



HARMONISING PROCEDURAL FAIRNESS AND EFFICIENCY: STRIKING A BALANCE IN ARBITRATION

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ABSTRACT

Arbitration has become a preferred means of dispute resolution in commercial disputes, commended for its flexibility, party autonomy and potential for swift resolution of disputes. However, this has largely been matched by the need to ensure procedural fairness, which can lead to increased cost, time, and complexity. Procedural due process mandates that all legal actions be fair and that each party engaged should be given notice of the arbitral proceedings and be treated equally before the legally constituted arbitral tribunal. Though in Arbitration the due process requirements are of great importance, where are their limitations? Can the equal treatment and procedural fairness occurs at the cost of arbitral efficiency? How far can this be stretched? The parties in arbitration are often worried about the delays, increased costs and extra “judicialization of the arbitral process” making it almost formal and parallel to litigation. The tension between procedural fairness and efficiency has emerged as a hallmark challenge for arbitration in modern contexts. Overindulgence in due process—commonly referred as “due process paranoia” can lead tribunals to over-accommodate procedures in anticipation of the validity of their awards, while overindulgence in efficiency can undermine the right of parties to a fair hearing. This article offers a critical evaluation of the underlying tension between these twin goals by examining institutional rules, national arbitration law, and related case law. Through comparative examination of India, the United Kingdom, Singapore, and international soft law regimes, the article explains how arbitral tribunals, institutions, and parties reconcile these competing demands. The article espouses a principled approach based on proportionality, procedural flexibility, and contextually determined discretion. It concludes by offering practical recommendations designed to harmonize fairness and efficiency, and thereby optimize the legitimacy and utility of arbitration as a means of resolving disputes.

I. Introduction

Arbitration has become the focal point of contemporary dispute resolution, both domestically and globally, in commercial contexts. Once historically an afterthought to state-backed court systems, arbitration has, in the last few decades, undergone a dramatic conversion into the preferred choice—if not the default choice—of resolving sophisticated, high-value, and cross-border disputes. Not coincidental, this transformation indicates a broad shift in international commercial and legal thinking toward mechanisms that emphasize efficiency,

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party autonomy, and procedural flexibility without compromising the legitimacy of the arbitral award.

Its roots can be traced back to the mid-20th century; however, its sheer expansion has been specially encouraged since the 1980s. One of the key driving factors behind this expansion has been the international legal framework that guarantees the recognition and enforcement of arbitral awards. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is widely recognized as one of the most successful private international law treaties with over 170 signatories¹. The treaty facilitates the enforcement of arbitral awards across the globe with minimal assistance from courts. This is a convenient and dependable alternative to the conventional lawsuits.

The 1985 UNCITRAL Model Law on International Commercial Arbitration is significant.² It has served as a model for the law of arbitration in numerous states such as India, Singapore, Canada, and Australia. The Model Law renders the law of arbitration more standardized and predictable, thus improving the terms of international business under the law.

The commercial rationale for the spread of arbitration is also compelling. In a globalized world of global commerce, joint ventures, and multinational enterprise, parties increasingly do not want to risk their assets before foreign or potentially biased foreign tribunals. Arbitration offers a neutral forum where parties can select not only the seat and rules of arbitral procedure but also the governing law to be applied and the arbitrators. Such a degree of control is attractive to sophisticated commercial operators who prefer control, certainty, and confidentiality in the resolution of disputes.

In addition, arbitration will often be a more effective substitute for litigation, if only hypothetically. Institutional rules will often have streamlined procedures, flexible schedules, and the possibility of expedited procedures. Unlike litigation, arbitration will often be private, thus protecting business relationships and keeping sensitive commercial information out of public eyes.

¹ United Nations, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)*, adopted 10 June 1958, entered into force 7 June 1959, available at https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards

² United Nations Commission on International Trade Law (UNCITRAL), *Model Law on International Commercial Arbitration*, adopted on 21 June 1985, with amendments as adopted in 2006, available at https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

In highly technical, high-stakes sectors such as construction, energy, intellectual property, and international finance, arbitration enables the use of specialist arbitrators who have expertise in the relevant areas, a quality that is commonly lacking in traditional court systems. Such an expert-input-based process is not merely more capable of dealing with difficult legal and factual issues but also renders the process more efficient.

In India, the arbitration process has seen a sea change, especially after the Arbitration and Conciliation Act of 1996 was enacted. Though the early stages of adoption were tainted by judicial interference and procedural lags, the subsequent amendments that occurred, most significantly in 2015, 2019 as well as 2021, tried to bring Indian practices in arbitration in sync with global benchmarks. Some of the significant amendments are the imposition of timelines for the delivery of arbitral awards, the introduction of expedited proceedings, and limiting judicial interference.

The Indian judiciary has played a two-edged role in shaping the arbitration landscape, sometimes championing it with a pro-arbitral bias, sometimes leading through unpredictable or interventionist judgments. Despite such volatility, one of the major trends spotted in recent years has been the trend of judicial restraint coupled with an inclination towards arbitration, as seen through the actions of the Indian Supreme Court. Efforts like the New Delhi International Arbitration Centre (NDIAC) and the setting up of arbitration centers at Mumbai and Hyderabad reflect India's desire to become a leading international arbitration hub.

Among the institutional environments, leading international arbitration centers such as the International Chamber of Commerce (ICC), Singapore International Arbitration Centre (SIAC), London Court of International Arbitration (LCIA), Hong Kong International Arbitration Centre (HKIAC), and American Arbitration Association (AAA) have served as key factors in making the arbitration process professional and effective. These centers offer sophisticated procedural rules, administrative facilities, and administration of panels of arbitrators, thus greatly improving the credibility and effectiveness of the arbitration process. Most organizations have begun employing rapid ways, emergency arbitration procedures, and innovative concepts (such as virtual hearings and electronic filing systems) to maintain pace with the mounting demand for quickness and lower costs. These new concepts have transformed arbitration into a contemporary, diverse, and common process.

While arbitration in itself remains in high esteem, it is replete with contradictions inherent in it. The very essence of the arbitration process is an inherent dialectical contradiction: the need to generate outcomes that are simultaneously procedurally equitable and protective of the rights of all concerned parties, and yet simultaneously moving with alacrity and economically efficient resolution of disputes. These two objectives are not usually compatible. A highly conciliatory process with a focus on speed can sacrifice fairness if parties are not afforded proper time to be heard. Conversely, a highly complex methodology based on sophisticated procedural protection may render arbitration less effective and more expensive—thereby defeating the very purpose of choosing arbitration in the first place.

The dialectical tension has intensified over the period of "due process paranoia." Here, arbitrators, sensitive to the risk of challenge to the legitimacy of their awards, can be inclined to over-accommodate by allowing procedural delay or tolerating an over-superfluity of submissions on the part of the parties. Conversely, in the meantime, the institutional imperative to enhanced efficiency in procedural terms—demonstrated by steps such as summary dismissal and restrictions on document production—has raised questions as to whether the pursuit of efficiency is at the expense of procedural fairness. This article aims to examine the intense tension underlying this phenomenon and how different legal regimes, institutional procedures, and arbitration practices strive to balance an equilibrium between fairness and efficiency. This research endeavor aims to contribute to the current scholarly and practical debate regarding the traits of an ideal arbitration process both at the national and international levels.

II. The Dialectical Relationship: Inherent Tension or Constructive Coexistence?

Concurrent arbitral practice is driven by two underlying imperatives: the imperative of procedural justice and the imperative of effective resolution of disputes. Both imperatives are essential to the legitimacy of arbitration; but both are in tension with each other in the practice. The drive for efficiency, in the interests of saving costs, time, and resources, becomes the overriding commercial goal, especially in high-value financial stakes or multi-jurisdictional cases. But this goal cannot be at the cost of procedural justice, which not only maintains the integrity of the arbitral process but is also essential to the enforceability of arbitral awards under international as well as national law.

The arbitral process doctrine of procedural fairness is characterized by a code of standard principles: fairness in treatment of parties, right to be heard, and impartiality and independence of the arbitral tribunal. These principles have been well articulated in the UNCITRAL Model Law on International Commercial Arbitration, 1985, which mandates that all parties must be given equal opportunity to present their cases on a fair basis and must be treated equally before the tribunal.³ The Indian law on arbitration structure follows these principles, as stipulated under Section 18 of the Arbitration and Conciliation Act, 1996, which enshrines the doctrine of party equality and right to fair hearing.⁴ Fairness thus is just not a moral obligation or a mere hope but a legal mandate, violation of which could lead to the award of an arbitral award to be challenged or to its non-enforceability.⁵ One of the most important interpretational issues is the tension between the procedural fairness and the autonomy of the parties. While parties have the right to devise procedures as mandated by Section 19 of the Act, tribunals cannot compel party-agreed procedures that deviate from principles of fundamental fairness.⁶ However, how far this is limited is arguable, particularly while balancing procedural innovations (such as summary dismissal and limited disclosure) with traditional ideas of fairness.

The solution lies in the appreciation that party autonomy is not unfettered but limited by the procedural legitimacy of the arbitral process. The arbitrator hence plays a double role: to facilitate and supervise—ensuring autonomy is being exercised within equitable boundaries, and protecting that efficiency should not trade-off against legitimacy.

But stressing fairness can lead to over concern with procedure. Arbitrators attuned to the possibility of review that awards are subject to in enforcement or annulment procedures may be tempted to overly procedural solutions to avoid accusations of partiality or failure to respect due process. This state of affairs, commonly called "due process paranoia," contributes to tribunals allowing broad discovery, lengthy hearings, or repeated cycles of submissions, each taking away from overall efficiency. The consequences are serious: increased cost, procedural delays, and ultimately the loss of arbitration's benefit as a swift and inexpensive alternative to litigation.

³ UNCITRAL, *Model Law on International Commercial Arbitration*, Art. 18, U.N. Doc. A/40/17 (1985).

⁴ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*, (2019) 15 SCC 131.

⁵ The Arbitration and Conciliation Act, 1996, s. 18, No. 26 of 1996, Acts of Parliament, 1996 (India).

⁶ The Arbitration and Conciliation Act, 1996, s. 19, No. 26 of 1996, Acts of Parliament, 1996 (India).

Efficiency in arbitration refers to the ability of the arbitral process to resolve disputes promptly, economically, and with the minimum procedural inefficiency.⁷ This includes the prompt appointment of arbitrators, the avoidance of unnecessary procedural formalities, the speedy resolution of issues of substance, and the conduct of effective hearings. Arbitration is procedurally more flexible than litigation, but the flexibility has to be exercised with intent to prevent any risk of inefficiency.

Efficiency tends to be multi-faceted, i.e.:

- i. Temporal efficiency— minimizing unwarranted postponement in adjudication
- ii. Economic efficiency – reducing the costs to the parties and to the tribunal
- iii. Procedural efficiency— doing away with superfluous or redundant procedural steps.⁸

Efficiency is not desirable—it is essential to ensuring that people have faith in arbitration as an effective mechanism for resolving disputes. When arbitration is as slow and costly as litigation, its value proposition is greatly reduced.

Efficiency, although not significantly based on legislative texts, is highly appreciated in institutions' regulation and reform. Institutions like the Singapore International Arbitration Centre (SIAC) and the International Chamber of Commerce (ICC) have instituted expedited procedures and summary dismissal to reduce delays.⁹ Such procedural innovations try to achieve proportionality and expediency and, simultaneously, guarantee fairness; however, their application in practice is generally left to the tribunal's discretion. The 2015 and 2019 amendments to India's Arbitration and Conciliation Act also tried to enhance procedural discipline by inserting strict time frames for the rendering of awards, especially in the case of domestic arbitrations.¹⁰ These legislative amendments, however, have raised issues about whether enshrining efficiency through statutes undermines arbitral independence and fairness.

The inherent challenge lies in the binary thinking of fairness and efficiency as mutually exclusive. In practice, the two factors have to be balanced and not conceived as competitive. A biased process is necessarily inefficient since it stands to be overturned or not applied and

⁷ G. Born, *International Commercial Arbitration*, 3rd ed., Vol. I (Kluwer Law International, 2021), pp. 230–233

⁸ T. Cook and A. Garcia, *International Arbitration: A Practical Guide* (Globe Law and Business, 2014), pp. 147–149.

⁹ Singapore International Arbitration Centre (SIAC) Rules, 2016, r. 5 (Expedited Procedure); International Chamber of Commerce (ICC) Arbitration Rules, 2021, art. 30.

¹⁰ The Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016, s. 29A; The Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019.

hence defeats the purpose of settlement. Conversely, an overly complex process can satisfy all the technical requirements of fairness and fail to satisfy the commercial goals of the parties. Effective arbitration requires a high-level understanding of fairness that is contextual, proportional, and detached from procedural idealism. Arbitral tribunals are required to use discretion circumspectly, based on the particular facts, expectations of the parties, and the nature of the dispute to achieve a balance result to the context. Institutional rules and judicial precedent can guide them, but the ultimate task is to leave it to the tribunal to devise proceedings which are equitable, but commercially reasonable. As the next section illustrates, legal systems and arbitral institutions have evolved various mechanisms to facilitate this exercise in balancing, but unevenly.

III. Institutional and Legal Approaches to Balancing Fairness and Efficiency

This tension between procedural fairness and operational efficiency has been keenly noted by arbitral institutions and legal systems in general. These institutions and legal systems have therefore pursued varied methods that seek to balance these two principles without changing the essential nature of arbitration as a party-centered process that is flexible. These efforts have been made through the form of institutional rules, soft law recommendations, and legislative reforms—each seeking to provide arbitrators with tools to guarantee fairness without compromising procedural efficiency.

Conceptually, procedural fairness and efficiency are inversely related to each other—transitioning to improve one will seem to undermine the other. For example, extensive cross-examination or large document discovery may improve fairness but may cause delay and added cost. On the other hand, keeping strictly to calendars or stopping procedural motions might speed up the process, but at the risk of possibly unfair processes.¹¹

But this two-stage view is becoming more and more seen as too simplistic. Scholars like Jan Paulsson and Emmanuel Gaillard have contended that fairness and efficiency are compatible, but they are mutually exclusive.¹² A fair process, when it is done correctly,

¹¹ Gary Born, *International Arbitration and Forum Selection Agreements*, 6th ed. (Kluwer Law International), p. 57.

¹² J. Paulsson, “Standards of Procedural Fairness in International Arbitration,” *Arbitration International*, Vol. 22, No. 3 (2006), pp. 337–346.

increases efficiency by reducing opportunities for challenges and conflicts. On the other hand, an equally efficient process increases fairness by being cheaper and quicker to attain.

Arbitral institutions are earnestly striving towards achieving fair and efficient results. The International Chamber of Commerce (ICC) has simplified procedures by implementing case management meetings, filing timetables, and determining preliminary steps.¹³ The ICC Rules of 2021 enable tribunals to adopt procedures commensurate with the significance and complexity of every case, while making hearings impartial and utilizing resources efficiently.¹⁴ Likewise, the London Court of International Arbitration (LCIA) facilitates the early resolution of disputes by its 2020 Rules and encourages arbitrators to utilize time and costs wisely.¹⁵

Concurrently, demand for faster processes grows. SIAC, HKIAC, and ICC are where one can opt for faster decisions, minimize what they need to bring, and utilize one arbitrator for some cases.¹⁶ These processes are for less complicated cases, sacrificing elaborate steps for quicker results. They don't, though, deprive the parties of rights since they can opt-out or revert to a more elaborate process if justice requires. Generally, these systems strike a good balance between fairness and efficiency.

In addition to binding formal rules, soft law instruments are useful guidelines. The IBA Rules on the Taking of Evidence in International Arbitration (2020) are not legally binding, yet most utilize them to make evidence processes reasonable and just.¹⁷ The rules permit arbitral tribunals to restrict the quantity of documents and witness statements, yet also ensure it is possible for both sides to present their case reasonably. In the same way, the UNCITRAL Notes on Organizing Arbitral Proceedings (2016) provide efficient and flexible case management, with a focus on adjusting procedural guidelines to meet the specific needs of each case without compromising key fairness principles.¹⁸

Different jurisdictions have enacted different laws catering their own demands and aspirations regarding the arbitration in their country. India has decidedly gone towards strict legislation. The 2015 amendment to the Arbitration and Conciliation Act included a twelve-

¹³ ICC, *Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration*, 2021.

¹⁴ ICC Arbitration Rules 2021, Art. 22(1).

¹⁵ London Court of International Arbitration (LCIA) Arbitration Rules, 2020, art. 14.6.

¹⁶ SIAC Rules, 2016, r. 5; Hong Kong International Arbitration Centre (HKIAC) Administered Arbitration Rules, 2018, sch. 4; Stockholm Chamber of Commerce (SCC) Arbitration Rules, 2017, Appendix II.

¹⁷ International Bar Association, *IBA Rules on the Taking of Evidence in International Arbitration*, 2020.

¹⁸ UNCITRAL, *Notes on Organizing Arbitral Proceedings*, 2016, para. 7.

month limit for domestic arbitrations under Section 29A, with a six-month extension at the consent of both the parties.¹⁹ Although this regulation was meant to assist, it has been criticized for being overly strict in intricate cases, where strict deadlines can damage equity²⁰. The 2019 amendment attempted to rectify this by permitting international commercial arbitration to not adhere to the established time limits if they wish so, understanding the necessity for flexibility based on circumstances.²¹

Singapore and Switzerland have adopted a beneficial approach. Rather than imposing rigid deadlines, they provide tribunals with room for maneuver in adhering to rudimentary principles of fairness. For instance, the Singapore International Arbitration Act does not establish numerous detailed rules, inviting tribunals to be prompt and equitable.²² This minimalist law demonstrates reliance on the abilities and expertise of arbitrators and parties, with court intervention restricted to particular grounds of challenge or invalidation.

National courts guarantee fairness and efficiency through the manner in which they enforce the law. In *Associate Builders v. DDA*, the Indian Supreme Court stated that violation of the rules of fairness is contrary to public policy but cautioned against interference by courts unless there has been real prejudice.²³ This line of jurisprudence is an evolving recognition that not every procedural irregularity indicates a lack of fairness warranting intervention by the courts. The Court emphasized the point that the notion of fair hearing does not include unlimited opportunities to advance one's case and that the power of the arbitrator to control the procedure must be preserved, subject to its not causing a miscarriage of justice.

In *Ssangyong Engineering & Construction Co. Ltd. v. NHAI*, the Court reaffirmed that procedural fairness is an indispensable element of the public policy ground, but the inquiry should extend only to cases of "patent illegality" apparent within the award itself or cases of a violation of natural justice.²⁴ In this case the tribunal has unilaterally amended the basis of the contract in the award under consideration, robbing the claimant of an opportunity to react—this constituted a violation of natural justice making annulment apt. But the ruling also

¹⁹ The Arbitration and Conciliation (Amendment) Act, 2015, s. 29A.

²⁰ B. N. Srikrishna, "Institutional Arbitration in India: A Way Forward," *Indian Journal of Arbitration Law*, Vol. 5, No. 2 (2016), pp. 1–9.

²¹ The Arbitration and Conciliation (Amendment) Act, 2019, s. 29A(1), proviso.

²² Singapore International Arbitration Act (Cap. 143A, 2002 Rev Ed.), s. 12.

²³ *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49.

²⁴ *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131.

enunciated an express restraint, underscoring that courts should refrain from stepping into the review of merits or reconsideration of evidence under the guise of ensuring fairness.²⁵

A similar doctrine was laid down by the Delhi High Court in the case of *NTPC v. M/s Voith Hydro JV*, where the Court held that arbitral tribunals are not required to grant an open-ended or unlimited hearing and are privileged to place some limits on cross-examination or submissions, if such limits are proportionate to the needs of the case.²⁶ The decision emphasized that efficiency should never be set against fairness and believed that tribunals are best equipped to rationalize proceedings unless deviation results in evident prejudice.

Globally, courts have taken a restrictive approach when hearing allegations of due process violations. In *Zermalt Holdings SA v. Nu-Life Upholstery Repairs Ltd. (UK)*, the court declined to set aside the award based solely on one party's assertion that the tribunal would not allow further rebuttal, stating that the "right to be heard" does not encompass unlimited access to argument.²⁷ Likewise, in *Guangdong Longyuan Construction Co. Ltd. v. CDE*, the Singapore High Court reiterated the position that the rule of fairness must be considered in its specific context, and arbitral discretion is typically regarded as valid unless there is clear evidence of unfairness.²⁸ These rulings reflect the judiciary's bias in favor of the procedural autonomy of tribunals and contextual as opposed to rigid interpretation of fairness.

These developments point to a changing legal consensus that fairness and efficiency are not necessarily conflicting values but have to be judiciously balanced. The courts have been willing to affirm procedural guidelines created by tribunals and have only interfered in cases of patent miscarriage of justice. The guiding principle that can be ascertained from case law is not whether both sides had all opportunities presented to them, but whether both sides were presented with a fair opportunity to place their case on the basis of the original expectations set out. Previously, institutions and legal traditions have moved away from the simplistic binary opposition to one where the need to balance equity and efficiency in arbitration proceedings has been better understood. The proportionality thesis has emerged as the signature of current institutional thinking with legislative and judicial evolution being centered on greater deference to the discretions exercised by arbitral tribunals. Yet, this quest for balance is a continuous and

²⁵ *Ibid.*, at para 42

²⁶ *NTPC Ltd. v. Voith Hydro JV*, 2023 SCC OnLine Del 2130.

²⁷ *Zermalt Holdings SA v. Nu-Life Upholstery Repairs Ltd.*, [1985] 2 EGLR 14 (QB).

²⁸ *Guangdong Longyuan Construction Co. Ltd. v. CDE*, [2020] SGHC 96.

never-ending endeavor as arbitration continues to evolve to counter evolving expectations of parties and the necessities of international dispute settlement.

IV. Case Study of India: Legislative Reforms, Judicial Trends, and Practical Challenges

India's arbitration process is where to look to see how fairness and efficiency are changing. In the past decade, new laws and court rulings have sought to ensure that arbitration is a dependable process to settle disputes. There are, however, practical issues with change implementation, along with ongoing issues with formal arbitration, that hinder the proper balance between efficiency and fairness from being struck.

The law reform process started on a positive note with the Arbitration and Conciliation (Amendment) Act, 2015.²⁹ The bill aimed to minimize court interference, place time limits, and provide the parties with more autonomy. The most significant reform was the addition of a new Section 29A, which gave a twelve-month time frame to finish local arbitrations. This measure was implemented to put an end to the long delays in arbitration, which have been a problem in India for decades.³⁰ But its extension to all arbitrations, irrespective of their complexity, soon came under attack. Where matters are intricate, justice takes a long time to read documents, opinion of experts, and cautious deliberation, which cannot be achieved within the time limit granted.³¹

Noting this tension, the 2019 Amendment exempted international commercial arbitration from Section 29A and provided tribunals with more latitude in cross-border arbitration. Meanwhile, the amendment shifted the point of departure of the timeline from the constitution of the tribunal to the completion of pleadings, providing more scope for maneuver. These amendments imply that legislature recognized that procedural efficiency must be calibrated according to circumstances, not applied uniformly to every case.

However, legislative skill has not always been accompanied by institutional capability. The failure to develop a strong institutional ecosystem of arbitral institutions in India, in spite of legislative promulgation of institution-based arbitration by the Arbitration Council of India

²⁹ The Arbitration and Conciliation (Amendment) Act, 2015, Statement of Objects and Reasons.

³⁰ The Arbitration and Conciliation Act, 1996, s. 29A, No. 26 of 1996, Acts of Parliament, 1996 (India).

³¹ P. Tiwari, "The One-Year Deadline: Issues and Challenges," *Indian Journal of Arbitration Law*, Vol. 6, No. 1 (2017), pp. 34–42.

(ACI) under the 2019 Act, has stalled procedural innovation.³² The Council is still non-operative, and ad hoc arbitration remains the default.³³ Under such circumstances, a lack of professional case management and codified procedural rules usually results in inconsistency and inefficiency, even when tribunals intend to be impartial.

Judicial reactions to this dilemma have differed significantly. Indian judiciary bodies have progressively acknowledged that procedural equity is not synonymous with procedural extremism. In the case of *Larsen and Toubro Ltd. v. MMRDA*, the Bombay High Court noted that the obligation to provide a "fair opportunity" does not require the acceptance of all procedural requests made by the parties.³⁴ Likewise, in *Delhi Metro Rail Corporation Ltd. v. M/s Telecommunication Consultants India Ltd.*, the Delhi High Court asserted that rigid compliance with timelines must not take precedence over the principles of natural justice, particularly when delays are not attributable to the parties involved.³⁵ These judgments reinforce a tenet of proportionality within procedural frameworks—ensuring that fairness does not serve as an excuse for delay.

But the judiciary has stepped in where pursuit of efficiency has intruded upon fairness. In the case of *Project Director, National Highways v. M. Hakeem*, the Supreme Court struck down an arbitral award on the ground that the tribunal had awarded amounts greater than the contract stipulated, holding that such behavior was against the public policy requirement.³⁶ Although the main concern of the case was with jurisdictional excess, the case indirectly established the doctrine that procedural expediencies—where they intrude upon substantive rights—cannot be justified under the cloak of efficiency.

Practical challenges persist at the enforcement stage. The habitual appeal to "public policy" and "patent illegality", section 34 grounds of setting aside of awards is an expression of a mix of suspicion of arbitral awards and a persistent judicial predisposition against reviewing substantive merits in the service of maintaining equity.³⁷ While judicial attitude has relaxed in recent years, it is a barrier to procedural efficiency because tribunals anticipate more

³² The Arbitration and Conciliation Act, 1996, s. 43B, No. 26 of 1996, Acts of Parliament, 1996 (India).

³³ A. Singh, "Institutional Arbitration in India: Myth or Reality?", *NLS Business Law Review*, Vol. 6 (2020), pp. 15–24.

³⁴ *Larsen and Toubro Ltd. v. MMRDA*, 2016 SCC OnLine Bom 5806.

³⁵ *Delhi Metro Rail Corporation Ltd. v. Telecommunication Consultants India Ltd.*, 2022 SCC OnLine Del 2469.

³⁶ *Project Director, National Highways v. M. Hakeem*, (2021) 9 SCC 1.

³⁷ *ONGC Ltd. v. Western Geco International Ltd.*, (2014) 9 SCC 263; *Ssangyong Engineering*, supra n. 6.

judicial scrutiny and therefore turn to cautious, time-consuming procedure—a phenomenon already recognized in the domain of "due process paranoia."

In addition, their interaction with various regulatory frameworks has given rise to an increase in procedural complications. For instance, government contract arbitrations are usually subjected to concurrent proceedings by the Comptroller and Auditor General (CAG), Vigilance Commission, or departmental inquiries, all of which prolong arbitral proceedings and cause uncertainty to private parties.³⁸ Such inherent issues reduce the effective implementation of both fairness and efficiency unless met with comprehensive policy reforms.

Parties often seek successive adjournments or make frivolous applications under arbitration on the pretext of seeking procedural rights in order to have a fair hearing.³⁹ For example, in *DMRC v. Delhi Airport Metro Express Pvt. Ltd.*,⁴⁰ the Delhi High Court noted that Indian arbitration participants have been known to employ procedural tactics as a subtle forum shopping and to create delay. Some parties willfully make enormous document demands or disclosures against their counterparts to exhaust their time and resources. Though fairness demands reasonable access to evidence, very broad discovery tends to lead to less efficiency.⁴¹

Parties have historically objected to appointment of arbitrators or jurisdiction of the tribunal at more than one stage—pre-arbitration, arbitration, and post-award under Section 34 or 37 and thus turn arbitration into a drawn-out litigation-type exercise. Courts have increasingly become sensitized to such tactics. In *National Highways Authority of India v. Gayatri Projects*,⁴² the court cautioned against the "weaponization of due process rights" to forestall the efficiency requirements under Section 29A.

Not all arbitral institutions are so well-situated to impose effective yet fair proceedings. The absence of uniform standards and differences in procedural rigour among institutions exacerbate the problem. Many Indian arbitral centres lack case managers, procedural calendars, and review mechanisms. Their absence limits their ability to advise tribunals on timeliness and procedural balance.⁴³ While leading institutions like SIAC or ICC have provision for summary

³⁸ S. Narayan, "Public Sector Contracts and Arbitration in India," *Economic and Political Weekly*, Vol. 54, No. 7 (2019), pp. 10–13.

³⁹ Born, G., *International Commercial Arbitration*, 3rd ed. (2021), p. 1347.

⁴⁰ *Delhi Metro Rail Corporation v. Delhi Airport Metro Express Pvt. Ltd.*, (2021) SCC OnLine Del 3031.

⁴¹ Paulsson, J., "Fairness and Efficiency: Friends or Foes?" in *Arbitration: The Next Fifty Years* (ICCA Congress Series, 2018), pp. 57–75.

⁴² *National Highways Authority of India v. Gayatri Projects*, 2022 SCC OnLine Del 3122.

⁴³ Malhotra, O.P., *Law and Practice of Arbitration and Conciliation*, 7th ed. (2020), Vol. 1, pp. 451–456.

procedures, video hearings, and procedural calendars, smaller or regional institutions have archaic or skeletal rules. This results in inconsistency and unpredictability in procedural design. Unlike international institutions, Indian centres hardly impose real cost sanctions for party misbehaviour or procedural abuse, reducing deterrence for delay tactics. The Law Commission of India, in its 246th Report (2014), pointed out that India's arbitration infrastructure must be urgently standardised and professionalised to deliver efficient and fair proceedings.⁴⁴ Progress, however, has been piecemeal.

Though amendments to laws (such as Sections 5 and 34 of the Arbitration and Conciliation Act) seek to limit court intervention, judicial interference is a major issue. Parties approach courts at the pre-arbitration or post-award stage, raising grounds of fairness like non-hearing or bias of the arbitrator. Courts averse to being stigmatised as unfair at times allow such challenges freely, at the expense of efficiency. Indian courts vary considerably on matters such issues as limitation under Section 29A, ambit of natural justice violations, and how to determine a "patently illegal" award.⁴⁵ Such variation induces uncertainty, which gives rise to over-cautiousness, a hindrance to efficiency. Even arbitration being final and binding, Section 34 or 37 challenges are used by parties to re-agitate facts, significantly prolonging the life cycle of the dispute. In *Hindustan Construction Co. Ltd. v. Union of India*,⁴⁶ the Supreme Court recognised the adverse effect of excessive post-award litigation, implying that arbitral autonomy should be maintained to ensure efficiency.

The COVID-19 pandemic necessitated immediate procedural innovations, such as remote hearings, electronic filing, and asynchronous submissions. While efficient, these innovations also gave rise to concerns about fairness. Not every witness, or every party, possessed stable internet, secure networks, or private rooms for remote participation. Virtual hearings at times reduced effectiveness of witness examination and cross-examination, straining procedural integrity. Parties inexperienced in e-discovery or virtual platforms carried higher procedural burdens, especially in document-intensive or technical cases. Post-pandemic, hybrid models are more necessary to ensure efficiency gains without compromising procedural dignity and access.

⁴⁴ Law Commission of India, *246th Report on Amendments to the Arbitration and Conciliation Act, 1996* (2014), Paras 10–12.

⁴⁵ See contrasting rulings in *Ssangyong Engineering v. NHAI*, (2019) 15 SCC 131 and *South East Asia Marine Engg. v. Oil India Ltd.*, (2020) 5 SCC 164.

⁴⁶ *Hindustan Construction Co. Ltd. v. Union of India*, (2020) 17 SCC 324.

The Indian experience underlines the difficulty of balancing procedural justice with efficiency through legislative reforms only. While the reforms that have put in place good mechanisms and institutionalized transparency in standards, residual institutional and infrastructure shortcomings—coupled with an unresponsive judiciary—still hinder concrete advancement. The test of the future lies in overcoming strict rule-based regulation to include capacity-building exercises that can make tribunals as well as litigants adapt arbitral procedures that are contextually suitable, equitable, and efficient.

V. Comparative Insights and International Jurisdictions and Their Best Practices

The balance between fairness and efficiency is not an Indian issue exclusively. A comparison shows that all the major seats of arbitration and international institutions have developed methods—official and unofficial—to achieve a good balance. The methods differ in the extent to which they are used and applied, but all agree that freedom of procedure has to be used discretely and wisely. This section deals with some chosen locations and international systems that achieve a good balance of fairness and efficiency.

The UNCITRAL Model Law on International Commercial Arbitration has been adopted by over 85 nations, including India. It provides general rules for the procedure while being respectful of the parties' choices and giving the tribunal freedom to handle the case.⁴⁷ Article 18 demands equal treatment of all parties and that everyone is given an equal opportunity to present themselves—this is regarded as an essential element of fair procedures.⁴⁸ Tribunals are not, however, obligated to provide absolute freedom in the way they handle the procedures. The Explanatory Note by the UNCITRAL Secretariat asserts that the jurisdiction of the tribunal to control time, hearings, and submissions is legitimate, with the proviso that the chance to be heard is substantial and reasonable.⁴⁹

The United Kingdom, not being a Model Law follower, is now a leading arbitration seat, largely because of the Arbitration Act of 1996 that grants significant discretion to arbitral tribunals.⁵⁰ Under Section 33 of the Act, arbitrators are to apply procedures that reduce

⁴⁷ UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006.

⁴⁸ *Ibid.*, Art. 18.

⁴⁹ UNCITRAL, Explanatory Note by the UNCITRAL Secretariat on the Model Law, para 7.

⁵⁰ Arbitration Act, 1996 (UK).

unnecessary expense and delay and that are fair and just in treatment of all parties.⁵¹ English courts, generally, are inclined to respect the administration of arbitral tribunals. In *Primera Maritime v. Jiangsu Eastern Heavy Industry*, the Court held that the right to be heard does not imply an absolute right to produce evidence or extend proceedings, thus reaffirming that procedural efficiency does not have to come at the cost of fairness.⁵²

Singapore, often cited as a model of arbitration efficiency, incorporates the UNCITRAL Model Law through the International Arbitration Act, complemented by robust institutional rules and judicial support.⁵³ In *China Machine New Energy Corp v. Jaguar Energy Guatemala LLC*, the Singapore Court of Appeal reaffirmed the need for balance by holding that procedural fairness must not be assessed in a vacuum; efficiency measures such as limited cross-examination were upheld as long as they were disclosed in advance and applied uniformly.⁵⁴ The Court emphasized that tribunals are not bound to “tick every procedural box” but must ensure that parties have a real opportunity to present their case.⁵⁵

France, which follows a civil law tradition, provides perhaps the most arbitration-friendly judicial stance. The French Code of Civil Procedure allows minimal court intervention and strongly favors the finality of awards.⁵⁶ In *Fouchard Gaillard Goldman on International Commercial Arbitration*, it is noted that French courts presume procedural fairness unless there is manifest evidence to the contrary.⁵⁷ The Paris Court of Appeal has consistently held that an arbitral award will only be annulled if the denial of due process had a material effect on the outcome.⁵⁸ This threshold-based approach avoids tactical challenges aimed merely at prolonging enforcement or setting aside procedures.

The United States, governed by the Federal Arbitration Act (FAA), prioritizes efficiency, often at the cost of expansive procedural safeguards.⁵⁹ In *Hall Street Associates v. Mattel Inc.*, the U.S. Supreme Court limited judicial review of awards, affirming that parties could not contractually expand grounds for setting aside an award beyond those provided in

⁵¹ *Ibid.*, Section 33(1).

⁵² *Primera Maritime v. Jiangsu Eastern Heavy Industry Co. Ltd.*, [2013] EWHC 3066 (Comm).

⁵³ International Arbitration Act (Cap. 143A, Rev. Ed. 2002) (Singapore).

⁵⁴ *China Machine New Energy Corp v. Jaguar Energy Guatemala LLC*, [2020] SGCA 12.

⁵⁵ *Ibid.*, at para 95.

⁵⁶ French Code of Civil Procedure, Book IV.

⁵⁷ Fouchard, Gaillard, Goldman, *International Commercial Arbitration* (Kluwer Law International, 1999), p. 1041.

⁵⁸ *Paris Court of Appeal, Judgment of 4 Nov. 2014*, *Revue de l'Arbitrage* 2015

⁵⁹ Federal Arbitration Act, 9 U.S.C. 1–16.

the FAA.⁶⁰ Although U.S. courts occasionally intervene for due process violations, the bar remains high. In *Tempo Shain Corp. v. Bertek Inc.*, the Second Circuit found a due process violation where the arbitrator summarily excluded expert testimony central to the claimant's case.⁶¹ However, such cases are rare, and the general trend favors arbitral discretion and time-bound proceedings.

Across these jurisdictions, institutional rules serve as critical procedural templates. The ICC, LCIA, SIAC, and HKIAC have incorporated best practices such as:

- i. Procedural timetables customized at an early stage,
- ii. Expedited procedures with opt-in or opt-out clauses,
- iii. Page limits, strict deadlines, and limits on witness/expert testimony,
- iv. Cost penalties for dilatory tactics,
- v. Summary dismissal procedures for manifestly unmeritorious claims.⁶²

Such innovations demonstrate that procedural fairness can be safeguarded within a rigorously managed procedural framework. The focus has shifted from formal equality to functional fairness—ensuring each party has a genuine, not unlimited, opportunity to present their case. This functional approach is more adaptable to modern commercial expectations, where time and cost are critical factors in dispute resolution.

Importantly, these jurisdictions also invest in judicial education and institutional infrastructure to support arbitration. Unlike India, where ad hoc proceedings remain dominant and institutional oversight is weak, advanced jurisdictions have fostered ecosystems that support consistent, fair, and efficient arbitration practices.⁶³

International best practices reveal that procedural fairness and efficiency are not mutually exclusive but are mutually reinforcing when tribunals are guided by principles of proportionality, transparency, and party equality. Indian arbitration stands to benefit from these global lessons—particularly in encouraging institutional arbitration, training arbitrators in case management, and ensuring judicial minimalism consistent with party autonomy.

⁶⁰ *Hall Street Associates v. Mattel Inc.*, 552 U.S. 576 (2008).

⁶¹ *Tempo Shain Corp. v. Bertek Inc.*, 120 F.3d 16 (2d Cir. 1997).

⁶² ICC Rules (2021); LCIA Rules (2020); SIAC Rules (2016); HKIAC Rules (2018).

⁶³ C. Born, *International Commercial Arbitration*, 3rd ed. (Kluwer Law International, 2021), pp. 2189–2195.

VI. Harmonising Procedural Fairness and Efficiency: Reforms and the Way Forward

In light of the dialectical tension and contemporary challenges examined above, the need for structural, doctrinal, and institutional reforms to better align procedural fairness and efficiency has become imperative. Effective arbitration in the 21st century must preserve the legitimacy conferred by fair process while delivering on the promise of expedited and cost-effective resolution. Reform strategies must, therefore, be layered—encompassing tribunal practice, institutional architecture, legislative design, and judicial restraint.

Reforming Arbitral Practice: Towards Proactive Tribunal Management

Early Issue Framing and Timetabling:

Tribunals should exercise proactive case management from the outset, for example, by deciding on key issues, outlining procedural steps, and allocating time for hearings. This would allow parties to visualize the process flow without allowing last-minute scope creep or delays.⁶⁴

Proportional Procedural Customization:

Procedures may be adapted according to the complexity of the case and dispute at stake. Documentary-only procedures and expedited timelines may be adopted for less complicated claims, for example, and more layered procedures may be saved for complicated ones.⁶⁵ A sense of fairness is increased where procedures are proportionate to the dispute.

Discouraging Procedural Abuse through Cost Orders:

Tribunals can use cost allocation more often as a deterrent to procedural abuse. The use of adverse cost sanctions can deter frivolous adjournments, obstructive document tactics, or repetitive objections.⁶⁶

Reasoned Procedural Orders:

⁶⁴ LCIA Arbitration Rules, Art. 14.5; ICC Rules, Art. 24.

⁶⁵ S. Krishnan, “Tailored Arbitration: Adapting Process to Dispute Complexity,” *Indian Journal of Arbitration Law*, Vol. 9, No. 1 (2021), pp. 33–45.

⁶⁶ ICC Commission Report on Decision on Costs (2015), pp. 8–12.

In deciding against procedural motions (e.g., for continuances, further discovery, or cross-examination of experts), tribunals should enter short but reasoned orders. This promotes transparency, enables judicial deference, and reassures parties of procedural fairness.⁶⁷

Enhancing Institutional Design and Standardization

Strengthening Indian Arbitral Institutions:

Indian arbitral centres must upgrade their procedural support mechanisms. This includes appointing experienced case managers, introducing standard procedural checklists, and ensuring regular training of arbitrators.⁶⁸

Unified Model Procedural Framework:

A model procedural code—similar to the IBA Rules—can be developed for domestic arbitration in India, to promote uniformity in discovery, evidence, and timelines. This would reduce ad-hocism and aid less experienced tribunals.

Incentivising Efficient Conduct via Fee Structures:

Arbitral institutions may consider rewarding efficient conduct by arbitrators (e.g., timely award issuance, adherence to timelines) through performance-based honoraria.⁶⁹ Likewise, parties could be incentivised to cooperate procedurally through reduced administrative costs.

Digital Infrastructure for Arbitration Management:

Institutions should deploy secure platforms for digital filings, virtual hearings, and collaborative case scheduling. Digital tools reduce delays and enhance participation for all stakeholders.

Legislative and Judicial Reforms

Clarifying “Public Policy” and “Natural Justice” Grounds:

⁶⁷ S. Ravindra Bhat, “Procedural Orders and the Role of the Tribunal,” *Arbitration Bar Association Lecture Series* (2022).

⁶⁸ Law Commission of India, 246th Report (2014), Paras 78–81.

⁶⁹ A. Redfern, *Law and Practice of International Commercial Arbitration*, 6th ed., p. 215.

Courts should adopt a narrow interpretation of Section 34 grounds, especially those based on natural justice or procedural irregularity. As established in *Ssangyong Engineering*, only patent violations—not mere procedural disagreements—should attract judicial interference.⁷⁰

Standardising Court Timelines under Section 34:

Amendments may be considered to prescribe outer timelines for disposal of Section 34 applications. Delays at the post-award stage render procedural efficiency at the arbitral level meaningless.

Limiting Grounds for Interlocutory Appeals:

Interim applications challenging procedural decisions (e.g., rejection of evidence or jurisdictional orders) should be entertained only in exceptional circumstances, to avoid judicial micromanagement.

Institutionalised Training for Judges Handling Arbitration Matters:

Special arbitration benches in High Courts, staffed by trained judges familiar with arbitral norms and international practice, can ensure a more informed and consistent jurisprudence on fairness and efficiency issues.

Soft Law, Ethics, and Cross-Border Learning

Adoption of International Best Practices:

Indian arbitration stakeholders should draw upon global instruments such as the IBA Rules, the UNCITRAL Notes on Organising Arbitral Proceedings, and the Prague Rules to contextualise and improve domestic practices.⁷¹

Ethical Standards for Arbitrators and Counsel:

Codes of conduct—such as the 2020 LCIA and ICC guidelines on party representation—should be localised and implemented in India. Ethical behaviour by arbitrators and counsel supports both fairness and procedural economy.

⁷⁰ *Ssangyong Engineering and Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131.

⁷¹ UNCITRAL Notes on Organising Arbitral Proceedings (2016); IBA Guidelines on Party Representation (2020).

Capacity Building and Stakeholder Awareness:

Workshops, certifications, and continuing education for arbitrators, counsel, and parties can spread awareness about the importance of procedural discipline, early cooperation, and realistic expectations.

Collaborative Rule Reforms across Institutions:

Leading arbitral institutions in India (e.g., MCIA, DIAC, ICA) should coordinate on developing common procedural innovations—such as standardised fast-track procedures, model procedural timetables, and cost schedules.

VII. Conclusion

The tension between procedural fairness and efficiency remains at the heart of contemporary debates in international and domestic arbitration. While both principles are essential for the legitimacy and effectiveness of arbitration as a dispute resolution mechanism, their inherent tension can complicate efforts to ensure that arbitration meets the expectations of all parties. In the Indian context, this challenge is particularly acute, as the arbitration ecosystem is still evolving, with significant disparities between arbitral institutions, judicial practices, and stakeholder expectations.

This article has explored the theoretical underpinnings of fairness and efficiency in arbitration and their practical implications. It has also explored the contemporary problems of abuse of process, institutional inconsistency, and judicial interference, which can cause arbitration to fail to work smoothly. These problems are not insurmountable, however measures to reform institutional and procedural elements, combined with a more consistent approach to judicial interpretation, can facilitate the harmonious coexistence of fairness and efficiency in the arbitral process.

The reforms, as advocated in this article—active tribunals' case management, institutional strengthening, legislative reform, judicial restraint's promotion, and the adoption of soft law—are vital to the establishment of a more resilient, credible, and efficient arbitration regime in India. With the adoption of these reforms, Indian arbitration can proceed towards the vision of being an international dispute resolution model, reconciling the demand for justice with the demand for speedy and cost-effective results.

As arbitration goes forward, it is crucial that stakeholders—such as tribunals, institutions, parties, and courts—be attentive to the need to harmonize procedural protections intended to ensure fairness without clogging the process with inefficiency. Only with a concerted effort to harmonize these principles can enable arbitration to truly fulfill its potential as a fair, efficient, and effective means of resolving disputes.