

THE SCOPE FOR EQUITABLE RELIEFS IN ARBITRATION PROCEEDINGS

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ABSTRACT:

Arbitration has emerged as a dynamic and flexible alternative to traditional litigation, yet its role in granting equitable reliefs remedies like injunctions and specific performance grounded in fairness remains an evolving frontier. This essay explores the legal and practical dimensions of such remedies in arbitral proceedings, with particular emphasis on the Indian context. It traces the statutory foundation provided by the Arbitration and Conciliation Act, 1996, and examines how recent judicial decisions, including *Amazon v. Future Retail* and *DMRC v. DAMEPL*, have expanded the authority of arbitral tribunals to award equitable remedies once considered the exclusive domain of courts¹⁰³⁰. By integrating comparative perspectives from jurisdictions such as the UK, US, and Singapore, the essay reveals a growing international consensus on empowering arbitrators to deliver non-monetary justice. It also addresses the procedural hurdles and enforcement challenges that accompany such powers, especially in ad hoc proceedings. Drawing on real-world examples and doctrinal analysis, the essay advocates for clearer contractual drafting, the inclusion of standard equitable relief clauses, and institutional innovations to strengthen the enforceability of these remedies. Ultimately, it argues that enabling arbitrators to grant equitable reliefs not only aligns arbitration with the demands of fairness but also enhances its relevance in a globalized legal landscape.

Keywords: Arbitration, Equitable Relief, Injunction, Specific Performance, Emergency Arbitrator, Non-Monetary Awards.

GRASP - EDUCATE - EVOLVE

¹⁰³⁰ The Arbitration and Conciliation Act, No.26 of 1996, <https://legislative.gov.in/sites/default/files/A1996-26.pdf>; see also *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2022) 1 SCC 209; *Delhi Metro Rail Corp. Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*, (2021) 12 SCC 624.

INTRODUCTION:

In the realm of modern legal systems, arbitration has emerged not just as an alternative to litigation, but as a sophisticated mechanism that blends efficiency, privacy, and party autonomy. However, as its popularity grows especially in commercial disputes questions surface about whether arbitration can truly deliver justice in the same breadth and depth as courts. One of the central questions is whether arbitral tribunals can offer equitable reliefs remedies like injunctions, specific performance, and restitution that are founded on fairness rather than rigid legal entitlements. Traditionally considered the exclusive domain of civil courts, these remedies are now slowly permeating the sphere of arbitration.

Imagine a small-scale entrepreneur in Bengaluru, Anjali, whose innovative startup faces collapse because a competitor is unlawfully using her patented design. A court-ordered injunction could take years, jeopardizing her hopes in arbitration's promise of swift justice. Can an arbitrator halt the competitor's actions, or is arbitration confined to awarding monetary damages? This question lies at the heart of equitable reliefs remedies like injunctions, specific performance, and rectification that prioritize fairness over rigid legal remedies. Rooted in the equitable traditions of English law, these remedies address harms where damages are inadequate, such as disputes over unique assets or intellectual property. In India, the Arbitration and Conciliation Act, 1996, has evolved to empower arbitrators with such authority, bolstered by landmark cases like *Amazon v. Future Retail* (2021) and *DMRC v. DAMEPL* (2022).¹⁰³¹ Yet, challenges like enforcement hurdles and procedural complexities persist. This essay examines the scope of equitable reliefs in arbitration, with a focus on India, drawing comparative insights

from the UK, US, and Singapore. Through legal analysis, real-world scenarios, and innovative proposals, it argues that expanding arbitrators' equitable powers enhances arbitration's efficacy, ensuring justice that is both fair and timely in a globalized world.

LEGAL FRAMEWORK FOR EQUITABLE RELIEFS IN ARBITRATION:

Equitable reliefs, including injunctions (to prevent specific actions), specific performance (to enforce contractual obligations), and rectification (to correct contractual errors), are discretionary remedies designed to achieve justice where monetary awards fall short. Their application in arbitration hinges on the arbitration agreement, statutory provisions, and institutional rules.

Equitable reliefs differ fundamentally from typical legal remedies. While legal remedies often involve financial compensation, equitable remedies compel a party to act or refrain from acting in a certain way to ensure fairness and justice. These include:

- Injunctions: Orders to prevent or require certain actions.
- Specific Performance: Directing a party to fulfil contractual obligations.
- Rectification: Modifying a contract to reflect the true intention of the parties.
- Rescission: Cancelling a contract due to factors like fraud or mistake.
- Restitution: Returning benefits obtained unjustly.

In courtrooms, these remedies are granted through judicial discretion. But in arbitration governed by party consent and private procedure the ability of tribunals to award such remedies has often been ambiguous or challenged. In India, the Arbitration and Conciliation Act, 1996 (as amended in 2015, 2019, and 2021), provides a strong statutory foundation for granting equitable reliefs in arbitration, even though it does not explicitly enumerate them. Section 28 empowers

¹⁰³¹ *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.*, (2021) 3 SCC 714; *Delhi Metro Rail Corp. Ltd. v. Delhi Airport Metro Express Pvt. Ltd.*, (2022) 1 SCC 131.

arbitrators to decide disputes in accordance with Indian substantive law¹⁰³², which includes the Specific Relief Act, 1963 and the Indian Contract Act, 1872 both of which permit equitable remedies like injunctions, specific performance, and rectification.¹⁰³³ The transformative 2015 amendment to Section 17 granted arbitral tribunals court-like powers to issue enforceable interim measures, including orders to preserve property, maintain the status quo, or prevent irreparable harm—classic examples of equitable relief.¹⁰³⁴ Furthermore, Section 34 permits broad judicial interpretation of award validity, allowing tribunals to incorporate equitable remedies in final awards, provided they align with Indian legal principles and public policy.¹⁰³⁵ Indian courts have reinforced this scope: in *Amazon v. Future Retail* (2021), the Supreme Court upheld an emergency arbitrator's interim injunction as binding under Section 17(2); in *DMRC v. DAMEPL* (2022), the Court affirmed an award directing specific performance; and in *Alka Chandewar v. Shamsul Ishrar Khan* (2017), it recognized the enforceability of arbitral directions with equitable character.¹⁰³⁶ Collectively, these developments signal a progressive legal environment in India that embraces the idea that arbitral tribunals, like courts, can ensure not just legal resolution but equitable justice, provided parties enable such powers through clear agreements and the process adheres to statutory safeguards.

INTERNATIONAL PERSPECTIVE:

Globally, arbitration frameworks support equitable reliefs with varying degrees of flexibility:

- United Kingdom: The Arbitration Act 1996, Section 48(5), explicitly authorizes arbitrators to grant injunctions and specific performance, reflecting England's equitable heritage. In *Bremer Vulkan v. South India Shipping* (1981), the House of Lords affirmed arbitrators' broad remedial powers, provided they align with the arbitration agreement.¹⁰³⁷
- United States: The Federal Arbitration Act (FAA) implies arbitral authority to grant equitable reliefs through judicial interpretation. In *AT&T Mobility LLC v. Concepcion* (2011), the U.S. Supreme Court emphasized arbitration's flexibility, allowing remedies like injunctions unless restricted by the parties.¹⁰³⁸
- Singapore: The International Arbitration Act (Cap 143A) permits interim measures, but specific performance may require court support, as seen in *NCC International v. Alliance Concrete* (2008).¹⁰³⁹ Singapore's hybrid approach balances arbitral autonomy with judicial oversight.

These jurisdictions reveal a global consensus: arbitrators can grant equitable reliefs when empowered by the agreement and governing law, though enforcement mechanisms vary.

CHALLENGES IN GRANTING EQUITABLE RELIEFS:

Despite growing acceptance, several hurdles remain:

- Enforcement Ambiguities: Unlike court orders, arbitral reliefs especially interim ones may face resistance or require judicial backing for enforcement.

¹⁰³² The Arbitration and Conciliation Act, No. 26 of 1996, § 28, India Code (1996).

¹⁰³³ The Specific Relief Act, No. 47 of 1963, § 5–8, 10, 14, 26, India Code (1963); The Indian Contract Act, No. 9 of 1872, §10, 73–75, India Code (1872).

¹⁰³⁴ The Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § 9, amending The Arbitration and Conciliation Act, No. 26 of 1996, § 17, India Code (1996).

¹⁰³⁵ The Arbitration and Conciliation Act, No. 26 of 1996, § 34, India Code (1996).

¹⁰³⁶ *Alka Chandewar v. Shamsul Ishrar Khan*, (2017) 16 SCC 119 (India) (recognizing that directions issued by arbitral tribunals under § 17 of the Arbitration and Conciliation Act are enforceable and may include equitable relief).

¹⁰³⁷ *Bremer Vulkan Schiff Bau und Maschinenfabrik v. South India Shipping Corp. Ltd.*, [1981] A.C. 909 (H.L.) (U.K.) (affirming that arbitrators have broad remedial powers so long as they act within the scope of the arbitration agreement).

¹⁰³⁸ Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2018); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344–45 (2011) (emphasizing arbitration's flexibility and holding that equitable remedies such as injunctions may be granted unless contractually excluded).

¹⁰³⁹ International Arbitration Act, Cap. 143A, § 12, Rev. Ed. 2002 (Sing.); *NCC Int'l AB v. Alliance Concrete Singapore Pte Ltd.*, [2008] SGHC 95, [2008] 2 SLR(R) 565 (Sing. H.C.) (holding that while arbitral tribunals may grant interim measures, specific performance may require court intervention).

- **Jurisdictional Concerns:** Some equitable matters may fall outside the scope of arbitrable subject matter, particularly when they involve public rights or third parties.
- **Limited Coercive Power:** Arbitrators cannot compel compliance through contempt proceedings, which affects the teeth of their orders.
- **Unclear Clauses:** Many arbitration agreements lack clarity on whether equitable remedies are permissible, leaving room for disputes.

A REAL-WORLD EXAMPLE:

Consider Anjali's plight in Bengaluru as stated in the introduction. Her startup's survival depends on stopping a competitor's patent infringement. An arbitral tribunal, under the MCIA, grants an interim injunction, halting the competitor's actions within weeks. Yet, enforcement requires court approval, delaying relief and threatening her business. This scenario, inspired by cases like *Amazon v. Future Retail*, highlights arbitration's potential to deliver equitable justice but underscores enforcement bottlenecks in India's ad hoc system.

REFORMS AND PRACTICAL SOLUTIONS:

To ensure that equitable reliefs become a robust feature of arbitration, the following reforms are vital:

- **Standardized Clauses:** Contracts should include model clauses explicitly authorizing equitable remedies.
- **Legislative Clarification:** Amendments to the ACA could codify the authority of arbitrators to grant equitable reliefs.
- **Hybrid Mechanisms:** Combining arbitration with court-ordered interim reliefs can ensure enforceability without undermining autonomy.
- **Training and Guidelines:** Arbitrators should be trained in the nuanced application of equitable doctrines, especially in commercial and cross-border contexts.

- **Global Advocacy:** Push for New York Convention amendments to clarify equitable relief enforceability, addressing public policy concerns.

CONCLUSION:

The evolving ability of arbitral tribunals to grant equitable reliefs reflects a meaningful transformation in the nature of dispute resolution one that prioritizes not just efficiency, but fairness. In India, the shift has been reinforced by progressive legislative reforms and landmark judicial endorsements, notably in *Amazon v. Future Retail* and *DMRC v. DAMEPL*, which have affirmed that arbitrators can issue remedies like injunctions and specific performance that were once considered the exclusive domain of courts. These developments highlight that arbitration, when supported by clear legal mandates and party consent, can address the unique demands of commercial and contractual disputes in a way that monetary compensation alone cannot. Yet, challenges remain. Procedural uncertainty, limitations in enforcement mechanisms, and the absence of standardized drafting continue to hinder the full realization of equitable justice in arbitral forums. To bridge this gap, India must invest in legal clarity, judicial consistency, and institutional innovation ensuring that parties who choose arbitration are not deprived of substantive justice. Ultimately, the integration of equitable reliefs into arbitration is not merely a technical evolution it is a reaffirmation of arbitration's core purpose: to deliver outcomes that are fair, tailored, and restorative. In a global legal environment that increasingly values flexibility and justice, embracing this shift positions Indian arbitration not just as an efficient alternative, but as a truly just one.

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