

## THE EQUILIBRIUM OF TRUST AND CERTAINTY: FORTY YEARS OF REFINING ENGLISH ARBITRATION

### AUTHOR

Dr. Sarosh Zaiwalla

Senior Partner & Founder, Zaiwalla & Co.

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### The Foundational Balance

English arbitration was initially built on a simple promise: a sanctuary where the rigid formalities of the High Court were traded for the swift, practical judgment of industry peers. The English arbitration process was to belong to the commercial man, and disputes were resolved through industry-specific knowledge and integrity rather than the cold mechanics of binding legal precedent and courtroom convention. Russel on Arbitration, one of the early legal practitioners' books of International Arbitration began with the words "*honest men dread arbitration more than lawsuits*".<sup>1</sup>

However, as global trade scaled, international commerce craved for more than mere fair play and required a London arbitration award to be as legally resilient as a judicial ruling. This transition from commercial discretion to judicial alignment has been the defining arc of the modern era of arbitration.

### Overview

The development of the English arbitral mandate is not a story of replacing commercial wisdom, but of recalibrating its relationship with the law. Over the last four decades, the power to resolve complex disputes has shifted from a reliance on purely industry-based intuition towards a sophisticated alignment with qualified legal principles.

This evolution has ensured that London remains a robust pillar of the international rule of law. From its foundational days in the early 1980s, *Zaiwalla & Co.* has been at the forefront of this

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<sup>1</sup> David St. John Sutton, Judith Gill and Matthew Gearing, *Russell on Arbitration* (24<sup>th</sup> edn, Sweet & Maxwell 2015).

globalised practice, not merely witnessing the expansion of London's legal reach, but actively shaping it through landmark successes that have defined English law for a generation.

### **1985: Originality of Thought and the Legacy of *La Pintada***

The first major shift toward legal precision occurred in *La Pintada Compania Navegacion S.A. v President of India* [**La Pintada**].<sup>2</sup> The dispute arose out of a contract for the carriage of wheat from the United States of America to India in the aftermath of the 'Great Indian Famine' from 1976-1978, a period marked by chronic payment delays. The central question was whether arbitrators possessed an inherent power to award amounts of compound interest as damages for late payment, in the absence of an express contractual term.

The case reached the House of Lords through a novel legal path. Both the High Court and the Court of Appeal had fallen into line with an arbitrator who had awarded compound interest against the President of India. Having obtained permission to take the case to the highest court, *Zaiwalla & Co.* instructed a young Tony Blair, as a junior to leading counsel Derry Irvine QC, to argue the matter. Keen followers of politics will note that when Mr. Blair became the United Kingdom [**UK**] Prime Minister, he appointed Mr. Irvine as his Lord Chancellor, in real terms Minister of Law and Justice.

Despite the initial protestations of counsel that *Zaiwalla & Co.*'s proposed arguments having no prospects of success, the firm maintained its stance that the rule of law required strict adherence to established damages principles, rather than broad 'commercial' pragmatism. The House of Lords ultimately upheld this view, reinforcing the boundaries of arbitral discretion.

The impact of the ruling was so significant that it prompted a surprise personal visit to the firm's offices by the then Lord Chancellor, Lord Mackay of Clashfern. His visit was a rare acknowledgement that the English justice system remains open to original thought and that even a boutique practice, through professional integrity and persistence, can fundamentally enhance national jurisprudence.

### **Refining the Boundaries: Lips Maritime**

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<sup>2</sup> *La Pintada Compania Navegacion S.A. v President of India* [1983] 1 Lloyd's Rep. 37.

By 1988, the alignment of arbitral powers with that of the courts continued with the House of Lords case of *President of India v Lips Maritime Corp.* [**“Lips Maritime”**].<sup>3</sup> This case focused on currency exchange losses. While the courts were beginning to show a matured willingness to accommodate commercial realities, the *Lips Maritime* case reinforced that such accommodation must be anchored in conventional legal doctrine. The House of Lords upheld the award nonetheless, translating commercial logic into the formal legal frameworks of remoteness and foreseeability.

This period demonstrated a progression of the arbitral mandate. The commercial man was now supported by the precision of qualified legal thought. Efficiency was no longer measured merely by the speed of settlement, but by the legal durability and integrity of the final award.

### **Protecting the Heart of the Process: Jivraj v Hashwani**

As the 21<sup>st</sup> century dawned, a new challenge emerged: ensuring that legal formalisation did not extinguish the essence of arbitration, being the independence and autonomy of the parties involved. This tension culminated in 2011 in *Jivraj v Hashwani*,<sup>4</sup> where the Hon’ble UK Supreme Court had replaced the House of Lords as the highest tribunal in the country. The dispute involved an arbitration agreement requiring arbitrators to be members of a specific community. The challenge was based on the premise that such a requirement violated employment equality legislation.

Representing the party seeking to uphold the clause, *Zaimwalla & Co.* argued a point of fundamental principle, that an arbitrator cannot be considered a subordinate employee whose appointment is subject to formal legal qualifications of employment equality. Rather, an arbitrator stands in independent capacity to render justice to both the parties. To treat arbitrators as employees would be to strip parties of their right to choose adjudicators they trust as individuals, who understand the cultural or religious context of the underlying bargain.

The Supreme Court’s agreement was a landmark moment protecting the soul of arbitration, affirming that while the process must be legally sound, the selection remains a private matter of trust.

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<sup>3</sup> *President of India v Lips Maritime Corp.* [1987] 2 WLR 906.

<sup>4</sup> *Hashwani v Jivraj* [2011] 1 WLR 1872.

## **Inference: A Symmetry of Rules and Justice**

The journey from the House of Lords in 1980s to the modern Supreme Court illustrates that English arbitration is a living system. It has successfully found a balance between commercial wisdom and legal expertise. This evolution reflects *Zainwalla & Co.*'s 45 years commitment to the idea that law exists for justice, and that justice is best served through an efficiency of approach that never sacrifices professional integrity.

The modern challenge is to preserve the flexibility that makes arbitration unique while providing the absolute stability required by global commerce. The most effective legal solutions continue to be found where originality of thought meets the courage to uphold the rule of law. As we refine the legal architecture of dispute resolution, we must ensure that the technical precision of the lawyer never fully eclipses the shared integrity of the individuals who first placed their trust in the process. Ultimately, true legal excellence lies in the realization that while legal rules provide certainty, it is the pursuit of justice that gives those rules their purpose as the ultimate goal of law is to do justice.