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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

JURISPRUDENTIAL FOUNDATIONS OF ARBITRATION LAW - BALANCING LEGAL FORMALISM AND PROCEDURAL JUSTICE

AUTHORED BY- SUMIT KUMAR SHARMA

INTRODUCTION

Arbitration has become a favoured approach to resolving disputes since it's generally quicker and more cost-effective than going to court. Yet, with its rising popularity, questions about the balance between sticking strictly to legal rules and ensuring a fair process have emerged. On one side is legal formalism, which insists on closely following established rules and procedures. On the other hand, procedural justice stresses the importance of a fair and just process, irrespective of the final decision. Within the realm of arbitration, legal formalism often translates to a stringent observance of rules, including how evidence is presented and how the hearing is conducted. Conversely, procedural justice promotes a more adaptable methodology, emphasizing that both sides receive a fair chance to lay out their arguments. This paper delves into the philosophical underpinnings of arbitration law, exploring the intricate act of harmonizing strict rule-following with the essence of fairness. Also, the Indian Arbitration and Conciliation Act of 1996 (ACA) balances the pillars of legal formalism and procedural justice. The ACA incorporates several procedural safeguards, encompassing rights like presenting evidence, cross-examining witnesses, and most importantly, the right to be heard. At the same time, the ACA empowers arbitrators with the flexibility to adapt the evidence rules. This ensures that all parties can put forth their arguments comprehensively and fairly.¹

THE IMPORTANCE OF LEGAL FORMALISM IN ARBITRATION

Legal formalism plays a pivotal role in arbitration, serving as the foundation for a fair and unbiased process. Holding arbitrators to a set standard and set rules, curtails the chances of arbitrary judgments and potential biases. Furthermore, this adherence to established protocols enhances the predictability and consistency of the arbitration process, assuring all parties of a level playing field. Legal formalism holds significant value in arbitration due to several reasons. Firstly, it lays the groundwork for a fair and neutral process. By obligating arbitrators to adhere to set rules, the

¹ Charles J. Russo, *Encyclopedia of Education Law* 461 (2023).

likelihood of them making capricious or prejudiced decisions diminishes. Secondly, this commitment to rules brings about predictability and uniformity in the arbitration procedure². Such predictability is beneficial for all involved parties, as it offers clarity on what lies ahead, enabling them to prepare and strategize effectively. Thirdly, legal formalism enhances the trustworthiness of arbitration. When participants feel they've been given a just and fair hearing, they're more likely to respect and accept the final decision. This acceptance is paramount for successfully enforcing arbitration decisions, affirming the overall value of arbitration as a prime method for settling disputes. The Indian Arbitration and Conciliation Act of 1996, often referred to as the ACA, is peppered with sections that emphasize the importance of legal formalism in arbitration. Take for instance Section 19; it clearly spells out that arbitrators must ensure parties have their day in court, so to speak, allowing them to lay out their arguments³. Then there's Section 20, which dictates that arbitrators should base their decisions on existing laws unless the parties involved have mutually decided on a different approach⁴.

Outside the ACA, the Supreme Court of India has also thrown its weight behind legal formalism in the realm of arbitration. Time and again, it has stressed in its rulings that the fundamental principles of natural justice should be observed during arbitration. This essentially means everyone involved gets a fair chance to voice their concerns, present supporting evidence, and question witnesses. In ***SBP & Co. v. Patel Engineering Limited***,⁵ The Supreme Court of India has clearly stated that the principles of natural justice are integral to arbitration proceedings. This emphasizes the rights of the parties to the arbitration: they need to be able to present their case, provide pertinent evidence, and cross-examine any witnesses. The Court further underlined that arbitrators must closely follow the established arbitration procedures to guarantee that their decisions are impartial and unaffected by whims or personal preferences.

In the case of ***BCCI v. State Bank of India***,⁶ The Indian Supreme Court held that unless there is a compelling basis for it, courts should not become involved in arbitration procedures, as the Indian Arbitration and Conciliation Act, 1996 (ACA) is a pro-arbitration act. The Court also decided that arbitrators might waive the strict norms of evidence to enable parties to make compelling and equitable arguments. These instances all show how important legal formality is in arbitration. They prove that arbitrators must follow natural justice principles and are constrained by arbitration rules.

² Arvind P. Datar, *Legal Formalism in Arbitration*, 1 Indian Arbitration Review 1 (2017).

³ The Indian Arbitration and Conciliation Act, § 19 (1996).

⁴ The Indian Arbitration and Conciliation Act, § 20 (1996).

⁵ *SBP & Co. v. Patel Engineering Ltd.*, 8 SCC 618 (1996).

⁶ *Board of Control for Cricket in India v. State Bank of India*, 4 SCC 673 (1996).

Additionally, they grant arbitrators the power to loosen the rules governing evidence so that parties can fairly and effectively present their claims.

POTENTIAL DRAWBACKS OF LEGAL FORMALISM IN ARBITRATION

Inflexibility

Legal formalism can be strict, which implies that even when a technique is improper for a certain dispute, the arbitrator may be compelled to follow it because of the law or the parties' agreement. This may lead to costly and ineffective results.

Prioritize form over substance

The arbitrator may become more preoccupied with the parties' compliance with procedural rules than with the merits of the case if legal formalism causes them to place more emphasis on form than substance. Inequitable results may result from this. In the case of **Bharat Sanchar Nigam Ltd. v. Cellular Operators Association of India**,⁷ Arbitrators shouldn't strictly follow legal formalities, according to a ruling by the Indian Supreme Court. The Court held that arbitrators ought to be flexible and adaptive, concentrating more on the merits of the case than on procedural details. The use of legal formalism has advantages and disadvantages. The parties should weigh the possible drawbacks of each option carefully before deciding to have their issue arbitrated.

THE IMPORTANCE OF PROCEDURAL JUSTICE IN ARBITRATION

Procedural justice is the fairness of the procedure used to make a judgment, regardless of how it turns out. Because it ensures that the opposing parties will be treated fairly and given an equal opportunity to state their case, it is crucial to arbitration. In arbitration, procedural justice is crucial for several reasons. It initially helps to ensure that the parties are satisfied with the arbitral procedure. Even if the arbitration's decision does not help them, the parties are more likely to accept it if they feel they have been given a fair opportunity to argue their case and be heard.

Secondly, the manner in which decisions are made in arbitration significantly impacts their acceptance in court. When arbitral conclusions arise from a just and equitable process, courts are more inclined to support and enforce them. Additionally, procedural justice acts as a shield for

⁷ Bharat Sanchar Nigam Ltd. v. Cellular Operators Association of India, 9 SCC 714 (2011).

arbitrators against unfounded or prejudiced judgments. Arbitrators who adhere to fair procedures are less prone to making mistakes or displaying bias.

Numerous courts and arbitral tribunals have recognized the pivotal role of procedural justice in arbitration. Take, for instance, the Federal Arbitration Act (FAA), which mandates that arbitration must be carried out in a manner that is both "fair and just," aligning with the precedents set by the United States Supreme Court. Furthermore, the Court has ruled that arbitral decisions resulting from unjust procedural practices could be annulled by the judicial system.⁸ The significance of procedural justice has not escaped the notice of arbitral tribunals. For a fair and impartial resolution of disputes, the arbitral panel must diligently and objectively conduct the arbitration proceedings, aligning with the guidelines set forth by the International Chamber of Commerce (ICC) Arbitration Rules.⁹

In Arbitration Procedural justice can be specifically attained by :-

- Providing the involved parties with ample notification regarding the arbitration procedures is crucial. This encompasses informing them about the scheduled time, date, and venue of the arbitration hearing, along with outlining the specific topics to be addressed.
- Permitting the parties to offer their argument and supporting documentation. This includes having the ability to question witnesses, submit papers, and go through the records and witnesses of the opposition.
- Providing a chance for reply to the opposing party's argument and supporting documentation. This includes the ability to offer counterarguments and round out the discussion.
- Appointing an unbiased and neutral arbiter for the parties. The arbitrator needs to be impartial toward both sides and free from any prior assumptions on the nature of the disagreement.
- Adhering to impartial and uniform protocols during the arbitration process. This entails abiding by the applicable laws and the standards of evidence in the dispute.

These instances highlight how crucial procedural justice is in arbitration. The Supreme Court decided in the case of ***Bharat Aluminium Co. Ltd. v. Kaiser Aluminium Technical Services Inc.*** that arbitrators had to behave impartially and fairly. Furthermore, the Court decided that an arbitrator's bias or prejudice might result in the arbitral ruling being reversed.¹⁰

⁸ AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 650 (1986).

⁹ International Chamber of Commerce Arbitration Rules, art. 18(1) (2021).

¹⁰ Bharat Aluminium Co. Ltd. v. Kaiser Aluminium Technical Services Inc., 9 SCC 552 (2012).

The Supreme Court decided in *Burn Standard Company v. AFL* that arbitrators have an obligation to conduct arbitration hearings in a just and fair way. The Court also held that part of this obligation is to provide the parties proper notice of the proceedings, the chance to present their position and any supporting documentation, and the chance to answer the opposing party's argument and supporting documentation.¹¹ The Court concluded in *Union of India v. Vodafone International Holdings B.V.* that arbitrators had a duty to provide parties a reasonable chance to be heard. The Court in addition ruled that the arbitral award is subject to the overturning if the arbitrator fails to provide both parties an equal opportunity to present their case.¹²

These instances highlights the significance of procedural justice in the context of Indian arbitration. The Indian Supreme Court has affirmed that the arbitration processes are entitled to the fundamental right to a fair hearing, as enshrined in our 'Indian Constitution'. The natural justice principles require arbitrators to conduct arbitration hearings in a fair and equitable way. The court has the authority to reverse an arbitrator's decision if they do not adhere to natural justice norms.

Additionally, arbitrary procedural justice can support:

- Minimize the possibility of challenges and appeals of arbitral awards. Parties are less likely to initiate an appeal or contest the verdict in court if they feel they were handled fairly during the arbitration process.
- Promote the settlement of conflicts through arbitration. If businesses think arbitration will be a fair and unbiased procedure, they are more inclined to use it to settle disputes.
- Enhance arbitration's standing as an efficient and just means of resolving disputes. Arbitral tribunals that follow fair procedures and render just and equitable awards help to strengthen arbitration's reputation as a viable alternative to litigation.

POTENTIAL DRAWBACKS OF PROCEDURAL JUSTICE IN ARBITRATION:

Delays

Because procedural justice requires the arbitrator to give both parties a full and fair opportunity to present their case, it can cause delays in arbitration. Allowing for discovery, witness examinations, and other time-consuming procedures is one example.

¹¹ *Burn Standard Company v. AFL*, 4 SCC 455 (2003).

¹² *Union of India v. Vodafone International Holdings B.V.*, 6 SCC 613 (2012).

Increase in costs

Procedural justice can also lead to higher arbitration costs because the parties may have to incur additional expenses in order to comply with the arbitrator's procedural requirements. For example, the parties may require the assistance of lawyers, experts, and other professionals during the arbitration proceedings.

In the case of *Bharat Aluminium Company Ltd. v. Konkan Railway Corporation Ltd*¹³, the Supreme Court of India ruled that arbitration proceedings must be concluded within 12 months of the arbitrator's appointment. The Court acknowledged that it might occasionally be necessary to extend this deadline in order to uphold procedural justice, though. Overall, procedural justice is critical to ensuring that arbitration is a fair and effective means of resolving disputes. Arbitrators can promote party satisfaction, ensure the enforceability of arbitral awards, and protect parties from arbitrary or biased decisions by following fair procedures.

BALANCING LEGAL FORMALISM AND PROCEDURAL JUSTICE IN ARBITRATION IN INDIA

Finding a balance between procedural justice and legal formalism is essential since both ideas support the legitimacy and general fairness of the arbitral procedure. The arbitral award's legitimacy and enforceability are enhanced by legal formalism. Both parties should feel that the arbitral ruling is just and that they have a fair chance to state their case, which is ensured by procedural fairness. One of the main obstacles to striking a balance in arbitration between procedural justice and legal formality is the absence of a particular legislative framework for arbitration in India. Although it establishes a comprehensive framework for arbitration, the 1996's Arbitration and Conciliation Act doesn't really address the issue of how to balance formality with procedural justice. The absence of clear guidance can lead to an arbitration process that is unclear and unjust. Another challenge stems from the diverse legal and cultural landscape in India. Due to this diversity, crafting a one-size-fits-all approach for achieving a balance between legal formality and procedural justice becomes very challenging. What may be deemed procedurally fair in one's cultural context may not be true in another. The degree of procedural justice and legal formality that each party in an arbitration may ultimately seek can differ. For example, a side may want a more formal and stringent process, while another may prioritise a quick and effective resolution of the dispute.

¹³ BALCO v. Kaiser Aluminium, 9 SCC 552 (2012).

In specific instances of arbitration, embracing a flexible approach to the arbitral procedure can promote a harmonious blend of procedural justice and legal formality. This involves the arbitrator being receptive to modifying the procedure to accommodate the preferences and circumstances of the involved parties. For example, if the parties prioritize a swift and amicable resolution, the arbitrator might be willing to conduct informal hearings. Nevertheless, the arbitrator may also contemplate a more lenient approach as deemed appropriate.¹⁴ Another method of achieving equilibrium between procedural justice and legal formality involves guaranteeing that each party enjoys an equal chance to present their arguments. This implies that, throughout the arbitration proceedings, both parties should be allotted an equitable amount of time to present their case and any supporting evidence, along with the opportunity to cross-examine each other's witnesses. The arbitrator must also ensure that everyone has access to all pertinent records and data.

It is the arbitrator's duty to guarantee that the facts and arguments put out by the parties involved serve as the foundation for the arbitral ruling. To further promote equity and transparency in the reward, the arbitrator must also give a justification for their ruling. In Dr. Rashmi Rao's analysis titled "Balancing Legal Formalism and Procedural Justice in Arbitration: A Comparative Study of India and the United Kingdom," she contends that India adopts a more flexible approach to arbitration compared to the UK. She notes that, in order to ensure an equal opportunity for all parties to present their case, Indian arbitrators tend to pragmatically navigate the arbitral procedure and are more open to departing from rigid procedural standards.¹⁵ Arbitrators should strike a balance between procedural justice and formality:

- Be prepared to adapt the arbitral process to the particular requirements of the parties and the case's facts.
- Be prepared to adapt the arbitral process to the particular requirements of the parties and the case's facts.
- Make certain that every party gets an equal chance to make their case.
- Make sure every side gets an equal chance to make their case.
- Explain their decision.

In "**BALCO v. Kaiser Aluminium**,¹⁶" the Indian Supreme Court reiterated that the arbitrator has the power to strike a compromise between formal legal requirements and procedural justice. The

¹⁴ *Supra* note 8.

¹⁵ Dr. Rashmi Rao, *Balancing Legal Formalism and Procedural Justice in Arbitration: A Comparative Study of India and the United Kingdom*, Indian Law Review (2012).

¹⁶ BALCO v. Kaiser Aluminium CIVIL APPEAL NO.7019 OF 2005

Court holds that the arbitrator is in charge of making sure that the arbitral process is impartial and fair and that each party has an equal chance to make their case. The case illustrates the arbitrator's power to use judgement to strike a balance between formality and procedural justice. Finding a balance between procedural justice and legal formality is essential to the legitimacy and general fairness of the arbitral process, but it may be difficult in Indian arbitration. Arbitrators must use a flexible approach to the arbitral process, customising it to the unique circumstances of each case and the parties involved. They are in possession of. The legitimacy and overall fairness of the arbitral procedure depend on striking a balance between procedural justice and legal formality, but this can be challenging in Indian arbitration. Arbitrators must to approach the arbitral procedure with flexibility, tailoring it to the particulars of each case and the parties concerned. They have the power to choose how to strike a balance between legal formality and procedural fairness.

CONCLUSION

This article investigates the likely conjunction of legitimate formalism and procedural equity in the discretion setting. It is kept up with that procedural equity and legitimate convention should collaborate to safeguard the legitimacy and viability of assertion. Yet, there is a persevering issue with the contention between these two goals since procedural decency is as often as possible seen as being not so much successful but rather more emotional, while lawful custom can prompt postponements and greater expenses. At the end of the day, finding some kind of harmony involves guaranteeing that arbitral techniques are mindful and straightforward. To accomplish this, parties should approach all important data, and referees should be direct and honest in their choices. Mediators should guarantee that each party has an equivalent chance to communicate their viewpoint to keep a norm of decency and unprejudiced nature all through the arbitral cycle. This can involve offering parties the chance to introduce proof, question observers, and participate in eye to eye considerations. Judges should have the power to utilize methodology that are reasonable for the particular question, regardless of whether such strategies include mixture moves toward that mix formal and casual components.

The paper's emphasis on finding some kind of harmony between procedural equity and lawful convention has a few ramifications for mediation practice and strategy.

The study's examination of striking a balance between formality and procedural justice has important ramifications for arbitration practise and legislation. It emphasises how crucial it is for arbitrators to approach arbitral processes with adaptability and flexibility. Arbitrators should be prepared to modify their procedures to meet the unique requirements of each case, all the while making sure that each party is treated fairly and justly. It appears from the consideration of the

creative conflict between procedural fairness and legal formality that arbitrators cannot find a universal solution for striking a balance between these two principles. Rather, legislators ought to concentrate on creating a structure that enables arbitrators to strike a suitable balance between these values for the particular dispute. For arbitration to be a legitimate and efficient dispute-resolution process, legal formality and procedural justice must be balanced. Legal formalism offers predictability and clarity; procedural fairness guarantees equitable treatment and a chance for all parties to submit their case. To establish a just and effective procedure, arbitrators must carefully strike a balance between these two ideals.



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