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# Arbitration in Bangladesh

## A Modern Framework Confronting Practical Constraints

Bangladesh arbitration, Arbitration Act 2001, commercial arbitration, judicial intervention, enforcement of arbitral awards, foreign-seated arbitration, New York Convention, institutional arbitration, BIAC, dispute resolution

Arbitration has become a central feature of modern commercial dispute resolution because it is designed to provide a private, binding, and comparatively efficient alternative to ordinary court proceedings. In Bangladesh, that framework is principally governed by the Arbitration Act 2001[1], which covers domestic arbitration, international commercial arbitration, and the recognition and enforcement of certain foreign arbitral awards. The statute sits within a broader international context: Bangladesh's arbitration law is widely treated as Model Law-influenced[2], and Bangladesh is also a contracting state to the New York Convention, which remains central to the enforcement of foreign arbitral awards. Yet a modern statutory framework does not by itself guarantee an effective arbitral system. In Bangladesh, the practical value of arbitration still turns on questions of speed, judicial support, judicial restraint, and enforceability. Any realistic assessment of arbitration in Bangladesh must therefore look beyond the text of the law and examine how the system operates in practice.

### Legal Framework

Arbitration in Bangladesh is primarily governed by the Arbitration Act 2001, which provides the statutory basis for both domestic and international arbitration. The Act was enacted to consolidate and modernise the law relating to arbitration, replacing earlier fragmented provisions and bringing Bangladesh closer to internationally recognised standards.

[1] Arbitration Act 2001 (Bangladesh)

[2] UNCITRAL Model Law on International Commercial Arbitration 1985

The framework reflects, to a significant extent, the principles of the UNCITRAL Model Law, particularly in its recognition of party autonomy and limited judicial intervention. Parties are generally free to agree on key aspects of the arbitral process, including the appointment of arbitrators and the procedure to be followed, subject to certain statutory safeguards. The Act also requires that arbitration agreements be in writing, thereby ensuring clarity and enforceability[3].

In addition to its domestic legislation, Bangladesh participates in the international arbitration regime through its accession to the New York Convention[4], which governs the recognition and enforcement of foreign arbitral awards[5]. This allows awards made in other contracting states to be enforced in Bangladesh, subject to limited exceptions.

In addition to the Arbitration Act 2001, elements of alternative dispute resolution are also recognised within the court system, including through Section 89B of the Code of Civil Procedure[6], which provides for court-referred arbitration, and in certain specialised statutes such as the Artha Rin Adalat Ain 2003[7]. However, these mechanisms operate alongside, rather than as substitutes for, the primary arbitration framework.

Taken together, the statutory framework positions Bangladesh as a jurisdiction that is, at least in formal terms, aligned with global arbitration standards. However, as discussed below, the effectiveness of this framework ultimately depends on how it operates in practice.

**How arbitration works in practice**

In practice, arbitration in Bangladesh usually begins with an arbitration clause in a contract, or less commonly, a separate written arbitration agreement. The Arbitration Act 2001 requires the agreement to be in writing, and it allows that requirement to be satisfied through signed documents or written communications that record the parties' agreement to arbitrate. Once a dispute arises, the process ordinarily moves forward when one party serves notice requiring the dispute to be referred to arbitration or requiring the other party to participate in the constitution of the tribunal. The parties are generally free to agree on the number of arbitrators and the method of appointment; failing agreement, the Act provides default mechanisms to ensure that the tribunal can still be constituted.

Once the tribunal is in place, the proceedings are relatively flexible. The parties submit their claims and defences, the tribunal determines how hearings or written submissions will be managed, and the dispute proceeds outside the ordinary court system. That procedural flexibility is one of arbitration's main attractions, particularly in commercial disputes where parties may value confidentiality, speed, and a greater degree of control over the process. At the end of the proceedings, the tribunal issues an arbitral award, which is final and binding[8] on the parties under the statutory framework. Enforcement, however, still requires engagement with the courts, which means that the practical success of arbitration often depends not only on the tribunal's decision, but also on the efficiency of the enforcement stage.

[3] Arbitration Act 2001, s 9

[4] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

[5] Arbitration Act 2001, ss 45-47

[6] Code of Civil Procedure 1908 (Bangladesh), s 89B

[7] Artha Rin Adalat Ain 2003

[8] Arbitration Act 2001, s 39

**Role of Courts in Bangladesh**

Although arbitration is designed to operate as an alternative to court litigation, the courts in Bangladesh continue to play an important supporting and supervisory role under the Arbitration Act 2001. Their involvement is built into the statutory framework and, in many cases, is necessary to ensure that the arbitral process functions effectively.

At the outset, courts may assist in the constitution of the arbitral tribunal where the parties are unable to agree on the appointment of arbitrators. They also have the power to grant interim measures in support of arbitration, particularly under Section 7A of the Arbitration Act 2001[9], which allows parties to seek urgent relief, such as injunctions or asset preservation, before or during arbitral proceedings. This supportive jurisdiction is important in maintaining the effectiveness of arbitration, especially in commercial disputes where delay may cause irreparable harm.

Courts also perform a supervisory function over the arbitral process. This includes addressing challenges to the jurisdiction of the tribunal, as well as applications to set aside arbitral awards on limited statutory grounds under Sections 42 and 43 of the Arbitration Act[10]. In principle, this reflects a balance between respecting party autonomy and ensuring procedural fairness.

The principle of limited judicial intervention is also well recognised in international arbitration jurisprudence. In *Fiona Trust & Holding Corporation v Privalov*[11], the UK House of Lords affirmed a strong presumption that commercial parties intend their disputes to be resolved through arbitration, with minimal court interference. While the Bangladeshi framework reflects a similar approach in principle, the extent of court involvement in practice continues to shape how that principle operates.

In practice, the extent of judicial involvement has been a point of concern. While the statutory framework contemplates limited intervention, parties frequently engage the courts at multiple stages of the process, particularly in relation to interim relief and enforcement. As a result, arbitration in Bangladesh remains closely intertwined with the court system, and judicial involvement can, in certain cases, diminish the efficiency that arbitration is intended to achieve.

**Key Practical Challenges**

Despite the modern structure of the Arbitration Act 2001, arbitration in Bangladesh continues to face a number of practical difficulties that affect its overall efficiency.

The first is delay. Arbitration is often chosen because it is expected to be faster than ordinary court proceedings, but in practice that advantage can narrow where the process becomes entangled in procedural objections, applications to court, or difficulties at the enforcement stage. This matters commercially because parties usually turn to arbitration in order to obtain a binding result without becoming tied up in prolonged dispute resolution.

A second challenge is the extent of judicial involvement. The Bangladeshi courts play an important supporting role in arbitration, particularly in relation to interim measures and enforcement, but that role can also expand into a source of uncertainty and delay. Practitioner commentary has noted that section 7A of the Arbitration Act 2001 gives the courts wide powers to grant interim protective measures, and questions about how far the courts may assist arbitral

[9] Arbitration Act 2001, s 7A

[10] Arbitration Act 2001, ss 42-43

[11] *Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40

proceedings, especially where the arbitration is seated outside Bangladesh, have not always been free from controversy.

The judiciary in Bangladesh has taken differing views regarding the applicability of the Arbitration Act 2001 to foreign-seated arbitrations. In *HRC Shipping Ltd v MV X-Press Manaslu*[12], the High Court Division adopted an arbitration-supportive approach, holding that courts may grant interim relief even where the seat of arbitration is outside Bangladesh. However, in *STX Corporation Ltd v Meghna Group of Industries Ltd*[13], the Court adopted a restrictive interpretation, emphasising the territorial scope of section 3 and holding that the Act does not apply to foreign-seated arbitrations except to the limited extent expressly provided. In *Southern Solar Power Ltd v Bangladesh Power Development Board*[14], the High Court Division departed from the restrictive approach in *STX* and reaffirmed a more arbitration-supportive stance, holding that section 7A empowers the Court to grant interim relief in aid of foreign-seated arbitrations.

From a practical perspective, this means that parties cannot always assume that arbitration will proceed with minimal court interaction.

A related issue is the absence of a clear framework for emergency arbitration in Bangladesh. In many international arbitration regimes, parties may seek urgent interim relief from an emergency arbitrator before the constitution of the tribunal. The Arbitration Act 2001 does not expressly recognise such mechanisms, with parties instead relying on court intervention under Section 7A for urgent relief. While this ensures access to interim measures, it also reinforces the continued dependence on courts at a stage where arbitration is intended to operate autonomously.

Enforcement also remains a significant issue. Although the statutory framework recognises both domestic awards and certain foreign arbitral awards, the value of an arbitral award ultimately depends on whether it can be enforced effectively. In Bangladesh, enforcement still requires recourse to the courts, and objections based on statutory grounds can prolong the process. For cross-border parties in particular, this can reduce confidence in arbitration as a swift and self-contained method of dispute resolution, even where the legal framework is formally pro-enforcement.

Another practical limitation is the still-developing nature of institutional arbitration in Bangladesh. In practice, arbitration in Bangladesh remains largely ad hoc, meaning that proceedings are conducted without the supervision of a formal arbitral institution. While ad hoc arbitration offers flexibility, it can also lead to procedural uncertainty, particularly where parties disagree on issues such as timelines, costs, or the conduct of proceedings. By contrast, institutional arbitration, administered by bodies such as the Bangladesh International Arbitration Centre (BIAC), provides a more structured framework with established rules and administrative support. Although BIAC represents an important step towards strengthening arbitration infrastructure in Bangladesh, institutional arbitration has not yet become the default choice in the way it has in more developed arbitration jurisdictions. This imbalance has practical implications, as stronger institutional frameworks can enhance efficiency, reduce disputes over procedure, and increase overall confidence in arbitration as a dispute resolution mechanism.

More broadly, these challenges point to a recurring gap between legal design and practical operation. Despite its broadly modern and internationally aligned framework, arbitration in Bangladesh continues in practice to face delay, uncertainty over the scope of court intervention, and inefficiencies at the enforcement stage. For arbitration to become

[12] HRC Shipping Ltd v. MV X-Press Manaslu, 58 DLR 185

[13] S*TX Corporation Ltd v Meghna Group of Industries Ltd* 64 DLR (HCD) 550.

[14] Southern Solar Power and another v. Bangladesh Power Development Board and others, 2019 (2) 16 ALR (HCD) 91.

a more consistently effective dispute resolution mechanism in Bangladesh, the legal framework must be supported by predictable judicial practice, efficient case handling, and stronger institutional confidence.

**Why this matters**

The effectiveness of arbitration is closely linked to the broader commercial environment in which businesses operate. In Bangladesh, arbitration is commonly used in commercial contracts, particularly in sectors involving cross-border transactions, infrastructure, and foreign investment. For such parties, the ability to resolve disputes efficiently and enforce outcomes predictably is often a key consideration when entering into contractual relationships.

While Bangladesh has a legal framework that recognises and supports arbitration, including its participation in the New York Convention, practical uncertainties can affect how that framework is perceived. Delays in proceedings, the potential for court intervention, and challenges in enforcement may, in some cases, reduce the attractiveness of arbitration as a dispute resolution mechanism.

From a commercial perspective, the reliability of arbitration is therefore not just a legal issue but also an economic one. A system that delivers timely and enforceable outcomes can enhance business confidence and support investment, whereas inefficiencies in dispute resolution may have the opposite effect. Strengthening the practical operation of arbitration is, accordingly, an important component of maintaining Bangladesh's credibility as a competitive and investor-friendly jurisdiction.

**Conclusion**

Arbitration in Bangladesh is supported by a modern statutory framework that reflects internationally recognised principles and provides a viable alternative to court-based dispute resolution. The Arbitration Act 2001, together with Bangladesh's participation in the New York Convention, establishes a legal foundation that is, in formal terms, aligned with global arbitration standards.

However, as this discussion has shown, the effectiveness of arbitration in Bangladesh ultimately depends on its practical operation. Delays, the extent of judicial involvement, and challenges in enforcement continue to shape the experience of parties engaging in arbitration. While these issues do not undermine the viability of arbitration as a dispute resolution mechanism, they do highlight the need for greater consistency, efficiency, and institutional development.

Strengthening the practical functioning of arbitration will be important not only for the resolution of disputes, but also for reinforcing Bangladesh's position as a reliable and competitive commercial jurisdiction.

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