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REPEAT APPOINTMENTS AND THE RISK OF BIAS IN ARBITRATION

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I. ABSTRACT

This study examines the increasingly significant issue of repeat or consecutive appointments of arbitrators in commercial arbitration and analyses whether such appointments create actual or perceived bias capable of undermining the principles of independence and impartiality. The research focuses primarily on the Indian legal framework governing arbitrator appointments and challenges, while undertaking a comparative examination of the approaches adopted in Singapore, Hong Kong, and Paris under leading institutional arbitration regimes. Employing a combined doctrinal and empirical methodology, the study analyses statutory provisions, judicial decisions, institutional rules, published appointment patterns, and arbitrator challenge outcomes. The empirical assessment demonstrates that appointments remain concentrated among a relatively small group of experienced arbitrators, whereas successful challenges based on alleged bias remain consistently rare across major arbitral institutions. These findings indicate that repeat appointments, although not constituting evidence of actual bias by themselves, may nevertheless generate structural risks affecting public confidence in arbitral neutrality. The study argues that existing disclosure-based safeguards are insufficient to address these concerns comprehensively. It therefore proposes reforms including strengthened and continuous disclosure obligations, enhanced institutional scrutiny of appointments, diversification of the arbitrator pool, and limitations on unilateral appointment mechanisms. The paper's principal contribution lies in integrating doctrinal analysis with comparative and empirical evidence to demonstrate that preserving party autonomy must be balanced with institutional safeguards that reinforce transparency, impartiality, and confidence in contemporary arbitration, particularly within the evolving Indian arbitration framework.

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II. KEYWORDS

Arbitration, Arbitrator Bias, Repeat Appointments, Independence and Impartiality, Institutional Arbitration.

III. INTRODUCTION: WHY REPEAT APPOINTMENTS MATTER TODAY

A. Growth of Arbitration and the Concern Around Repeat Appointments

Arbitration, a method of settling commercial disputes most often used within infrastructure, investments, and international commerce[2], has become increasingly popular over time. With the increase in arbitration usage, questions have arisen about patterns regarding repeat appointments. In a number of different jurisdictions around the world, there are a number of experienced arbitrators who have frequently been appointed in large dollar value disputes. While reputation and experience are obviously factors when appointing an arbitrator, the pattern of repeat appointments by the same party (or law firm) has raised questions about potential bias.[3]

Unlike judges, arbitrators have a case-by-case appointment process and are compensated each time they are appointed. As a result, there has been some debate regarding whether or not the perception of dependence between the arbitrator and repeatedly appointing party could exist, even if no actual bias exists. Regardless of whether bias exists, the perception of a close relationship between an arbitrator and a repeatedly appointing party may have an impact on the trust of the process. Empirical data show that although award outcomes are commonly by a unanimous vote; the party's appointed arbitrator may be viewed by others as potentially biased due to how they obtained access to the tribunal.[4]

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[2] Gary Born, International Commercial Arbitration (3rd end, Kluwer 2021) 45–60.
[3] Lisa B Bingham, 'Employment Arbitration: The Repeat Player Effect' (1997) 1 Emp Rts & Emp Pol'y J 189, 191–195.
[4] David Horton and Andrea Cann Chandrasekher, 'After the Revolution' (2015) 104 *Georgetown Law Journal* 57.

B. Statement of Problem

The central issue in this debate is whether or not there is tension between party autonomy and the impartiality and independence of the arbitrators. The fact that party autonomy allows disputants to choose their decision-makers (arbitrators) based on their qualifications and knowledge of the applicable industry or law is one of arbitration's key characteristics.[5] However, even though the principle of party autonomy is foundational, these choices must still be made within a framework of fairness.

In addition to being impartial, a tribunal also has to be viewed as such. The concerns about appointments are heightened when an arbitrator receives multiple appointments from one source, or an individual moves throughout the spectrum of being counsel to being an arbitrator in separate arbitrations, as in one instance to another. Courts have applied an objective standard to determine whether a reasonable person, who is fully informed of the facts in the case, would perceive that an arbitrator has a real chance of being subjectively biased against either party.[6] Therefore, a determination of whether the arbitrator exhibited actual bias is not enough; rather, a determination of whether the public has confidence in the fairness and impartiality of this process must also be made.

C. Scope and Comparative Study

The primary focus of this article is on repeat appointments under the Arbitration and Conciliation Act, 1996, as amended by the 2015, 2019, and 2021 amendments. While the 2015 and 2019 reforms strengthened disclosure obligations and introduced structured grounds of ineligibility, the 2021 Amendment further reshaped the legislative framework by omitting the Eighth Schedule governing arbitrator qualifications and thereby permitting greater flexibility in determining arbitrator eligibility through applicable rules and institutional standards. These developments are examined alongside comparative approaches adopted in Singapore, Hong Kong, France, and the ICSID framework.

[5] Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015).
[6] William W Park, 'Arbitrator Bias' (2015) 12 *Transnational Dispute Management* 1.

This focus on the Indian position will provide an opportunity to contrast the more recent legal developments in Singapore, Hong Kong and Paris regarding institutional rules and judicial approaches both with respect to arbitrators who are repeat appointees. The intention is also to reference trends regarding the appeals process for repeat appointees within ICEID's arbitration process.

D. Research Objectives

The present study seeks to achieve the following objectives:

1. To examine the legal principles governing arbitrator independence and impartiality in relation to repeat appointments under the Arbitration and Conciliation Act, 1996 and relevant comparative jurisdictions.
2. To analyse the disclosure obligations, challenge mechanisms, and judicial approaches adopted in India, Singapore, Hong Kong, France, and the ICSID framework for addressing concerns arising from repeat appointments.
3. To evaluate publicly available institutional data on arbitrator appointments and disqualification proceedings in order to assess patterns of appointment concentration and the effectiveness of existing safeguards against actual or perceived bias.
4. To identify gaps in the current legal and institutional framework and propose reforms aimed at enhancing transparency, strengthening confidence in arbitral impartiality, and preserving the balance between party autonomy and procedural fairness.

E. Research Question

The primary research question addressed in this paper is:

1. To what extent do repeat appointments of arbitrators create actual or perceived bias in commercial arbitration, and whether the current legal framework is sufficient to address this issue without compromising party autonomy?

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F. Research Methodology

This study adopts a mixed doctrinal and empirical research methodology. The doctrinal component examines the Arbitration and Conciliation Act, 1996, relevant amendments introduced in 2015 and 2019, judicial decisions, institutional arbitration rules, and comparative legal developments in India, Singapore, Hong Kong, France, and the ICSID framework to evaluate the legal principles governing arbitrator independence, impartiality, and repeat appointments. The empirical component analyses publicly available institutional reports, caseload statistics, and published appointment data to identify patterns of repeat appointments and the concentration of appointments among a relatively small group of arbitrators. It further reviews published data on arbitrator challenge and disqualification proceedings across major arbitral institutions to assess the frequency and success of such challenges.

The empirical analysis is based exclusively on publicly available datasets and institutional publications, with the sampling limited to reported appointments and challenge decisions available during the study period. The combined methodology enables both a normative assessment of the legal framework and an evidence-based evaluation of whether repeat appointments create structural risks to the perceived impartiality of arbitral proceedings.

G. Literature Review

Several scholars, including William Park and Catherine Rogers, have highlighted the significance of independence and impartiality when arbitrating disputes.[7] Additionally, as highlighted by Stephen Choi and Susan Franck's empirical research, an abundance of

[7] Catherine Rogers, 'Reconceptualizing the Party-Appointed Arbitrator' (2023) 64 *Harvard International Law Journal* 139.

empirical studies has documented occurrences of repeat appointments and their potential influence upon decision-making processes.[8]

Nevertheless, the majority of current literature either examines legal principles or empirical findings as isolated from each other. There is a lack of integrated analysis that compares the legal framework, institutional practices, and patterns of appointment. This paper builds upon current literature by combining each of these perspectives to assess their relevance within the Indian context.

This article will establish that repeating a judicial appointment does not necessarily result in a bias against the repeat-appointed judge; however, such appointments create a continuing systemic risk of circumstantial reliance by the parties to any given arbitration, which could thereby impact the integrity of the arbitration process. Furthermore, this article will conclude that the current safeguards (predominantly based on the principle of full disclosure) are inadequate to properly address this issue.

IV. UNDERSTANDING ARBITRATOR BIAS

A. Distinguishing Independence and Impartiality

Independence and impartiality are commonly used concurrently in arbitration; they do not mean the same thing. Independence means there must be no objective relationships between the parties, their attorneys, or any related entities that could affect how the arbitrator makes decisions.[9] Any financial connection, work engagement, or close personal relationship should raise valid concerns regarding independence due to the potential for outside influence.

Impartiality, on the other hand, relates to how an arbitrator perceives the dispute at hand. That requires the arbitrator to render his/her decision based upon facts without any prior

[8] Stephen J Choi, Jill E Fisch and AC Pritchard, 'The Influence of Arbitrator Background' (2014) 9 *Virginia Law and Business Review* 43; Susan D Franck, 'The Role of International Arbitrators' (2006) 12 *ILSA Journal of International and Comparative Law* 499.

[9] Georgios Dimitropoulos, 'Constructing Arbitrator Independence' (2016) 36 *Northwestern Journal of International Law and Business* 371.

notion of either party or the issues. While the path to determining whether or not independence exists may be factual or relationship-based, the determination regarding impartiality is less obvious.[10] Thus, the courts use an objective standard to determine whether or not a reasonable person with all the available evidence would conclude that there is a legitimate chance of bias. The focus on impartiality does not only include actual fairness but the appearance of fairness.

B. Forms of Bias

1. **Repeat Appointment Bias:** The issue is one of frequency where certain parties or firms consistently request the same arbitrator for multiple matters. As a result of such frequent requests, the arbitrator could be perceived to have some connection with or familiarity with the requesting party. Even though there may not be an actual bias, the pattern of repeated requests creates an appearance of a lack of independence from the requesting party's interests.[11]
2. **Financial Incentive Bias:** Arbitrators are engaged and compensated for individual matters. Where a large portion of an arbitrator's work has come from one party, concerns can arise regarding the economic dependence of the arbitrator on that party. Additionally, the potential for future appointments can create a perception of bias and/or can affect decision-making, particularly in high-value or niche markets.[12]
3. **Subject-Matter Bias:** Arbitrators may exhibit bias based on their prior expressed views about recurring legal or factual issues. Any prior award, published opinion, or consistent position on other similar issues may create a question of whether an arbitrator can approach the current matter with an unbiased mind.[13]

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[10] Diane A Desierto, 'Rawlsian Fairness and International Arbitration' (2015) 36 *University of Pennsylvania Journal of International Law* 939.
[11] Donna Erez-Navot, 'Repeat Player Effect' (2015) 16 *Cardozo Journal of Conflict Resolution* 831.
[12] Shauhin A Talesh and Peter C Alter, 'The Devil is in the Details' (2020) 42 *Law and Policy* 315.
[13] James Ng, 'When the Arbitrator Creates the Conflict' (2016) 2 *McGill Journal of Dispute Resolution* 23.

4. **Role-Based Issues (Working as an Advocate, & Arbitration):** In a scenario, individuals may fulfill, at different times, the roles of Advocate & Arbitrator in multiple situations. In some arbitration fields, this dual role is assumed; however, this could lead to feelings of uncertainty with respect to impartiality when making a decision (arbitrating).
5. **Pre-Dispositional & Cognitive Bias:** As with all judges and decision makers, their profession and experience shape their understanding and rationale (for example, the experience of practice will make you learn how you see things when you make a decision). While your experience allows you to have expertise, it may also impact the way you perceive things and make your decision. The law focuses upon addressing actual & perceived bias and managing bias instead of merely relying on neutrality.
6. **The IBA Guidelines on Conflicts of Interest in International Arbitration (2024):** An important international benchmark for assessing arbitrator impartiality is provided by the IBA Guidelines on Conflicts of Interest in International Arbitration (2024). Although the Guidelines do not have binding legal force unless adopted by the parties or an arbitral institution, they are widely relied upon by arbitral tribunals, institutions, and national courts as persuasive guidance on disclosure obligations and challenges to arbitrators. The Guidelines employ a "traffic-light" framework comprising the Red List**,** Orange List**,** and Green List to classify circumstances that may affect an arbitrator's independence or impartiality. Under the Orange List, multiple appointments by the same party or the same counsel within a relevant period, together with other recurring professional relationships, may give rise to justifiable doubts requiring disclosure, although such circumstances do not automatically result in disqualification. The 2024 revision further clarifies disclosure obligations relating to repeat appointments, relationships with counsel, expert engagements, and other professional connections, while reaffirming that the General Standards remain the primary test for determining

impartiality and independence. This framework supports the central argument advanced in this article that repeat appointments do not, by themselves, establish actual bias, but they may create structural or perceptual risks that necessitate comprehensive disclosure and careful institutional scrutiny in order to preserve confidence in arbitral proceedings.

V. THE INDIAN FRAMEWORK

1. **The Arbitration and Conciliation Act, 1996:** In India, the regulation of arbitration is fundamentally governed by the Arbitration and Conciliation Act 1996. The purpose of the legislation was to modernize the law of arbitration in India to match the standards of international practice, especially those provided by the UNCITRAL Model Law.[14] The act emphasizes the importance of party autonomy while reducing judicial intervention as much as possible; however, during the development of arbitration as a means of resolving disputes, there has been a growing concern regarding an arbitrator's ability to work independently and their repeated appointment after completing prior assignments as an arbitrator.
2. **The 2015 and 2019 Amendments:** The 2015 Amendment introduced significant reforms aimed at strengthening arbitrator neutrality. Section 12(1), read with the Fifth Schedule, requires arbitrators to disclose any past or present relationships that may give rise to justifiable doubts regarding their independence or impartiality. Section 12(5), read with the Seventh Schedule, further provides that specified relationships automatically render an individual ineligible to act as an arbitrator unless the parties expressly waive the disqualification after the dispute has arisen.[15] The 2019 Amendment sought to promote institutional arbitration and proposed objective qualification standards for arbitrators through the insertion of the Eighth Schedule. However, these prescriptive eligibility requirements attracted criticism for potentially restricting the diversity and international

[14] UNCITRAL Model Law (n/a).
[15] Arbitration and Conciliation Act 1996 (India), s 12.

composition of arbitral tribunals. Consequently, the Arbitration and Conciliation (Amendment) Act, 2021[16] omitted the Eighth Schedule and replaced it with a more flexible framework under which arbitrator qualifications are to be determined through applicable rules and institutional standards. The 2021 Amendment also inserted Section 36(3),[17] empowering courts to grant an unconditional stay on the enforcement of an arbitral award where the underlying arbitration agreement or award is prima facie induced or affected by fraud or corruption. Collectively, these reforms strengthened India's arbitration framework while facilitating greater flexibility in the selection and appointment of arbitrators.

3. **Unilateral Appointments and Government Contracts:** Previously, many contracts with various governments allowed each party to nominate its own arbitrator to hear their dispute. Recently, the Supreme Court has held that if one party is not eligible to be an arbitrator, that party cannot appoint another person as an arbitrator. This clarification has reduced the extent of unilateral control over the composition of the tribunal.
4. **Confidentiality and Disclosure:** Section 42-A of the Arbitration and Conciliation Act, 1996 imposes a statutory duty of confidentiality upon the arbitrator, arbitral institution, and parties in relation to arbitrate proceedings. The provision begins with the non-obstante clause, "Notwithstanding anything contained in any other law for the time being in force," indicating that the confidentiality obligation generally prevails over inconsistent statutory provisions. The only express exception permits disclosure where it is necessary for the purpose of implementing or enforcing an arbitral award. Although confidentiality is a fundamental feature of arbitration, it must be balanced with the statutory disclosure obligations applicable to arbitrators under Section 12 and the Fifth and Seventh Schedules,[18] which require disclosure of circumstances that may give rise

[16] Arbitration and Conciliation (Amendment) Act, 2021 (Act No. 3 of 2021).
[17] Arbitration and Conciliation Act, 1996, ss. 36(3), 43J (as amended).
[18] Arbitration and Conciliation Act, 1996, s. 12, Fifth Schedule & Seventh Schedule.

to justifiable doubts regarding independence or impartiality before or during the arbitral process. Accordingly, confidentiality does not negate an arbitrator's duty to make legally required conflict disclosures; rather, both obligations operate harmoniously to preserve the integrity, transparency, and fairness of arbitration proceedings.

VI. COMPARATIVE PERSPECTIVES: SINGAPORE, HONG KONG AND PARIS

In order to conduct a valid comparison of the repetition of appointments and bias issues, we must analyze not only the national laws related to arbitration, but also the rules that govern the processes of appointing, making disclosures, or challenging arbitrators from an institutional perspective. The current section assesses both the institutional processes and the legal frameworks of the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), and the International Chamber of Commerce (ICC) in Paris.

Jurisdiction	**Governing Law/Ordinance**	**Primary Institution**	**Judicial Approach**	**Institutional Safeguards for Neutrality**	**Challenge Procedure and Authority**
Singapore	International Arbitration Act (IAA) (incorporating UNCITRAL Model Law)	Singapore International Arbitration Centre (SIAC)	Restrained and pro-arbitration; intervention limited to serious	Arbitrators must submit written declarations of independenc	SIAC retains authority to determine challenges to

			procedural irregularities or jurisdictional defects; applies the "justifiable doubts" test for bias regarding independence or impartiality.	e and disclose any circumstances raising concerns; SIAC's Arb-Med-Arb framework maintains a clear separation between mediation and arbitration roles.	arbitrators, which limits tactical court interference.
Hong Kong	Arbitration Ordinance (Cap 609) (mirrors UNCITRAL Model Law)	Hong Kong International Arbitration Centre (HKIAC)	Minimal court intervention; High Court specialist list applies a consistent and arbitration-supportive standard; imposes cost	Detailed provisions governing appointment and challenge procedures; mandatory initial and continuing disclosure of	HKIAC has the authority to decide challenges directly to promote efficiency and avoid prolonged judicial

			consequences on unsuccessful attempts to resist enforcement to discourage frivolous challenges.	potential conflicts.	proceedings.
France (Paris)	Book IV of the Code of Civil Procedure	International Chamber of Commerce (ICC)	Generally supportive and measured approach; repeat appointments are not automatically disqualifying but are assessed for relationships of dependence.	Formal confirmation of all party-nominated arbitrators by the ICC Court; review of disclosures; mandatory scrutiny of draft awards before they are issued.	The ICC decides challenges internally through structured mechanisms; the ICC Court may refuse confirmation if concerns arise.

VII. LANDMARK CASES ON ARBITRAL BIAS

A. India

Indian courts have played a significant role in clarifying the law on arbitrator neutrality. In TRF Ltd. v. Energo Engineering Projects Ltd. (2017),[19] the Supreme Court held that a person who is ineligible to act as an arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996 cannot nominate another arbitrator. The Court clarified that if a person lacks eligibility to serve, the power to appoint also falls away.

The law developed further in Perkins Eastman Architects DPC & Anr v HSCC (India) Ltd.,[20] where the Supreme Court held that a party having a unilateral interest in the outcome of the dispute cannot possess the exclusive power to appoint a sole arbitrator. The Court extended the principle laid down in TRF Ltd. v. Energo Engineering Projects Ltd., holding that a person who is himself ineligible to act as an arbitrator cannot directly or indirectly exercise a unilateral power of appointment. The decision reinforces the principle that the constitution of the arbitral tribunal must preserve both actual and perceived impartiality.

The court in Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd. (2017)[21] held that arbitrator panels should not include only employees or affiliated entities of one of the parties. Panels must be broad enough to provide truly free and fair choice.

In Bharat Broadband Network Ltd. v. United Telecoms Ltd (2019),[22] the court held that any eligibility in terms of the order made under Section 12(5) will automatically operate and can only be waived by an express written agreement after a dispute had arisen.

[19] TRF Ltd v Energo Engineering Projects Ltd (2017) 8 SCC 377.
[20] Perkins Eastman Architects DPC & Anr v HSCC (India) Ltd., 2019 SCC OnLine SC 1517.
[21] Voestalpine Schienen GmbH v DMRC (2017) 4 SCC 665.
[22] Bharat Broadband Network Ltd v United Telecoms Ltd (2019) 5 SCC 755

B. International Developments

Repeated referral of cases to the same arbitrator has also been raised as a concern in international courts and tribunals. The United Kingdom Supreme Court found, in Halliburton Co. v. Chubb Bermuda Insurance Ltd. (2020),[23] that arbitrators had a duty to disclose circumstances that may give rise to doubts as to their impartiality.

In the case of Caratube v. Kazakhstan, it was held that prior involvement in related arbitration could provide grounds for disqualification in investment arbitration, where it raises concerns with respect to prejudgment. Other decisions, including Tidewater v. Venezuela and Universal Compression v. Venezuela, suggest that repeat appointments alone will not generally result in a finding of bias, according to the ICSID standard.[24]

At OPIC Karimum v. Venezuela, a more stringent approach was adopted by looking at repeated appointment in conjunction with other influences suggesting dependent status.

VIII. INSTITUTIONAL DATA AND PATTERNS OF CHALLENGE

A. ICSID Data

Challenging the appointment of an arbitrator before the International Centre for Settlement of Investment Disputes (ICSID) has been shown to be exceedingly difficult. While parties may occasionally challenge an appointment of an arbitrator on the ground of independence or impartiality, very few of these challenges are successfully made.[25] The requirement in the ICSID Convention that an arbitrator must demonstrate a clear and manifestly shown lack of independence is a significant reason as to why there is an extremely high threshold for arbitrator disqualification.[26]

An interesting point to note about ICSID arbitrations is that the vast majority of appointments are made to a very limited number of individuals. Studies analyzing

[23] Halliburton Co v Chubb Bermuda Insurance Ltd [2020] UKSC 48.
[24] Caratube v Kazakhstan (ICSID ARB/13/13); Tidewater v Venezuela (ICSID ARB/10/5).
[25] ICSID, *Caseload Statistics 2026*.
[26] Queen Mary University of London, *Arbitration Survey 2025*.

patterns of appointment to international investment tribunals reveal that a large number of arbitrators appear on a repeat basis before multiple tribunals.[27] While this is often due to an arbitrator's experience and reputation, it raises valid concerns about repeat arbitrator appointments. Additionally, a small pool of arbitrators has great authority over the functioning of the arbitration system as a result of frequent appointments.[28]

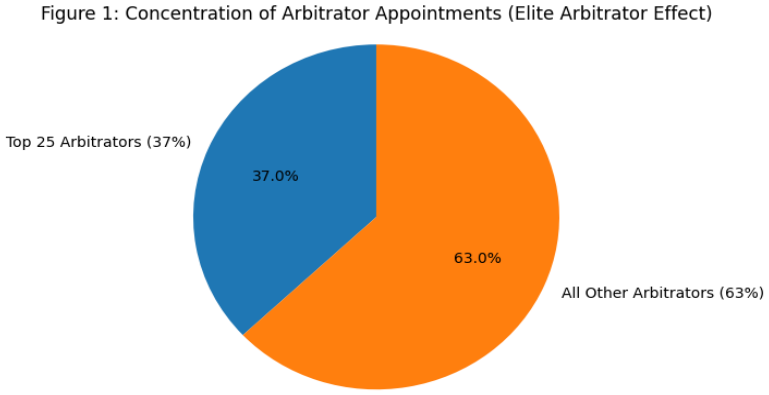


Figure 1: Concentration of Arbitrator Appointments (Elite Arbitrator Effects

(*Pie chart showing that roughly 37% of appointments are held by a small group of arbitrators.*)

Concentrated appointments do not, in itself, indicate bias; however, it does spawn discussions about the possibility that repeated appointments could create a perception that they are too close to one or more parties or their counsel.[29]

B. SIAC and HKIAC

In Asia, the SIAC and HKIAC have developed into key arbitration centers for international commercial conflicts and increasing numbers of Indian parties are utilizing the services of these institutions to settle disputes cross-border. Their popularity indicates

[27] Karel Daele, *Challenge and Disqualification of Arbitrators* (2012).
[28] Maria Nicole Cleis, *ICSID Arbitrators* (2017).
[29] William W Park, 'Arbitrator Bias' (2015) 12 *Transnational Dispute Management* 1.

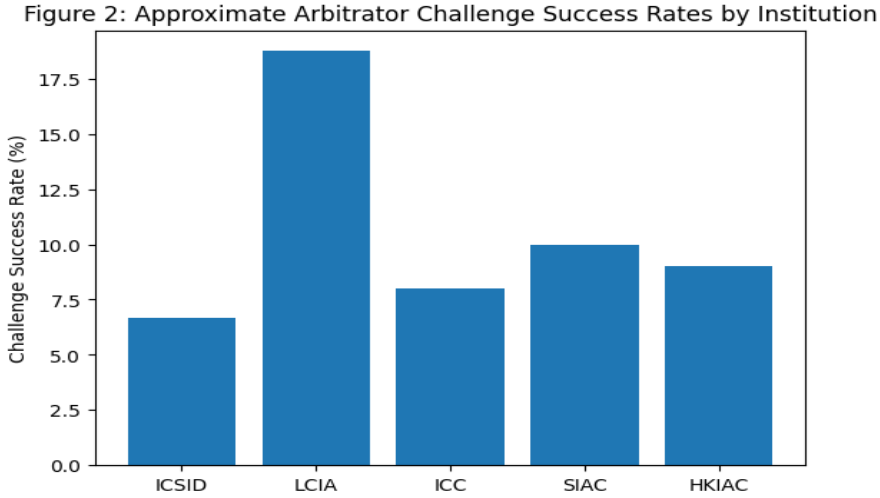
the confidence with which they are utilized due to their procedural efficiency, neutrality, and fair treatment.[30]

The SIAC and HKIAC have made improvements to their internal processes to ensure fairness in arbitrators. All arbitrators must disclose potential relationships/ circumstances that may create doubt about their independence. Institutional bodies also have in place procedures to assess and review objections and challenges on an as needed basis. All of this leads to transparency in the appointment and reduces the potential of conflicts.[31]

C. ICC and LCIA

Similar findings regarding arbitration disputes can be found at other significant arbitration institutions, such as the ICC and the LCIA. It seems clear that very few requests to disqualify arbitrators are successful.[32] Moreover, there are often additional means of addressing conflicts at the outset of a dispute, including compliance with disclosure requirements and prior review of the conflict by the institution prior to the appointment of the arbitrator(s).[33]

Figure 2: Approximate Arbitrator Challenge Success Rates by Institution



[30] Houchih Kuo, 'Repeat Arbitrators' (2011) 4 *Contemporary Asia Arbitration Journal* 247.
[31] James Ng, 'Arbitrator Ethics' (2016) 2 *McGill Journal of Dispute Resolution* 23.
[32] Karel Daele, *Challenge and Disqualification of Arbitrators* (2012).
[33] Maria Nicole Cleis, *ICSID Arbitrators* (2017).

Figure 2: Approximate Arbitrator Challenge Success rates by Institution

(*Bar graph comparing success rates across ICSID, LCIA, SIAC, HKIAC*)

The data shows that the likelihood of arbitrator disqualification across the various arbitration institutions is extremely low; therefore, it appears that the standard of proof for establishing arbitrator bias is high.[34]

D. Indian Data

Arbitration disputes based on bias have seen a dramatic increase in India after amendments were made to the Arbitration and Conciliation Act of 1996 in 2015 and then again in 2019. The amendments clarified what an arbitrator must disclose as well as the grounds for an arbitrator's ineligibility, which will allow both parties of the dispute to challenge the conflict of interest of the arbitrator.[35]

The majority of disputes involving these types of bias issues arise in the context of public procurement. For example, in public contracts, arbitration clauses often permit arbitrators to be appointed by an authority from a limited list of arbitrators.[36] The courts have begun to scrutinize these relationships to determine the independent status of arbitrators; whether the arbitration is seen as fair both parties to the dispute.

The data outlined above indicates that while there are few formal instances of disqualification of arbitrators, issues regarding repeated appointments and the concentration of arbitrators continue to drive discussion related to the fairness of the arbitration process.[37]

IX. PREVENTING BIAS: PRACTICAL MEASURE

1. **Continuous Disclosure Obligations:** Arbitrators should disclose to parties at all stages of their appointment any new relationships or engagements that could give

[34] ICSID, *Caseload Statistics 2026*.
[35] Arbitration and Conciliation Act 1996 (India), s 12.
[36] Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd (2017) 4 SCC 665
[37] Stavros Brekoulakis, 'Systemic Bias' (2013) 4 *Journal of International Dispute Settlement* 553.

them reason to doubt their independence from the parties so that transparency will exist between the parties and arbitrators. Ongoing disclosures will also allow parties to resolve issues of possible bias before they become a basis for challenging the validity of arbitral awards.[38]

2. **Institutional Oversight and Accreditation:** Institutional oversight remains an important mechanism for strengthening confidence in arbitration by promoting transparent appointment procedures, ethical standards, and effective disclosure practices. The Arbitration Council of India (ACI) was envisaged under Part IA of the Arbitration and Conciliation Act, 1996 to grade arbitral institutions, frame norms relating to institutional arbitration, and promote professional standards for arbitrators. However, despite its statutory incorporation through the 2019 Amendment,[39] the ACI has not yet been constituted, and its proposed regulatory functions therefore remain unimplemented. This institutional vacuum has limited the development of a uniform accreditation and oversight framework for arbitral institutions in India. The absence of an operational ACI also has implications for the issues examined in this article, particularly the promotion of consistent disclosure standards, transparent appointment practices, and diversification of the arbitrator pool. Until the ACI or an equivalent regulatory mechanism becomes functional, these objectives will continue to depend primarily upon judicial oversight, institutional rules, and internationally recognised soft-law standards, including the IBA Guidelines on Conflicts of Interest in International Arbitration.[40]
3. **Diversiying the Arbitrator Pool:** Expanding the pool of qualified arbitrators remains an important means of reducing the concentration of repeat appointments. Historically, appointments have tended to favour retired judges and senior legal practitioners. Although the Eighth Schedule introduced in 2019

[38] Olivia Valner, 'Apparent Bias' (2021) 38 *Journal of International Arbitration* 1.
[39] Arbitration and Conciliation (Amendment) Act, 2019.
[40] Department of Legal Affairs, *Arbitration Report* (2017).

attempted to prescribe formal qualification criteria, its omission by the 2021 Amendment[41] removed restrictive eligibility requirements that had been criticised for limiting participation by foreign practitioners and subject-matter specialists. The current framework provides greater flexibility for institutions and parties to appoint arbitrators with diverse professional expertise, including engineers, accountants, technical experts, and younger practitioners. A broader and more diverse arbitrator pool can reduce repeated appointments while preserving the expertise necessary for the effective resolution of complex commercial disputes.[42]

4. **Reforming Unilateral Appointment Clauses:** Arbitration clauses permitting the sole party to control the process of appointment are now viewed as a cause for review by the courts. Courts have recently been disfavoring these types of agreements with respect to governmental entities selecting arbitrators from their own panels. Balanced appointment mechanisms will allow for the tribunal to be perceived as both independent and neutral.[43]

X. PRACTICAL FRAMEWORK FOR INDIA

1. **Expertise and Neutrality:** There are relatively few experienced arbitrators available in some niche areas of arbitration such as construction, maritime, or commodities disputes; Due to the limited pool of available arbitrators, there is more potential for repeat appointments to occur by coincidence. However, courts and arbitral institutions in India should apply caution and due diligence when examining such situations because repeat appointments do not automatically suggest that an arbitrator has a bias. Rather than simply reviewing the number of times an arbitrator received a repeat appointment, the question that should be asked is whether the appointment results in a financial dependency of the

[41] Statement of Objects and Reasons, Arbitration and Conciliation (Amendment) Bill, 2021.
[42] Catherine Rogers, 'Party-Appointed Arbitrators' (2023) 64 *Harvard International Law Journal* 139.
[43] Perkins Eastman Architects DPC v HSCC (India) Ltd (2019) 9 SCC 389.

arbitrator upon any one party or law firm.[44] Furthermore, if there are too many restrictions regarding repeat appointments, access to experienced professionals who have the requisite subject matter expertise to resolve complex disputes will be significantly limited.

2. **An Approach to Assessing Bias:** It is also important to consider indirect relationships between arbitrators and parties when assessing bias. For example, an arbitrator may have prior experience with disputes involving the same factual background or legal issues in resolving concerns.[45] Although this background can help, it cannot allow for pre-judging. Ultimately, the focus should center on the capacity of an arbitrator to independently evaluate a dispute and to reach a conclusion based solely on the evidence presented.

XI. SUGGESTIONS AND RECOMMENDATIONS

The findings of this study indicate that existing disclosure-based safeguards, although significantly strengthened by statutory reforms and judicial intervention, require complementary institutional and policy measures to address the structural risks associated with repeat appointments. Accordingly, the following recommendations are proposed:

1. **Strengthen Disclosure Obligations:** Arbitrators should remain under a continuing duty to disclose repeat appointments, recurring professional relationships, and any other circumstances capable of giving rise to justifiable doubts regarding their independence or impartiality, consistent with international best practices and the IBA Guidelines on Conflicts of Interest in International Arbitration (2024).
2. **Promote Institutional Oversight:** The statutory framework relating to the Arbitration Council of India should be implemented without further delay so that

[44] Gary Born, *International Commercial Arbitration* (2021).
[45] Diane A Desierto, 'Rawlsian Fairness' (2015) 36 *University of Pennsylvania Journal of International Law* 939.

institutional accreditation, quality standards, and transparent appointment practices can be developed on a uniform national basis. Until such implementation, arbitral institutions should continue strengthening their own disclosure and appointment protocols.

3. **Diversify the Arbitrator Pool:** Greater participation by younger practitioners, foreign arbitrators, technical experts, engineers, accountants, and sector-specific professionals should be encouraged to reduce the concentration of appointments among a limited group of arbitrators while preserving expertise in specialised disputes.
4. **Reform Appointment Mechanisms:** Arbitration clauses conferring unilateral appointment powers should continue to be discouraged in favour of balanced appointment procedures that reinforce both actual and perceived impartiality, in accordance with recent judicial developments.
5. **Strengthen Judicial Capacity and Institutional Arbitration:** Establishing specialised arbitration benches within the High Courts, together with continued development of institutional arbitration centres such as GIFT City and the India International Arbitration Centre (IIAC), would improve consistency, efficiency, and confidence in arbitral proceedings.
6. **Clarify Ethical Standards:** Clear guidance governing situations where legal professionals act alternately as counsel and arbitrator, together with consistent conflict-of-interest standards, would further strengthen confidence in the neutrality of arbitral tribunals. Collectively, these recommendations seek to preserve party autonomy while reducing structural risks associated with repeat appointments and enhancing the credibility, transparency, and effectiveness of arbitration in India.
7. **Aligning Future Reforms with the Draft Arbitration and Conciliation (Amendment) Bill, 2024:** The policy recommendations advanced in this article should also be viewed alongside the Draft Arbitration and Conciliation

(Amendment) Bill, 2024,[46] which has been released for public consultation by the Government of India. The Draft Bill seeks to strengthen institutional arbitration by refining the statutory framework governing arbitral institutions, recognising emergency arbitration, reducing unnecessary judicial intervention, and introducing procedural reforms aimed at improving the efficiency of arbitral proceedings. Several of these proposals complement the recommendations made in this article, particularly the emphasis on strengthening institutional arbitration and improving the credibility of appointment procedures.[47] However, legislative reform alone is unlikely to address concerns relating to repeat appointments and perceived bias unless accompanied by robust disclosure obligations, effective institutional oversight, diversification of the arbitrator pool, and consistent ethical standards governing conflicts of interest. Accordingly, while the Draft Bill represents an important step towards modernising India's arbitration framework, its implementation should be accompanied by complementary measures that enhance transparency, promote impartiality, and reinforce public confidence in the arbitral process.

XII. CONCLUSION

Repeat appointments in arbitration do not automatically mean that an arbitrator is biased. In many specialised areas of dispute resolution, the number of experienced arbitrators is limited, and parties often prefer individuals who have expertise in that field. However, maintaining trust in the arbitral process requires transparency and clear safeguards. Continuous disclosure of any relationships or circumstances that may raise doubts about independence is essential to ensure fairness.[48]

[46] Draft Arbitration and Conciliation (Amendment) Bill, 2024 (Department of Legal Affairs, Ministry of Law and Justice).
[47] Report of the Expert Committee to Examine the Working of the Arbitration Law and Recommend Reforms in the Arbitration and Conciliation Act, 1996 (Chair: Dr. T.K. Viswanathan).
[48] Indu Tarmali, 'Impartiality of Arbitrators' (2023) 2 *JULS* 167.

In India, the arbitration framework has improved significantly since the amendments made in 2015 and 2019. These reforms introduced clearer rules on disclosure and restricted unilateral appointment practices that previously created concerns about neutrality. While these developments have strengthened the system, further steps are still needed.[49] Expanding the pool of arbitrators, encouraging institutional arbitration, and ensuring consistent judicial oversight can help build greater confidence in the process. Ultimately, the goal is to balance party autonomy with the need for impartial and reliable dispute resolution, so that arbitration in India continues to develop as a credible and trusted system.

This article brings a new perspective to the discussion of bias and the impact on the fairness of an arbitration process by looking at not only actual bias but the impact of repeated appointments in terms of the structural and perceptual risks they create. By providing a doctrinal, comparative and empirical examination of the issue, this article demonstrates that reform measures are needed beyond current disclosure requirements.[50]

During my time as an intern, I had a case in which I realized how often repeat appointments can occur in practice. This is something most people do not question or realize, however, the impact on fairness can be significant and understated. As a result, I came to understand that repeat bias is a live issue and requires serious attention.

My interest in this area originated from my own experience rather than as an academic inquiry; therefore, I believe it is critical to reduce these practices to maintain the trust people have in the arbitration process.

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[50] Shauhin A Talesh and Peter C Alter, 'The Devil is in the Details' (2020) 42 Law and Policy 315.

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