MRP ADVISORY

LEGAL UPDATE

PARTY AUTONOMY IN INTERNATIONAL ARBITRATION: ARE PARTIES IN INDIA TRULY FREE TO CHOOSE THE PROCESS?

By Ms. Pallavi Agrawalla, Associate

INTRODUCTION

Party autonomy is one of the most frequently cited advantages of arbitration. It promises disputing parties the freedom to select their arbitrators, define the rules of procedure, determine the language and place of arbitration, and shape the overall framework in which their dispute will be resolved.

In India, this principle is deeply embedded in the Arbitration and Conciliation Act, 1996 (the "Act"), which incorporates many features of the UNCITRAL Model Law. Sections 10, 11, 19 and 28 of the Act expressly recognise the parties' right to determine key procedural and substantive aspects of the arbitration. Further, Indian courts have consistently endorsed this principle in theory, affirming that even two Indian parties may validly choose a foreign seat, and that there is no statutory prohibition preventing such designation. These rulings reflect a strong doctrinal commitment to preserving the autonomy of contracting parties.

However, a closer examination of practice reveals a different story. Despite the legal protections, the ability of Indian parties to meaningfully exercise their autonomy in international arbitration remains constrained. This article examines that tension, and explores how institutional defaults, contractual power imbalances, procedural disengagement, and judicial interference often reduce party autonomy to a mere formality for Indian users. It further considers how this illusion of freedom impacts tribunal composition, access to procedural innovation, and the overall inclusiveness of the arbitration process.

The Practical Realities of Autonomy for Indian Users

How Autonomy Is Lost Before It Begins

In the context of cross-border contracts involving Indian parties, arbitration clauses are rarely the product of equal negotiation. In international agreements involving Indian companies, the dispute resolution clause is often inherited rather than created. More often than not, it is the last item to be considered during negotiations and the first to be copied from an earlier transaction. It is common to find arbitration clauses that have been cut and pasted from a previous deal, with no attention to whether the institution, seat, language, or appointment procedure is suitable for the current parties or the kind of dispute that may arise.

This trend is especially evident in infrastructure, construction, and technology contracts, where foreign corporations often lead the drafting process. Indian parties tend to accept standard clauses without objection, especially if the commercial terms are otherwise favourable. This acquiescence is not always due to lack of interest. Sometimes it is the result of limited exposure to the procedural consequences of arbitration or a lack of bargaining leverage. However, the result is the same: autonomy is ceded not through formal agreement but through practical disengagement.

The irony is that party autonomy is most powerful when it is used at the outset. This is when parties can proactively set the tone and structure of the dispute resolution process. Yet, many Indian users let this opportunity pass, either out of habit or because they do not realise that there are meaningful choices to be made. Instead of being a customised procedural framework, arbitration becomes a black box that is reluctantly opened only when a dispute arises.

Institutions and the Comfort of the Default

Even where institutional arbitration is selected, once parties have agreed to submit their disputes to an institution such as the ICC, SIAC, LCIA, or DIAC, they often assume that their job is done. They rely entirely on the institution's procedural model to guide the proceedings and make no further attempt to shape the process.

#This is not necessarily problematic, institutions provide predictable and reliable frameworks. However, when parties have the right to tailor the procedure and consistently choose not to, they are no longer exercising autonomy; they are surrendering it. Whether it is the decision to bifurcate proceedings, to apply rules for early dismissal, or to limit document production, parties have the ability to control the scope, duration, and cost of the arbitration. Yet these tools remain underutilised.

What makes this even more concerning is the fact that institutions themselves increasingly encourage party participation. They issue guidelines, procedural timetables, and toolkits that invite parties to collaborate on shaping the procedure. But if the parties do not engage, the procedure reverts to standard form. This undermines the very idea that arbitration is a flexible, party-driven process.

It is also worth noting that this reliance on institutional default disproportionately affects Indian users. Indian companies, especially those without a strong in-house legal function, tend to defer to institutional norms without question. Their interaction with arbitration remains passive, and the opportunity to influence the outcome through procedural design is lost.

Autonomy as a Vehicle for Diversity and Inclusion

This pattern is not limited to procedure alone. One of the least discussed but most important consequences of party autonomy is its potential to enhance representation in arbitration. When parties are proactive, they can nominate arbitrators who reflect a broader set of experiences, jurisdictions, and perspectives. They can open up the process to voices that are otherwise excluded. But for that to happen, they must first recognise that diversity is a valid consideration in exercising autonomy.

Unfortunately, the current practice often points in the opposite direction. Arbitrator selection remains concentrated among a small group of repeat players. Institutions may attempt to promote diversity through their appointments, but the party-nominated arbitrators tend to be chosen from the same list of familiar names. This reinforces the illusion of choice, while the actual composition of tribunals remains static.

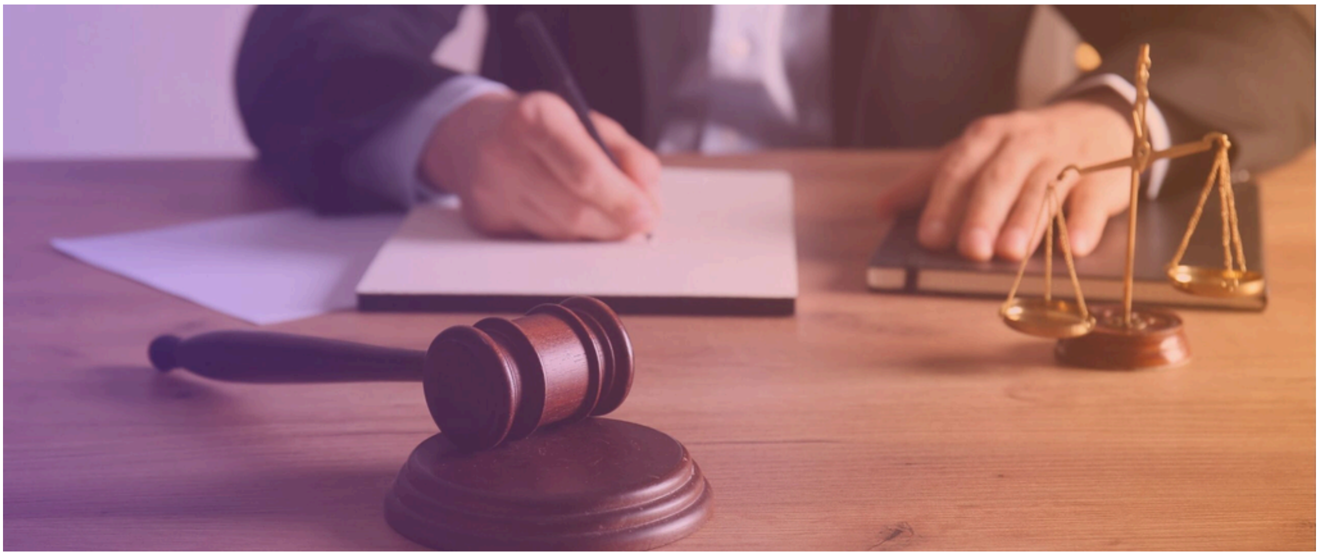
For Indian women in arbitration, this has real consequences. The lack of visibility and repeat appointments makes it harder to build credibility, develop a track record, or progress to more complex appointments. If Indian parties want to see change in the landscape, they must be part of the solution. That begins with recognising the influence they hold when they nominate, appoint, or even suggest arbitrators.

The broader structural landscape reinforces this pattern. Many Indian organisations lack internal legal infrastructure to support arbitration strategy. The drafting of arbitration clauses is often outsourced or left to general counsels who may not be specialised in dispute resolution. In the absence of training, institutional support, or peer models, parties revert to what is familiar and accepted. As a result, party autonomy is technically available, but rarely operationalised.

In sum, while Indian parties possess the legal right to craft their arbitration process, a range of external and internal factors curtail their ability to do so. This erosion of autonomy has tangible consequences, particularly for inclusion and representation within the system. Party-nominated arbitrators are an important channel for ensuring that diverse voices are heard. When that power is left unused, it reinforces existing hierarchies and limits the transformative potential of arbitration.

Reclaiming Autonomy and Reasserting Intentionality

Party autonomy will only become meaningful when parties begin to take ownership of the arbitration process. This requires a shift not just in practice but in mindset. Indian parties must begin to view arbitration not as an administrative inevitability, but as a mechanism that can and should be tailored to suit their interests.



The first step is to treat dispute resolution clauses with the seriousness they deserve. These clauses should not be viewed as ancillary, but as mechanisms that directly affect the cost, duration, and outcome of future disputes. Contract negotiators and legal teams must be trained to recognise and exercise the procedural options available to them.

Secondly, arbitrator selection must be approached with intention. Indian parties have the power to demand shortlists that reflect diversity, not only in gender and nationality, but also in generational and professional experience. Institutions can support this by publishing metrics, encouraging nominations, and offering more transparent selection processes. But the primary responsibility lies with users, who must move beyond convenience and reputation when making appointments.

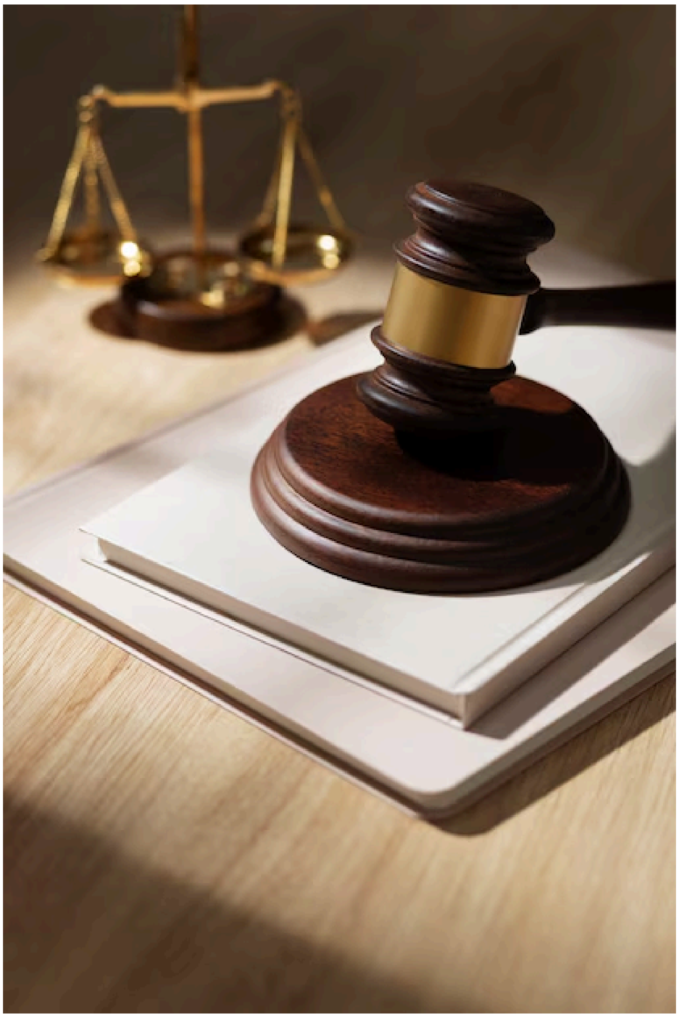
Thirdly, parties must begin to customise procedural aspects of arbitration. This includes setting timelines for pleadings, agreeing on document production standards, defining expert evidence procedures, and embracing technological tools such as remote hearings and e-bundles. Institutions are increasingly open to party-driven innovations. But these can only be implemented if users assert their preferences early and clearly.

Finally, there must be a concerted effort to build capacity within Indian organisations. This involves creating clause libraries, maintaining records of past arbitration outcomes, appointing specialised legal personnel, and participating in industry forums. Institutions like the Mumbai Centre for International Arbitration (MCIA) and the Delhi International Arbitration Centre (DIAC) can play an important role by offering training, panel access, and procedural templates tailored to Indian users. Only when users are confident in their understanding of arbitration will they be able to use autonomy not as a theoretical right, but as a practical instrument.

Conclusion

Party autonomy remains one of the most compelling reasons to choose arbitration. But for Indian parties, that autonomy is often not exercised. Whether due to habit, lack of leverage, or institutional inertia, Indian users of arbitration have over time surrendered the very power that was designed to protect their interests.

This is not a criticism of any one institution, practice, or stakeholder. Rather, it is a reflection of a broader culture of passivity in procedural matters. Changing that culture will require effort from all sides including lawyers, institutions, corporate users, and arbitrators themselves.



ABOUT MRP ADVISORY

MRP Advisory is a boutique law firm specialising in dispute resolution and arbitration (domestic and international) across sectors of Construction, Infrastructure, Buildings & Renewables, Water, Oil & Gas, Power and related domains, providing end-to-end support. Our distinguished team of legal practitioners, who are highly ranked globally as Leading Experts by renowned ranking bodies like Legal 500, Lexology Index etc. specializes in domestic & international arbitration, and regularly work with esteemed barristers and KCs from renowned chambers in the construction industry. With a proven track record of managing high-profile arbitrations globally under ICC, DIAC, SIAC, LCIA, and other institutional rules, MRP is uniquely positioned to navigate complex construction arbitration matters and serves diverse clients across UAE, Oman, Qatar, Libya, Kuwait, Saudi Arabia, Singapore, Japan, Nepal, India to name a select few.