# Introduction to Arbitration in India

## The Role of the Judiciary

TUSHAR KUMAR BISWAS

Wolters Kluwer
Law & Business

# Introduction to Arbitration in India

## The Role of the Judiciary

Tushar Kumar Biswas



Wolters Kluwer
Law & Business

*Published by:*
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

*Sold and distributed in North, Central and South America by:*
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

*Sold and distributed in all other countries by:*
Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

*Printed on acid-free paper.*

ISBN 978-90-411-4765-3



Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

# Foreword

The relationship between arbitral tribunals and domestic courts is complex and multi-faceted. It covers such diverse situations as the involvement of courts in the appointment and removal of arbitrators, anti-suit injunctions by domestic courts, interim measures by domestic courts in support of arbitration, review of arbitral awards by domestic courts and enforcement of awards by domestic courts.

When it comes to international arbitration directed against states, such as investment arbitration, the situation gets even more complicated. These cases may involve a need to pursue remedies in domestic courts prior to international arbitration, the division of competences under the label of treaty claims and contract claims, fork in the road provisions, anti-suit injunctions by tribunals directed at parallel proceedings in domestic courts and an examination of the legality of the actions of domestic courts. This complex relationship of domestic courts and arbitral tribunals shows elements of competition, of support, of obstruction and of mutual control. It is startling and paradoxical because it defies any notion of a hierarchy of decision makers.

The supervision of domestic courts by arbitral tribunals may seem surprising from the traditional perspective of domestic arbitration. But the typical standards of protection contained in bilateral investment treaties, such as fair and equitable treatment, full protection and security and even safeguards against uncompensated expropriation, can all be violated by domestic courts. Each of these potential violations is subject to the scrutiny of investment tribunals.

From the perspective of international law, international review of domestic court decisions is neither new nor unusual. International judicial control over State activity has always extended to the courts. The State's responsibility for all organs exercising public authority is uncontested and is reflected in Article 4 of the International Law Commission's Articles on State Responsibility. There are good reasons for not differentiating between the different branches of government when it comes to State responsibility. In real life the courts and other elements of the government interact in a way that defies the application of a separation of powers doctrine to questions of State responsibility.

The significance of an important country like India in this complex interplay of two different types of judiciaries is evident and requires no elaboration. Tushar Kumar

Biswas is to be commended for undertaking the momentous task of describing and analyzing this intricate issue from the perspective of the world's largest democracy.

But this book is of much wider significance than the context of one particular country would suggest. It is also an important contribution to the general debate over the denationalization of international arbitration, i.e. the process of detaching it from the fetters of national legal systems. As such this book is of prime importance to businesses and their counsel worldwide.

*Christoph Schreuer*

# Preface

The role of arbitration is distinguished from the role of litigation in a traditional court of law. This distinction is particularly significant in the Indian context, given that the state-run judicial system in India is notoriously slow and expensive. The failings of the Indian judiciary, real and perceived, have prompted parties engaged in commercial activity to settle their disputes primarily through the mechanism of arbitration.

Earlier arbitration in India was primarily governed by the Arbitration Act, 1940, which was burdened with procedural defects. Following suit of UNCITRAL Model Law, the Indian Parliament enacted the Arbitration and Conciliation Act, 1996, thus remaining mindful and respectful of arbitration. The Act made several attempts to uphold party autonomy in arbitration. Public authorities recognize the effectiveness of arbitral awards by conceding arbitrators some powers in relation to the settlement of disputes. The arbitrators are authorized to rule on their own jurisdiction, and arbitral tribunals are also empowered to order interim measures. Further, the Code of Civil Procedure was amended in 1999 to make provision for settlement of disputes outside the courts.

Despite of the fact that the legislatures endeavored to reduce the supervisory role of the courts, the Indian legal system grants courts the possibility of intervening in some stages of the arbitral process. This is because national courts and national laws continue to play a vital role in the effective operation of the arbitral regime. Ironically, despite the legislative endeavor to minimize judicial interference in arbitration, the role of the court remains vastly interventionist. This book, *inter alia*, analyzes of the role of the Indian judiciary, focusing on the following areas: matters relating to appointment of an arbitrator; availability and applicability of interim measures; the doctrine of competence; challenging the arbitrator in respect of independence and impartiality; anti-suit injunctions; setting aside of arbitral awards or refusal to enforce foreign awards; right to appeal and India's liability regime under international investment laws for judicial delay.

I am indebted to Eleanor Taylor, Prof. Christoph Schreuer, Adam Mauntah, Chandrakant Kamdar, Justice Ruma Pal, Prof. Jane Schukoske and Garima Budhiraja

for their help and assistance. I deeply acknowledge my father Mr. Apurba Kumar Biswas and mother Bithika Roy Chowdhury for their constant support. I am also thankful to the W.B. National University of Juridical Sciences for providing me valuable resources.

*Tushar Kumar Biswas*

# Table of Contents

# CHAPTER 1
# Introduction

## §1.01 GENERAL OVERVIEW

It is not always easy to define the exact relationship between the national courts and arbitral tribunals. But the relationship between the two is absolutely necessary in order to ensure the smooth operation of arbitral proceedings. Despite of the fact that arbitration is a form of alternative dispute resolution (ADR) system, the success of it is vastly dependent on the support of the national courts. Many people view arbitration as a contractual substitute of national courts. But unlike arbitrators, national courts in their respective territories possess coercive powers and therefore, the courts play an important role in supporting and maintaining arbitration. The state prescribes the boundaries of arbitration and enforces these boundaries through its courts.[1] The state also, through its legislative functions, determines other limitations upon the arbitral process; whether, for instance, arbitrators have power to compel the attendance of witnesses or the disclosure of documents and, more importantly, whether or not any appeal to the national court is possible and if so, how and when and upon what terms.[2]

State courts are ordinarily called upon to intervene in arbitrations in one of the three situations i.e., at the beginning of arbitration; during the course of an arbitral proceeding and at the end of the arbitration. Commonly, courts intervene within the framework of what is referred to as "arbitral litigation."[3] Contemporary arbitration statutes confer a number of powers on the courts, which flow from an understanding on the part of legislatures of the terms of arbitration agreements, and which allow for judicial intervention in favor of the arbitral proceedings. This is distinct from the more

1. ALAN REDFERN, MARTIN HUNTER, ET AL., LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION, 328 (2004).
2. Id; 328.
3. *See generally* José Carlos Fernández Rozas, Anti-suit Injunctions Issued by National Courts Measures Addressed to the Parties or to the Arbitrators, available at http://eprints.ucm.es/9257/1/Anti-suit_Injunctions.pdf (last visited on January 16, 2012). *See also* Philippe Fouchard, *Le juge et l'arbitrage: Rapport général*, 1980 REV. ARB. 416.

traditional form of court intervention, which amounts to an interference in the arbitral process.[4]

The contemporary Indian legal system grants state courts the possibility of intervening in some stages of the arbitral process. India showed its desire to remain respectful of arbitration by enacting the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as "the Act"). At the same time, public authorities recognize the effectiveness of arbitral awards by conceding to arbitrators some powers in relation to the settlement of disputes. The arbitrators are authorized to rule on their own jurisdiction. The said principle is known as the doctrine of competence/competence which allows the tribunal to rule on objections including the existence or validity of the arbitration agreement; the arbitral tribunal is empowered to order such interim measures as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

The true nature of relationship between arbitral tribunal and the courts has been compared to a relay race by Lord Mustill in the following words:

> Ideally, the handling of arbitral disputes should resemble a relay race. In the initial stages, before the arbitrators are seized of the dispute, the baton is in the grasp of the court; for at that stage there is no other organisation which could take steps to prevent the arbitration agreement from being ineffectual. When the arbitrators take charge they take over the baton and retain it until they have made an award. At this point, having no longer a function to fulfil, the arbitrators hand back the baton so that the court can, in case of need, lend its coercive powers to the enforcement of the award.[5]

The dilemma truly remains where there is an argument from one side to prevent "judicialization" of the arbitral process but at the same time, there is equally an opposite force which argues for some sort of "public" supervision and control which may be necessary to protect wider social interests that may be ignored or jeopardized by "private" arbitrators. The inevitable tension between these two values has created unprecedented controversies.[6] Nonetheless, of course, there are two extreme views as to the extent the national courts should intervene and should exercise judicial control over the arbitration as well as the award. As Lord Saville rightly pointed out the two extreme positions are as under:

---

4. Id; 1.
5. *See generally* Lord Mustill, "*Comments and Conclusions in Conservatory Provisional Measures in International Arbitration*", 9th Joint Colloquium (ICC Publication, 1993).
6. *See generally* JOHN S. MURRAY, ET AL., PROCESS OF DISPUTE RESOLUTION-THE ROLE OF LAWYERS, 623 (1996). It can be fairly argued that both considerations are equally important. On the one hand, the parties to an international contract who opt for arbitration as a mechanism for settling their disputes look to the finality of the award rendered by the arbitral tribunal, as the reference to arbitration presumably excludes the intervention of national courts. On the other hand, the desire for "public" supervision and control, which may be necessary because the arbitrators are private bodies who at times may fail to adhere to the basic standards of fair proceedings which will presumably lead to a fair arbitral award. *See generally* Hossein Abedian, *Judicial Review of Arbitral Awards in International Arbitration – A Case for an Efficient System of Judicial Review*, Journal of International Arbitration, Volume 28 Issue 6, 553 (2001).

> It can be said on the one side that if parties agree to resolve their disputes through the use of a private rather than a public tribunal, then the court system should play no part at all,[7] save perhaps to enforce awards[8] in the same way as they enforce any other rights and obligations to which the parties have agreed. To do otherwise is unwarrantably to interfere with the parties' right to conduct their affairs as they choose.
>
> The other extreme position reaches a very different conclusion. Arbitration has this in common with the court system; both are a form of dispute resolution which depends on the decision of a third party. Justice dictates that certain rules should apply to dispute resolution of this kind. Since the state is in overall charge of justice, and since justice is an integral part of any civilized democratic society, the courts should not hesitate to intervene as and when necessary, so as to ensure that justice is done in private as well as public tribunals.[9]

Though none of those views which are discussed above are totally acceptable for international commerce, it is a tested proposition that supervisory court intervention has the potential of seriously disrupting the arbitral process and impeding the parties' quest for speedy resolution of their disputes.[10] It is a common feature of recent arbitration legislation to limit the scope for court intervention. The effect has been that the tribunals are given wider powers by statutes and can be given further powers by the parties. The traditional authority of the courts has been limited and in some cases, completely excluded or at least made dependent on agreement by the parties.[11]

Over time, courts in different national systems have varied with respect to how interventionist they have been in the arbitral process. The role of the judiciary in the matter of arbitration in India has increasingly been the subject of debate as a result of a number of controversial decisions given by the courts. The central focus of this book is centered on the core issue of whether the role that has been played by the judiciary

---

7. It is interesting to note that though in a narrower context i.e., in the context of international arbitral awards, the idea of eliminating judicial control was first introduced and experienced, for a certain period of time, in Belgian law, under which the courts were prevented from any judicial scrutiny of the award in arbitrations taking place in Belgium, as the seat of arbitration, if none of the parties was a national or resident of Belgium. French case law also inspired the idea of a system of 'mandatory "non-review" of awards' and 'a completely laissez-faire system' that would attract arbitration. The French approach, for a short period of time, advocated the idea that 'a State would have no entitlement, or indeed no benefit, to review awards rendered on its territory as long as neither party is seeking enforcement of the award in that State'. *See generally* Hossein Abedian, *Judicial Review of Arbitral Awards in International Arbitration – A Case for an Efficient System of Judicial Review,* Journal of International Arbitration, Volume 28 Issue 6 562 (2001). *See also* EMMANUEL GAILLARD, LEGAL THEORY OF INTERNATIONAL ARBITRATION 63-64 (2010); William W. Park, *Why Courts Review Arbitral Awards*, Festschrift Fur Karl-Heinz Böckstiegel 597 (2001).
8. The necessity of judicial scrutiny of the award is self-evident when the enforcement of the award is sought. A national judge, who is expected to recognize the res judicata effect of an arbitral award, can hardly overlook the issue of basic fairness of the proceedings leading to the award by making sure that the award is free from procedural irregularities. *See generally* Hossein Abedian, *Judicial Review of Arbitral Awards in International Arbitration – A Case for an Efficient System of Judicial Review,* Journal of International Arbitration, Volume 28 Issue 6 (2001).
9. Lord Saville, Denning Lecture, 1995, "Arbitration and the Courts", p. 157 as cited in ALAN REDFERN, MARTIN HUNTER, ET AL., LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION, 414 (2004).
10. JULIAN D M LEW, ET AL., COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION, 358 (2007).
11. Id; 358.

is justified. In effect, the book will interpretatively analyze the role that the judiciary has played, and the interpretation of the role of judiciary will be mainly based on the scheme and the scale of the Act.

## §1.02 POSITION OF JUDICIARY AND JUDICIAL REVIEW UNDER THE FRAMEWORK OF THE CONSTITUTION

Before proceeding with any further discussion, understanding the position of Indian judiciary under the Indian constitutional framework is important. The Constitution of India is the supreme law of the land and the judiciary is the final interpreter of the laws.[12] That means any interpretation that is given by the judiciary in respect of arbitration law is binding and final. At the same time, under the scheme of the Constitution, any ordinary legislation that violates the provisions of the Constitution, to the extent of its violation or contradiction, is void. Therefore, arbitration law also has to be in the line with the Constitution and has to pass the test of the Constitution. Although the Constitution of India does not expressly provide who has the power to declare the law void, but it is presumed that the judiciary possesses this power. The Constitution of India does not speak about judicial review in express words, but the same has to be inferred from the provisions of the Constitution. Article13(1) and (2) of the Constitution of India [13] provides that if any ordinary law violates the provisions of Part III of the Constitution, then to the extent of its violation it should be declared void. However, a void law bears no brand of voidness upon its forehead and will remain effective for its ostensible purpose as the most impeachable law unless proceedings are taken to establish that it is void.[14] Articles 226[15] and 32,[16] which confers writjurisdiction on the High Courts and Supreme Court respectively are in fact the heart of the

12. Article 141 of the Constitution of India declared that "The law declared by the Supreme Court shall be binding on all courts within the territory of India."
13. Clauses (1) and (2) of Art. 13 of the Constitution of India read as under:

    (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
    (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

14. H.M. Seervai, Constitutional Law of India, 1449 (2005).
15. Article 226 of the Constitution of India deals with the power of High Courts to issue certain writs and it *inter alia* provides that every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

    However, in this respect it has to be noted that the arbitral tribunal is not a tribunal within the meaning of Art. 226 of the constitution; nevertheless a writ could be issued under Art. 226 of the Constitution where no other remedy is available to an aggrieved person. *See* Anuptech Equipments v. Ganapathi Cooperative Housing Society, MANU/MH/0144/1999 Rebello, J.
16. Article 32 of the Constitution

    Remedies for enforcement of rights conferred by this part.-

Indian Constitution because those Articles provide effective and speedy remedies for asserting fundamental rights against laws which violate them. However, it is evident from the substance of the provisions that the scope of Article 32 is limited to the extent of enforcement of the fundamental rights enumerated under the Part III of the Constitution, whereas the scope of Article 226 of the Constitution, which confers writ jurisdiction on High Courts, is much wider than Article 32 of the Constitution. It is because the power under Article 226 is not merely confined to issue of writs, but can also be invoked for "any other purpose". The High Court while exercising its powers under Article 226 can provide relief against orders of quasi-judicial tribunals and authorities or against other acts by such lower authorities even though the acts of such authorities do not infringe the fundamental rights. In addition to that, Article 227[17] imposes a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority.[18] The power is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law and justice.[19] Nonetheless, it is very important note that the power of judicial review vested in the High Courts and into the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the Constitution.[20]

---

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

17. Article 227 of the Constitution provides about the power of superintendence over all courts by the High Court and *inter alia* says that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and the High Court may (*a*) call for returns from such courts; (*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and (*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
18. The question which is important from an arbitration point of view is whether the court can entertain revision under Art. 227 in exercise of judicial review against the order passed by the arbitrator in an ad hoc arbitration? Whether s. 5 of the Arbitration and Conciliation Act is a bar which excludes the jurisdiction of the High Court?

    In the Bharat Bank Ltd v. Employees of Bharat Bank Ltd, MANU/SC/0030/1950, the term "tribunal" within the meaning of Art. 136 was examined by the court and it was observed that, "tribunals which do not derive authority from the sovereign power cannot fall within the ambit of Art. 136. The condition precedent for bringing a tribunal within the ambit of Art. 136 is that it should be constituted by the State. Again a tribunal would be outside the ambit of Art. 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties. *See also* Engineering Mazdoor Sabha and Anr v. Hind Cycles Ltd., MANU/SC/0279/1962; Rohtas Industries Ltd v. Rohtas Industries Staff Union, MANU/SC/0354/1975.
19. Estralla Rubber v. Dass Estate (p) Ltd. (2001) 8 SCC 319.
20. L Chandra Kumar v. Union of India and others MANU/SC/0261/1997, AIR1997SC1125, 1997(1)BLJR735, (1997)1CALLT55(SC), 83(1997)CLT815(SC). *See also* Kesavananda Bharati v.

## §1.03 ESSENCE OF COMMERCIAL ARBITRATION

Commercial arbitration must have existed since the dawn of commerce. All trade potentially involves disputes, and successful trade must have a means of dispute resolution other than force. From the start, it must have involved a neutral determination, and an agreement, tacit or otherwise, to abide by the result, backed by some kind of sanction.[21]

The evolution of business arbitration remains of critical importance to international economic cooperation.[22] Without reliable ways to resolve cross-border disputes, many wealth-creating transactions either will remain unconsummated, or will be concluded at higher costs to reflect the absence of adequate mechanisms to vindicate contract rights. Arbitration of business disputes, thus, provides net benefits from the perspective of both national welfare and the shared interests of the global commercial community.[23]

With the increasing integration of global markets, the demand accelerates for neutral dispute resolution forums that are international in scope yet responsive to diverse users and cultures. With developments in information technology and regional and global integration of trade, the parameters of business activity are becoming more global.[24] Transnational enterprises are operating on a global scale, with more complex contracts characterized by long-term arrangements. This development has led to an increase in the need for neutral forums that provide effective conflict management to resolve the growing number of international disputes.[25]

Often the role of arbitration is distinguished from the role of litigation in a traditional court of law which bears significance both in the Indian as well as in the global context. Several factors on which this distinction is based are laid out here. In India, the official system is too slow to respond the needs of the time as well as is too expensive because of court fees and stamp duties. Furthermore, the formalized legal system invariably breeds professional lawyers, who more often than not charge very high fees which in the majority of cases creates hardships to the parties that outweigh the benefits of being represented by counsel, given the capacity of the average person in India to pay legal fees. It is generally true that arbitration produces speedier resolution; however, there can be exceptions due to multiple parties, arbitrators, lawyers and litigation strategies; similarly, arbitration is normally less costly; however, there can be exceptions to this principle due to multiple parties, lawyers, arbitrators and litigation strategies.[26]

---

State of Kerala MANU/SC/0445/1973; Fertiliser Corporation Kamgar Union v. Union of India MANU/SC/0010/1980: (1981)ILLJ193SC; Delhi Judicial Service Association v. State of Gujarat MANU/SC/0473/1991: AIR1991SC2150.

21. Michael John Mustill, *Arbitration history and background*,6 J. INT'L ARB. 43, 1 (*1989*).
22. WILLIAM W. PARK, ARBITRATION OF INTERNATIONAL BUSINESS DISPUTES, 4 (2006).
23. Id; 4.
24. Shahla F. Ali, *Approaching the Global Arbitration Table: Comparing the Advantages of Arbitration as Seen by Practitioners in East Asia and the West*, 28 Rev. Litig. 791, 4(2009).
25. Id; 4.
26. *See generally* Arthur Mazirow, Esq., CRE, *The Advantages and Disadvantages of Arbitration as compared to litigation*, Presented to The Counselors of Real Estate, April 13, 2008, Chicago, Ilinois.

Other factors also distinguish arbitration from litigation. The exclusionary rules of evidence do not apply, everything can come into evidence so long as it is relevant and non-cumulative,[27] and arbitration is not a public hearing and there is no public record of the proceedings. Confidentiality is required of the arbitrator and, by agreement, the entire dispute and its resolution can be subject to confidentiality imposed on the parties, their experts and attorneys by so providing in the arbitration agreement.[28] From the defense point of view, there is less exposure to punitive damages and run-away juries. Also in the case of arbitration there is a possibility to get arbitrators who have specific subject-matter expertise. In arbitration there is limited discovery because it is controlled by what the parties have agreed upon and it is all controlled by the arbitrator. Overall, the arbitration process is often less adversarial than litigation, which helps to maintain business relationships between the parties. The arbitration is also more informal than litigation due in large part to many of the factors set out above. The finality of the arbitration award and the fact that normally there is no right of appeal to the courts to change the award also makes arbitration an appealing avenue for dispute resolution.[29]

## §1.04 A BRIEF HISTORY

India has a long tradition of arbitration. The settlement of differences by tribunals chosen by the parties themselves, whose decision to be accepted as final and conclusive between themselves— which is the basic idea of arbitration—was well-known to Hindus in ancient India. There were in fact different grades of arbitrators with provisions for appeal in certain cases from the award of a lower grade of arbitrators to arbitrators of the higher grade.[30] The practice seems to have been in vogue immediately before the advent of the British.[31] Modern arbitration law in India was created by the Bengal Regulations in 1772, during the British rule. The Bengal Regulations provided for reference by a court to arbitration with the consent of the

27. Id; 1.
28. Id; 1, However in so far as privacy is concerned, it is not true that arbitrations are necessarily confidential. Either party may be able to publicize the fact that the proceeding is going on. Nevertheless, it is usually the case that pleadings in arbitration are not available to the public, and that the hearing is closed as well. Theodore O Rogers, *The Procedural Differences Between Litigating in Court and Arbitration: Who Benefits?* 16 Ohio St J on Disp Resol, 633, 6 (2001).
29. Id; 1, *see also* Theodore O. Rogers, Jr, *The Procedural Differences Between Litigating in Court and Arbitration: Who Benefits?* 16 Ohio St. J. on Disp. Resol. 633 (2001).
30. In India, history gives evidence that the villagers had a judicial system of their own, which was familiar and respected by them; the various traders and guilds had a similar system. The *puga* courts were comprised of persons dwelling in the same place, irrespective of their caste or employment, and were competent to decide cases in which the local publics were interested. The *Srenis* (guilds) were associations of persons engaged in similar pursuits, of which the merchant's guilds were most the important. They were competent to decide matters relating to their special calling for traders. Social matters concerning the members of a particular community could be investigated and decided at the level of *Kulas*. The three arbitration courts (*Kula, Sreni, Puga* or *Gana*) were private tribunals in the sense that they were not constituted by a royal authority and they resembled arbitrators to that extent. *See* Law Commission of India, Seventy: Sixth Report on Arbitration Act, 1940, 5 (1978).
31. Law Commission of India, Seventy: Sixth Report on Arbitration Act, 1940, 4 (1978).