obligation when financial losses are not sufficient in order to maintain the moral imperative of the parties to fulfil special promises.

The fairness base of arbitral relief is also true in Indian jurisprudence. In Adhunik Steels Ltd. v. Orissa Manganese and Minerals Pvt. Ltd., (2007) 7 SCC 125[8], it was an issue of supply contract whereby Adhunik Steels had applied to obtain an injunction in order to stop the respondent company diverting ore supplies. What was stressed is that interim injunction by section 9 of the Arbitration and Conciliation Act, 1996 is an equitable discretionary remedy and not an automatic entitlement under a contractual regime. The Court relied on the principles of balance of convenience, irreparable injury and fairness in granting such relief or not. This case highlights the explicit role of the Indian courts in identifying equity at the core of the success of the arbitral proceedings, especially in the maintenance of subject matter of the disputes.

V. THE SILENT POWER: UNDERSTANDING EQUITABLE RELIEFS

Equitable reliefs are the silent, but effective weapons of conflict resolution. Equitable remedies, in contrast to monetary damages (which are awarded once a breach occurs), serve to avert or deter wrongs which would not be provided with sufficient

[7] Lumley v. Wagner (1852) 42 ER 687; (1852) 1 De G M & G 604
[8] Adhunik Steels ltd. V. Orissa Manganese & Minerals Pvt. Ltd. (2007) 7 SCC 125

compensation by damages. Within the context of arbitration, the given remedies do not only keep the purity of the contractual relations but also inject the conscience into the commercial conflicts.

Specific performance, in which a party is made to do what it has /they/ promised in a contract, is the most notable equitable relief. According to Indian law, during specific performance, Section 10 of Specific Relief Act, 1963 indulges in the fact that when monetary compensation is not adequate[9], e.g. in the contract of unique goods and in the case of immovable property etc. In K. Narendra v. Rtiviera Apartments (P) Ltd., (1999) 5 SCC 77, he decision of affirmed that special performance would be awarded in cases where justice insists that the contract should be performed as opposed to awarding damages.[10] The English courts have a long practice of applying specific performance internationally, in extraordinary situations especially when the subject matter of these contracts deals with unique subject matter.[11]

The second important remedy is injunction, which orders a party not to do something in the breach of the duties, or to do something. The ability to give interim injunctions is granted in India to arbitral tribunals by Section 17 of Arbitration and Conciliation Act, 1996[12] in India and was affirmed by the Supreme Court in Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119[13]. Historically, the English equity would use injunctions like in the Lumley v. Wagner, 42 Eng. Rep. 687 (Ch. 1852)[14] in which the court barred a singer against an infringement of an exclusive contract. Arbitral tribunals in the United States, as well, tend to issue injunction under AAA and JAMS rules in cases where there are contract rights that are at danger of being irreparably damaged.[15]

[9] Specific Relief Act, No. 47 of 1963, s.10, India code (1963)
[10] K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77 (India)
[11] See Ryan v. Mutual Tontine Westminer Chambers Association, (1893) 1 Ch. 116 (Eng.)
[12] Arbitration and Conciliation Act, No. 26 of 1996, s. 17, India Code (1996)
[13] Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119 (India)
[14] Lumley v. Wagner, 42 Eng. Rep. 687 (Ch. 1852)
[15] See Am. Arbitration Association, Commercial Arbitration Rules and Mediation Procedures, R-37 (2013)

Rectification is another remedy that gives the parties opportunity to correct contracts that do not serve the real intentions of the parties, as a result of fraud or mistake between parties. This provision is reflected in the Indian law in breadth by section 26 of the Specific Relief Act, 1963[16]. The English approach is captured in the case of Frederick E. Rose (London) Ltd. v. William H. Pim Junior & Co. Ltd., [1953] 2 QB 450 in which the courts adjusted agreements to match actual agreement of parties.[17]

Rescission on the other hand comes into play to quash fraudulent, unconscionable and those contracts that are made under misrepresentation. In India section 27 of the Specific Relief Act, 1963 is used to govern the rescission, and the discretion to restore the parties to their antecedent position has been given to the courts and tribunals[18]. Union of India v. Kishorilal Gupta and Bros., AIR 1959 SC 1362, repeated a well-known principle that contracts vitiated by fraud, or inequity, might be avoided as a means of promoting equity[19]. Under the common law, the concept of rescission has been identified as a remedy that provides a fix in the international practice where parties are not obligated to unwarranted contracts that do not follow the advice of conscience.

The comparative studies indicate that, although the Indian arbitration jurisprudence is increasingly being developed with the provisions of equitable powers, it continues being largely dependent on the statutory provisions, such as the Specific Relief Act of 1963. Conversely, neither the English nor the U.S. federal approach to arbitration appears to give tribunals an explicit mandate to grant equitable reliefs as the English Arbitration Act, 1996[20] expressly empowers tribunals with equitable powers and federal and institutional rules permit U.S. arbitrators to adjudicate in this way unless otherwise excluded by contract. Singapore, under its International Arbitration Act, also follows the

[16] Specific Relief Act, No. 47 of 1963, s. 27, India Code (1963)
[17] Fedrick E. Rose (London) Ltd. v. William H. Pim Junior & Co. Ltd. (1953) 2 QB 450 (Eng.)
[18] Specific Relief Act, No. 47 of 1963, s. 27, India Code (1963)
[19] Union of India v. Kishorilal Gupta and Bros., AIR 1959 SC 1362 (India)
[20] Arbitration Act 1996, c. 23, s. 48 (UK)

pro-equity approach; in that, tribunals can order interim and emergency relief that are in line with international arbitral practice.[21]

Such equitable reliefs are therefore a muted, but critical aspect of arbitration. They guard against a substantive right; a misapplication of technicalities and that justice and not very strict applications of the law be done where the letter of the law is not enough.

VI. FROM SPECIFIC PERFORMANCE TO INJUNCTIONS: A CATALOGUE OF EQUITABLE TOOLS

These fair solutions in arbitration offer redress in non-financial forms, and allow tribunals to deliver justice in accordance with the substantive requirements of a dispute. The significance of them is that they deal with situations where the injuries are not so severe as to create rights or protect the sanctity of the contract.

Specific performance is the most evident fair remedy that forces parties to fulfil their contractual obligations. It ascertained that under Section 10 of the Specific Relief Act, 1963 as amended, specific performance can be ordered in the situations where damages are inadequate mostly in contracts relating to immovable property or to goods of a unique character.[22] In K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77, the Supreme Court acknowledged that specific performance is correct where the obligations of the contract were unique and no amount of money could restore the position of the aggrieved party.[23] In other countries, English courts have also used specific performance.

Of equal importance is the remedy of injunctions, which can be prohibitory (preventing a party acting contrary to obligations), or mandatory (in demanding positive action). Arbitration and conciliation The Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 section 17 gives arbitral tribunals the power to issue interim measures of protection during proceeding s, such as

[21] See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc. 473 US 614, 628 (1985)
[22] Specific Relief Act, No. 47 of 1963, s. 10, India Code (1963)
[23] K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77 (India)

injunctions.[24] In Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119 the autonomy of arbitral proceedings was strengthened by the confirmation of the enforceability of tribunal authorized interim injunctions.[25] Likewise, in the seminal case of Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479, the Court pointed out that interim protection in the form of injunctions was crucial in making arbitral proceedings not appear futile[26]. Abbott describes the arbitrate act 1996 as a section that encourages arbitration in the UK by applying the injunction to courts and tribunals working together in the context of saving the object of the dispute.

A second significant equitable remedy is that of rectification, where the contract in writing is corrected to mirror the actual intent of the contracting parties in case of errors, fraud, or misstatements that distorted the contract. The codification of the Indian law of rectification in section 26 of the Specific Relief Act, 1963 codifies the concept.[27] The boundaries of this principle are explained in English jurisprudence by Frederick E. Rose (London) Ltd. v. William H. Pim junior and Co. Ltd., [1953] 2 Q.B. 450, where rectification was refused on the grounds of no true consensus.[28]

Finally, rescission of vitiated contracts by innuendo or fraud or misrepresentation or duress on the understanding that parties will be put back to the pre-contractual position. It has statutory foundation in India in Section 27 of the Specific Relief Act, 1963.[29] In Union of India v. Kishorilal Gupta & Bros. A.I.R. 1959 S.C. 1362, The Supreme Court affirmed rescission of contracts marred with unfairness and pointed out the corrective role of equity.[30] Rescission is also justified by comparative jurisprudence: in Derry v.

[24] Arbitration and Conciliation Act, No. 26 of 1996, s. 17, India Code (1996), as amended by The Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016
[25] Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119 (India)
[26] Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479 (India)
[27] Specific Relief Act, No. 47 of 1963, s. 26, India Code (1963)
[28] Frederick E. Rose (London) Ltd. v. William H. Pim junior and Co. Ltd., [1953] 2 Q.B. 450 [Eng]
[29] Specific Relief Act, No. 47 of 1963, s. 27, India Code (1963)
[30] Union of India v. Kishorilal Gupta & Bros. A.I.R. 1959 S.C. 1362 (India)

Peek, (1889) 14 App. Cas. 337 (H.L.) the House of Lords had determined that contracts procured through fraudulent misrepresentation might be rescinded.[31]

Regarding these remedies, they highlight the arbitration as not limited to the damage's awards. Rather, with the inclusion of equitable reliefs it has become a process sensitive to fairness that upholds substantive rights, averts injustice and upholds the integrity of contractual obligations in both local and foreign practice.

VII. STATUTORY FRAMEWORK AND GAPS: WHERE INDIAN LAW STANDS

Indian laws have previously been retarded to adopt equitable reliefs in arbitration though such reliefs are on the rise in importance. The Arbitral tribunals were only given the limited powers under the section 17 of the Arbitration and Conciliation Act, 1996, which initially stated that the tribunal could provide interim measures. Such orders were however not definite on enforcement since tribunals did not have the mandate to enforce. It resulted in a major dependency on the courts by Section 9 of the Act.

The Arbitration and Conciliation (Amendment) Act, 2015 provided an important change, by adding Article 17(2), and stating that interim measures granted by arbitral tribunals shall be treated as an order of the court, and shall be enforced in a manner comparable to an order of the court.[32] This reform aligned Indian law significantly close with the international standards, specifically the UNICTRAL Model Law on International Commercial Arbitration, which in accordance with Article 17 give arbitral tribunals the power to grant interim measures and in Article 17H, it ensures enforceability by courts.[33] Thus, the Indian provision harmonises with global best practices by elevating tribunal-ordered interim relief to the same status as judicial orders.

[31] Derry v. Peek, (1889) 14 App. Cas. 337 (H.L.) (Eng)
[32] Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 9, Gazette of India, Jan. 1, 2016 (India)
[33] UNCITRAL Model Law on International Commercial Arbitration, arts. 17, 17H, U.N. Doc. A/40/17, annex I (1985), with amendments by U.N. Doc. A/61/17, annex I (2006).

Still, there exist gaps in the system of legislation. Although tribunals may now make and execute interim measures, including injunctions and asset preservation, the Act is silent as to final equitable measures, including specific relief or rescission. The parties will now have to seek such remedies in the substantive law of contracts, especially the Specific Relief Act, 1963. Such a disjointed methodology deprives arbitral tribunals of a clear statutory role in providing final equitable reliefs, in contrast to jurisdictions such as the UK or Singapore where such a role is explicitly granted to arbitral tribunals through legislation that empowers arbitral tribunals with equitable discretion.

The problem of enforcement remains as well. The judiciary has been conducive in theory, but there is still confusion in practice. In Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119, the Supreme Court reaffirmed tribunal independence, by stating that the interim measures granted by Section 17 are binding and enforceable, although in practice, they may still have to be enforced by the judiciary itself particularly where parties defy them.[34] These issues have been observed to present challenges to Indian courts resistant to long-term supervision in the traditional sense of equitable relief (injunction or specific performance), given the need to balance party autonomy, arbitral efficiency, and judicial facilitation in India's new arbitration system.[35]

In comparison, international practice is much clearer. Interim measures will be applicable across jurisdictions under the UNCITRAL Model Law, interim measures are enforceable across jurisdictions, and arbitral institutions such as the ICC and LCIA expressly authorises the tribunals to grant both final equitable and interim reliefs.[36] India's reformed statutory framework, still lacks fully empowering tribunals and providing certainty in enforcement. Bridging this gap is crucial to strengthen India's position as a reliable arbitration hub.

[34] Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 SCC 119 (India)
[35] See Gaurav Pachnanda, Interim Reliefs in International Commercial Arbitration – Indian Perspective, 6 Indian J. Arb. L. 115, 122–25 (2017).
[36] See ICC Rules of Arbitration, art. 28 (2021); LCIA Arbitration Rules, art. 25 (2020).

VIII. COURTS, CONSCIENCE, AND INTERIM RELIEFS: JUDICIAL BACKING FOR EQUITY

Equity, which has always been linked with the court, has been defended in arbitrary matters, especially in the area of interim reliefs. The arbitral powers have been continuously supported through Indian courts through equitable redress where it is needed thus making arbitration a viable and fair dispute resolution.

The Act 1996, Arbitration and Conciliation Act, Section 9, grants the possibility to the courts to issue interim measures in advance, during, or after arbitral proceedings. This has been broadly applied to protect the rights of the parties even in pre-arbitral stage. In Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479, the Supreme Court stated that the courts have the jurisdiction to award interim relief under Section 9 even prior to the arbitral proceedings commencing.[37] Such a historic decision made sure that parties were able to retain assets and retain status quo till constitution of a tribunal and thus the situation arbitral proceedings would have been rendered useless. According to scholars, such a ruling shows a cautious attitude of giving the courts a safety valve role, balancing between the autonomy of the arbitral and the judicial process.[38]

Section 17 of the Act on the other hand authorises arbitral tribunals to order interim measures. Parity in Section 9 and Section 17 was achieved in the 2015 Amendment through the introduction of Section 17(2) that assumes that the interim measures ordered by tribunals are enforceable as though they are the orders of a court. This was a much-needed statutory reform that made India consistent with the UNCITRAL Model Law and that played a significant role in promoting tribunal independence. In Alka Chandewar v. Shamshul Ishrar Khan 16 SCC 119, (2017), pointed out that arbitration will be ineffective when they fail to adhere to the orders of the tribunals.[39] The Court emphasized that such preliminary measures are bound to have the same binding authority as judicial orders,

[37] Sundaram Finance Ltd. v. NEPC India Ltd., (1999) 2 SCC 479
[38] See Michael Hwang & John Choong, The Role of Equity in International Arbitration, in Contemporary Issues in International Arbitration and Mediation 195, 201–03 (Arthur W. Rovine ed., 2012).
[39] Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 S.C.C. 119 (India).

which enhance party compliance in arbitration. The absence of a clear enforcement mechanism has, however, been warned by commentators to cause parties to continue depending on courts, thus watering down arbitral self-sufficiency.[40]

This newer jurisprudence has also elaborated the changing relationship between Section 9 and 17. In Amazon.com NV Investment Holdings LLC v. Future Retail Ltd. 1 SCC 209, (2022),[41] the Supreme Court acknowledged the enforceability of emergency awards by arbitrators under Section 17, which is a hallmark of numerous international arbitration venues (Singapore and London). Similarly, in Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corp. Ltd., (2022) 1 SCC 131,[42] the Court once again supported the binding nature of the measures stipulated by the tribunal, which is important to emphasize because interim reliefs are the foundation of successful arbitral proceedings. Researchers such as Gaurav Pachnanda believe that these shifts are a sign of a jurisprudence of convergence as Indian arbitration law has been gradually aligning with international practice at the same time, though with judicial control, to fill in any gaps in enforcement.[43]

In spite of these developments, there are still enforcement issues. The supervisory character of some equitable reliefs, including continued injunction or a final order of mandatory performance, makes it question the viability of their application by Indian courts which have traditionally been reluctant to permit continuous monitoring. The same is warning by Gary Born who assures that, although interim relief is critical to the legitimate nature of arbitration, excessive dependence on the courts may jeopardize the efficiency and independence of arbitration.[44]

These cases along with the academic discussions show that Indian courts do not simply sit back and watch the arbitration process but they act as enforcers of justice and

[40] See Emmanuel Gaillard, Legal Theory of International Arbitration 137–39 (2010).
[41] Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209 (India).
[42] Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corp. Ltd., (2022) 1 S.C.C. 131 (India).
[43] See Gaurav Pachnanda, Interim Reliefs in International Commercial Arbitration – Indian Perspective, 6 Indian J. Arb. L. 115, 122–25 (2017).
[44] Gary B. Born, International Commercial Arbitration 3561–63 (3d ed. 2021).

impartiality in the arbitral process. The judiciary has filled the gaps in the statutory regime by strengthening both the tribunal and the court authority to award interim reliefs, which has brought Indian arbitration to more international levels at the same time indicating tensions that still exist between arbitral autonomy and judicial enforcement.

IX. GLOBAL GLIMPSES: INTERNATIONAL ARBITRATION AND EQUITABLE REMEDIES

The controversy on fair reliefs in arbitration is not a new phenomenon in India but it is the same in other parts of the world where there is a tendency to balance arbitral independence with judicial assistance. The international practice offers great insights in terms of tribunal and court relationships in order to award and enforce just remedies.

Channel tunnel group Ltd. v. Balfour Beatty Construction Ltd., [1993] A.C. 334 (H.L.)[45] is a decision that has been frequently cited. As opposed to the usual misrepresentations, the case was not concerned with specific performance granted by a tribunal. Rather, the House of Lords considered whether injunctive relief under the common law of England and Wales could be granted, upon a contract between the parties having an arbitration clause referring to disputes to Brussels. The court believed that even though English courts had the jurisdiction, it was expected that they will not interfere with the agreed process of arbitration as it contains the principle of judicial restraint in arbitral issues. This case highlights the boundaries of the judicial engagement in fair remedies to parties who have settled on arbitration.

Various jurisdictions have taken varied positions of arbitral equitable powers. Section 44 of the Arbitration Act 1996 of the United Kingdom permits the courts to grant interim measures, such as injunction and preservation of assets, where the tribunals have no authority and the situation necessitates a court to interfere.[46] Section 48 on the other hand gives tribunals their own capacity to award remedies that could be obtained in the High

[45] Channel Tunnel Grp. Ltd. v. Balfour Beatty Constr. Ltd., [1993] A.C. 334 (H.L.) (appeal taken from Eng.).
[46] Arbitration Act 1996, c. 23, § 44 (U.K.).

Court including specific performance (subject to agreement by the parties).[47] This guarantees that tribunals can be given substantive powers yet in extreme cases, judicial assistance can still be sought.

In Singapore, the International Arbitration Act 1994, Section 12A directly authorizes tribunals to issue interim remedies, such as injunctions, and the courts is in support of such remedies.[48] Tjong Very Sumito v. Antig Investments Pte Ltd., [2009] SGCA 41, the Singapore Court of Appeal affirmed that tribunal primacy should be upheld where the courts must only intervene when it is absolutely necessary to do so as pro-arbitration.[49]

In the United States, even though the Federal Arbitration Act does not specifically deal with interim measures, the power of tribunal to issue equitable relief was established by the courts. In Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 335 F.3d 357 (5th Cir. 2003), the court enforced an award of a foreign arbiter granting equitable relief, which showed good judicial deference to the determination of arbitral awards.[50]

It is also significant that the institutional arbitration rules explicitly authorize tribunal to award fair reliefs. Article 28 of the ICC Rules of Arbitration allow tribunals to direct interim measures and the guidelines permit emergency arbitrators to grant immediate relief in the presence of the tribunal constitution.[51] In line with that, Article 25 of the LCIA Arbitration Rules automatically grants tribunals the authority to award interim measures required to safeguard rights or property, and the jurisdiction of the courts is supportive.[52] In a further move, the SIAC Rules, Rule 30, and Schedule 1 ensure the institutionalization of emergency arbitration, which can be used to provide quick fair relief in emergency

[47] Id. § 48.
[48] International Arbitration Act 1994, c. 143A, § 12A (Sing.).
[49] Tjong Very Sumito v. Antig Invs. Pte Ltd., [2009] SGCA 41 (Sing.).
[50] Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 335 F.3d 357 (5th Cir. 2003) (U.S. Ct. App. 5th Cir.).
[51] ICC Rules of Arbitration, art. 28 (2021).
[52] LCIA Arbitration Rules, art. 25 (2020).

situations.[53] These institutional frameworks help us understand that fair remedies are not just judicial concepts, but they are a part and parcel of contemporary arbitral practice.

Combined, the international practice demonstrates that equitable remedies in arbitration are able to flourish under a hybrid model: tribunals are given broad remedial discretion, and courts serve as a safety net to make their remedies enforceable. This model has been strengthened by institutional rules which make sure that arbitration is flexible and effective in delivering cross-border justice.

X. THE GREY ZONES: CHALLENGES IN GRANTING EQUITABLE RELIEFS

Despite arbitration emerging as a platform that is in a position to administer fair justice, there are still difficulties in the clear expression, award, and application of such redress. These grey areas indicate the necessity of being more conceptually clear and internationally harmonized.

A. Lack of Standardization

One issue which is a key concern is the fact that there are no set standards on how to confer equitable reliefs. The principles by which damages are calculated in arbitration are relatively clear but other remedies like injunctions or specific performance are often based on discretionary evaluations of fairness and necessity. The UNCITRAL Model Law gives tribunals the power to award interim measures in accordance with the provisions of Article 17, but provides no specific principles that tribunals must take into consideration.[54] Institutional rules including ICC, LCIA, and SIAC follow suit and authorise interim reliefs but do not codify precise guidelines. This allows flexibility but has the problem of inconsistency. There have been suggestions by commentators like Jan Paulsson that arbitration would be enhanced by standardised tests like those found by

[53] SIAC Rules, r. 30 & sched. 1 (2016).
[54] UNCITRAL Model Law on Int'l Com. Arb., art. 17, U.N. Doc. A/40/17, annex I (1985), with amendments by U.N. Doc. A/61/17, annex I (2006).

the IBA Rules on the Taking of Evidence to provide predictability in the application of fair remedies.[55]

B. Enforcement Complexities

Equitable reliefs are also faced with challenges in cross border application. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) is binding to the states which are parties to the contract, requiring them to recognize arbitral awards, although there is no specific reference to monetary and non-monetary awards,[56] and enforcement practice is still uneven. Using the example of Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 335 F.3d 357 (5th Cir. 2003), the court of appeals in the United States affirmed that non-monetary relief is encompassed by the Convention by mounting fair elements of a foreign arbitral award.[57]

Other scholars, including Albert Jan van den Berg, point out that though broad language in the Convention can accommodate equitable awards, the effectiveness of this depends on how national courts interpret the Convention (that is, whether as a narrow or supervision-averse court).[58]

C. The Path Forward

These challenges highlight the necessity of being more transparent and unified. Arbitral bodies, in an institutional sense, may come up with model principles on the award of fair remedies, based on comparative practice. Judicially, the courts need to take a pro-enforcement approach and interpret the New York Convention to encompass equitable awards in a broad manner. It is through this that arbitration would be able to achieve its

[55] Jan Paulsson, Standards for Granting Equitable Relief in Arbitration, 22 Arb. Int'l 301, 307–10 (2006).
[56] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. I, June 10, 1958, 330 U.N.T.S. 38 [hereinafter New York Convention].
[57] Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 335 F.3d 357, 365–66 (5th Cir. 2003) (U.S. Ct. App. 5th Cir.).
[58] Albert Jan van den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation 276–78 (1981).

purpose as a holistic system of justice that would be able to provide both compensatory and fair reliefs.

XI. CASE FILES: LANDMARK DECISIONS THAT RESHAPED THE DISCOURSE

Landmark judicial and arbitral decisions in the various jurisdictions have greatly contributed to the development of equitable reliefs in arbitration. These instances illustrate how arbitral autonomy and the requirement to ensure effective remedies has been struck by the courts and tribunals to gradually develop the jurisprudence of a fair remedy in arbitration.

The Sundaram Finance Ltd. v. NEPC India Ltd. case created in India by the Supreme Court an important precedent when the court concluded that courts could provide interim relief under the Section 9 of the Arbitration and Conciliation Act, 1996 even prior to the commencement of the arbitral proceedings.[59] The Court found that in the absence of such jurisdiction, parties may frustrate the arbitral procedure by emptying pockets before tribunal constitution. Since then this ruling has been considered the foundation of pre-arbitral judicial protection in India to make sure that arbitration does not turn into a sham exercise.

The next Alka Chandewar v. Shamshul Ishrar Khan decision, Supreme Court pointed out that interim remedies issued by arbitral tribunals pursuant to Section 17 should be treated in the same way as a court order, especially since the 2015 Amendment added a Section 17(2)).[60] The ruling dealt with the issues of not complying with the orders of the tribunal and made arbitral interim measures more enforceable, which reinforced the autonomy of arbitral in the context of the Indian system.

[59] Sundaram Fin. Ltd. v. NEPC India Ltd., (1999) 2 S.C.C. 479 (India).
[60] Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 S.C.C. 119 (India).

Similar clichés of judicial restraint and arbitral authority are present in international jurisprudence. In Channel tunnel group Ltd. v. Balfour Beatty Construction Ltd., the house of Lords suspended the English court proceedings in good faith to the arbitration agreement between the parties stating that the disputes shall be referred to Brussels.[61] Although the case was not such a case directly relating to specific performance, its importance was that the arbitral jurisdiction had to be respected even in the application of the interim relief. Subsequent rulings that have taken the position of pro-arbitration have been affected by this ratio in the United Kingdom and elsewhere.

The United States courts have even gone ahead to affirm the admissibility of equitable awards in the New York Convention. In Karaha Bodas Co. v. Pertamina, the Fifth Circuit Court of Appeals has affirmed an arbitral award containing non-monetary remedies, and stated that such awards were not subject to the Convention.[62] The ruling made it clear that fair remedies could be enforced as long as they do not violate the public policy, which increased the power of interpretation of the Convention and strengthened the position of the United States as an arbitration friendly venue.

The institutions of arbitral have also made significant contributions to making equitable remedies normal. Of particular interest is the case ICC Case No. 10596 of 2000 where specific performance was ordered by the tribunal which required the delivery of unique goods on a long-term contract.[63] The tribunal held that damages would be insufficient due to the impossibility of replacement of the subject matter. This ruling, frequently referred to in ICC digests, exemplifies how arbitral tribunals are ready to use fair remedies to enforce contractual integrity and so to harmonize arbitral remedies with more established contractual remedies.

[61] Channel Tunnel Grp. Ltd. v. Balfour Beatty Constr. Ltd., [1993] A.C. 334 (H.L.) (appeal taken from Eng.).
[62] Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 335 F.3d 357, 365–66 (5th Cir. 2003) (U.S. Ct. App. 5th Cir.).
[63] ICC Case No. 10596 of 2000, Final Award (2000), reprinted in 16 ICC Int'l Ct. Arb. Bull. 76 (2005).

Collectively, these instances indicate that the jurisprudence of equitable reliefs is not limited to a particular jurisdiction but, rather, it is the result of a trans-national discourse. The Indian courts have prepared the ground in regard to pre-arbitral and tribunal ordered interim reliefs, and the international courts and tribunals have strengthened the issues about enforceability and arbitral independence. There is also institutional arbitration that has increased the area of equitable remedies, such that arbitration is an adaptable and efficient form of justice.

XII. CONCLUSION: A GROWING SPACE FOR FAIRNESS IN ARBITRATION

Reliefs which were previously considered to be extraordinary in the context of arbitration, have gradually become a significant part of its validity. This process can be seen in the history of Indian law: judicial innovation in Sundaram Finance made it possible to have pre-arbitral interim protection, and statutory change in 2015 and judicial reinforcement in Alka Chandewar enabled tribunals to award interim protection which was enforceable. More recently, Amazon v. Future Retail affirmed that even emergency arbitrator orders have a binding effect, and India was put in the mainstream of the global system of arbitration friendly jurisdictions. Nevertheless, the image is still not complete. Although some progress has been made in the context of interim relief, the approach to final equitable remedies, including rescission, rectification, or specific performance has been patchy and usually tribunals have to rely on parallel court oversight.

This is a notable gap that is observed in the backdrop of the international practice. The United Kingdom specifically states that tribunals are entitled to ensure equitable remedy, Singapore allows a balanced discretion between tribunal and judicial support, and institutionalised rules (as in the case of the ICC and SIAC) allows arbitrators discretion to allow urgent equitable relief. The following comparative experiences imply that arbitration is as strong as it is autonomous and efficient, and at the same time, it produces remedies that are corresponding to the substance of the conflict. To India, it is one of

integration, in effect, inclusion of equitable reliefs into the arbitral mainstream without compromising enforceability.

It still has plenty of room to be explored. The possibility of applying the New York Convention to equitable awards, though having been at least technically accepted, remains a challenging issue in which remedies are considered as being supervision. Similarly, an empirical study of the practical implementation of the Indian tribunals in terms of the equitable claims would prove invaluable to the existing doctrinal discussions by providing the necessary evidence on whether or not these remedies are sought, granted and enforced in practice.

The lesson that comes out of this research is very basic yet urgent: impartial solutions in the arbitration should cease being accepted as an exception and become trusted tools of justice. In the case of practitioners, this involves preparing fair claims that are accurate, and basing the claims on the statutory and contractual authority. In the case of legislators, it necessitates a statutory directive that comes out clearly to authorize tribunals to issue final fair reliefs. In the case of arbitral institutions, the introduction of systematic principles of fair remedies may introduce the much-desired consistency without loss of flexibility.

Finally, arbitration legitimacy lies in the fact that it must not only offer efficient solutions but just solutions as well. In a closer adoption of equitable remedies, both by legislative reform, judicial assistance and by institutional invention, India can see to it that arbitration becomes a place in which justice is not only done, but perceived to be done.

XIII. REFERENCES

A. Primary Sources

1. Sundaram Fin. Ltd. v. NEPC India Ltd., (1999) 2 S.C.C. 479 (India).
2. Alka Chandewar v. Shamshul Ishrar Khan, (2017) 16 S.C.C. 119 (India).
3. Amazon.com NV Inv. Holdings LLC v. Future Retail Ltd., (2022) 1 S.C.C. 209 (India).

4. Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corp. Ltd., (2022) 1 S.C.C. 131 (India).
5. Channel Tunnel Grp. Ltd. v. Balfour Beatty Constr. Ltd., [1993] A.C. 334 (H.L.) (appeal taken from Eng.).
6. Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), 335 F.3d 357 (5th Cir. 2003) (U.S. Ct. App. 5t h Cir.).
7. ICC Case No. 10596 of 2000, Final Award (2000), reprinted in 16 ICC Int'l Ct. Arb. Bull. 76 (2005).

B. Statutes and Rules

1. Arbitration and Conciliation Act, No. 26 of 1996, India Code (1996).
2. Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, Gazette of India, Jan. 1, 2016 (India).
3. Specific Relief Act, No. 47 of 1963, India Code (1963).
4. Arbitration Act 1996, c. 23, U.K.
5. International Arbitration Act 1994, c. 143A, Sing.
6. UNCITRAL Model Law on Int'l Com. Arb., U.N. Doc. A/40/17, annex I (1985), with amendments by U.N. Doc. A/61/17, annex I (2006).
7. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 38.
8. ICC Rules of Arbitration (2021), available at https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/.
9. LCIA Arbitration Rules (2020), available at https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx.
10. SIAC Rules (2016), available at https://siac.org.sg/siac-rules-2016.

C. Secondary Sources

1. Gary B. Born, International Commercial Arbitration (3d ed. 2021).
2. Emmanuel Gaillard, Legal Theory of International Arbitration (2010).

3. Alan Redfern & Martin Hunter, Law and Practice of International Commercial Arbitration (6th ed. 2015).
4. Albert Jan van den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation (1981).
5. Albert Jan van den Berg, Enforcement of Arbitral Awards under the New York Convention: Experience and Prospects, 6 Int'l Bus. L.J. 11 (1998).
6. Jan Paulsson, Standards for Granting Equitable Relief in Arbitration, 22 Arb. Int'l 301 (2006).
7. Michael Hwang & John Choong, The Role of Equity in International Arbitration, in Contemporary Issues in International Arbitration and Mediation 195 (Arthur W. Rovine ed., 2012).
8. Gaurav Pachnanda, Interim Reliefs in International Commercial Arbitration – Indian Perspective, 6 Indian J. Arb. L. 115 (2017).