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UNILATERAL APPOINTMENT OF ARBITRATOR, WITH SPECIAL EMPHASIS ON APPOINTMENT IN PUBLIC SECTOR CONTRACTS IN INDIA

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ABSTRACT

An arbitrator is the lynchpin of the entire arbitration. Appointment of arbitrators has usually been a highly contentious issue between the disputants. In India, the law on this issue has come a long way in the last eight decades or so, from the Arbitration Act, 1940 to the Arbitration and Conciliation Act, 1996 and major amendments in 2015. For a long time, the government and public sector contracts have predominantly incorporated unilateral appointment of arbitrators in the arbitration clauses. The courts have done their best to find the right balance between party autonomy supporting unilateral appointment of arbitrators on the one hand and neutrality, fairness and impartiality on the other hand. This paper analyses the comprehensive overview of statutory and judicial developments, 2015 amendments, judicial interpretations, government and public sector policies and views of private businesses on the unilateral appointment of arbitrators. It also identifies the challenges faced by the government and public sector in appointment of arbitrators and the role of arbitral institutions in India in this regard.

INTRODUCTION

An arbitrator is the lynchpin of the entire arbitration process. As the choice of resolving disputes by arbitration is a mutual decision by the disputants, the appointment of an arbitrator(s) should ideally be mutual, however, there has been a long history of unilateral appointment of

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arbitrator(s) in India, especially in government and public sector contracts with private parties. The 2024 judgment of the Supreme Court of India in *Central Organisation for Railway Electrification v. ECI-SPIC SMO-MCML (JV)*[3](hereinafter referred to as "the *CORE 2024*") has brought an end to this unfair practise. The Supreme Court reaffirmed the superiority of fairness and impartiality in the process of arbitration. The Court declared a one-sided arbitration clause giving one side absolute authority in the appointment of the arbitrator as void on the basis that such clauses are universally incompatible with the spirit of fairness enshrined in the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act'), particularly post-amendments of 2015 (hereinafter referred to as 'the 2015 Amendments').

The method of appointing arbitrators has been a contentious issue in the development of India's arbitration system. The Arbitration Act of 1940 (hereinafter referred to as 'the 1940 Act') presented a vision of party autonomy checked by judicial control, being an accommodationist reaction to the then-prevailing procedural realities. Parties could agree on the appointment method, but the courts still had the power to step in when the parties did not agree or when one party hindered the process. This two-tiered system maintained the flexibility of arbitration while offering a safety valve against breakdown in procedure. The going was not smooth and there were often issues raised regarding the appointment of arbitrator(s). In case there were more than one arbitrator, both the parties usually appointed one arbitrator each. Interestingly, the 1940 Act permitted two arbitrators and if they differed, which happened very often, the matter was referred to an umpire. The courts intervened on numerous occasions resulting in delay and inaction. It continued till 1996 when the new law of arbitration – the 1996 Act – was enacted.

As economic liberalisation in the 1990s and India's increasing global economic integration accelerated, the 1996 Act was passed to update the legal framework substantially from the UNCITRAL Model Law[4]. The 1996 Act drastically reduced judicial intervention, vesting parties with control over the appointment of arbitrators. Yet, due to the lack of specific provisions guaranteeing the impartiality of arbitrators, particularly in unilateral appointments, there has been a lot of controversy.

[3] Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), 2024 SCC OnLine SC 3219.
[4] UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72, U.N. Doc. A/40/17 (June 21, 1985).

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Unilateral appointments, where a single party (usually a more powerful party like a state agency) names the sole arbitrator, emerged as a nagging issue of contention. The courts at first upheld unilateral appointments in the interests of party autonomy, with the focus on procedure rather than material fairness. The deferential strategy undermined faith in the impartiality of arbitration hearings, especially where state agencies were involved in contracts.

The watershed moment arrived with the 2015 Amendment, which brought in elaborate disclosure obligations and a default bar on the appointment of interested parties' employees as arbitrators. Judicial understanding after 2015, in judgments such as *TRF Ltd. v Energo Engineering Projects Ltd*.[5] and *Perkins Eastman Architects DPC v HSCC (India) Ltd*.[6], reinforced these legislative developments, underlining that the impartiality and independence of arbitrators are the building blocks of the legitimacy of arbitration.

This evolving change culminated in its latest and perhaps the most definitive expression in the *CORE 2024*[7] judgment in which the Supreme Court categorically overruled a unilateral appointment clause conferring exclusive authority to one party to appoint an arbitrator. The Court ruled that such provisions were in violation of the fundamental principles of fairness and impartiality inherent in the 1996 Act, especially in the wake of the 2015 Amendments. The ruling reaffirms one of the principal features of India's new arbitration jurisprudence — a transition from party control to a levelled, fairness-driven appointment system.

On the basis of this overview of history and analysis, the paper here endeavours to evaluate the existing state of Indian law of arbitration with regard to unilateral appointments and suggest lines of future reform.

SELECTION OF ARBITRATORS UNDER THE ARBITRATION ACT OF 1940: LEGAL FRAMEWORK AND JUDICIAL INTERPRETATION

The 1940 Act prescribed a model of arbitrator appointments, with both party autonomy and judicial supervision. The mixed model responded to the prevailing law school orthodoxy at the time, seeking on the one hand to advance party control of arbitration but also guarantee that the

[5] TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 7 SCR 409.
[6] Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.
[7] Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), 2024 SCC OnLine SC 3219.

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courts had access in case of breakdown in procedural stand-offs, uncooperativeness, or unjust tactics. The court had a great intervention power[8] in arbitration proceedings under this act[9].

The 1940 Actprovided freedom to the parties to make arrangements for themselves regarding how the arbitrators were to be appointed, their number, the qualifications of arbitrators, and how they are to be appointed. These agreements were typically placed in the contract's arbitration clause or in a standalone arbitration agreement. The parties were given significant latitude by law to tailor the arbitral process to their preference and business acumen[10]

The 1940 Act also recognised that party autonomy itself could not always facilitate efficient appointments. If the parties were unable to agree on the appointment procedure, or if one party objected or failed to participate in the process, Section 8[11] of the Act provided for the courts to intervene. On the filing of an application by either party to the dispute, the court may appoint one or more arbitrators, as the situation demands. This judicial authority was especially significant in preventing a recalcitrant party from sabotaging arbitration proceedings by merely refusing to cooperate[12].

Yet another important feature of the 1940 Act under Section 8[13]was the facility for the appointment of a replacement to fill a vacancy arising out of the death, incapacity, resignation, or removal of an arbitrator. In the absence of agreement among the parties to appoint a substitute, the court could intervene to fill the gap. This facilitated continuity in arbitral proceedings and avoided getting the disputes stalled through procedural bottlenecks.

One issue that proved highly controversial under the 1940 Act was that of unilateral appointments, or the appointment by a single party in the event of default of the other party

[8] Sumeet Kachwaha, *The Arbitration Law: A Critical Analysis*, vLEX (Mar. 22, 2021), https://vlex.com/vid/the-arbitration-law-critical-analysis-29331622.
[9]Krishnava Dutt and Arjun Anand, *Evolution of Arbitration Law in India: Past, Present and the Way Forward*, 11 HASTINGS BUSINESS LAW JOURNAL 97 (2015).
[10]*Indian Arbitration Act 1940 – Explained*, LAWCRUST (Nov. 1, 2023), https://lawcrust.com/indian-arbitration-act-1940/.
[11] Arbitration and Conciliation Act, 1996, § 8. This allows a party to unilaterally apply to the court for interim relief, including the appointment of a receiver or orders for preservation of property, even if the other party does not agree. This enables a party to protect its interests before arbitration proceedings conclude.
[12]Sara Saleem, *An In-Depth Examination of the Arbitration Act 1940*, THE LEGAL (Oct. 28, 2023), https://the-legal.org/an-in-depth-examination-of-the-arbitration-act-1940/.
[13] Id.

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within a particular timeframe. Section 9(b) of the Act[14] enabled unilateral appointments in the form that the notifying party could appoint a sole arbitrator if the defaulting party refused to do so after receiving notice. The party giving notice might, thus, unilaterally initiate the formation of the arbitral tribunal. This provision had a pragmatic function—it avoided defaulting parties from indefinitely delaying arbitration proceedings.

Unilateral appointments, however, were not absolute or unchallengeable. Courts could still review such appointments, particularly if the process of appointment was unjust or the defaulting party was not accorded reasonable time to respond. Courts could overturn such appointments if they determined that the notifying party had acted in bad faith or had shortened time limits intentionally with the purpose of ambushing the other party. Judicial review stood as a bulwark protecting against abuse so that procedural justice would not be traded for expedience[15].

The unilateral appointments process was guided by a notice procedure. The parties would pen letters to each other, invoking them to nominate an arbitrator within a time frame (commonly specified under the arbitration agreement or, where not specified, within reasonable time). Should the notified party not respond, the notifying party could then make a sole appointment of an arbitrator and move to arbitrate. This process, though procedurally sound in theory, tended to result in accusations of bias because the single arbitrator was appointed solely by one party.This inbuilt risk of bias led Indian courts to pursue a vigilant supervisory role[16].

Despite the fact that the 1940 Act did not specifically require arbitrators to be independent and impartial (while the current 1996 Act lays great stress upon these qualities), the courts often employed the doctrine of natural justice to ensure impartiality. Courts might be able to oust arbitrators under Section 11[17] if they were in default of misconduct or failed to conduct themselves with reasonable dispatch. Misconduct was interpreted widely, and it included not

[14] The Arbitration Act, 1940, § 9(b). If one party fails to appoint an arbitrator within 15 days of receiving written notice—after the other party has already appointed theirs—that party may appoint their arbitrator as sole arbitrator, whose award will bind both parties as if appointed by consent.

[15]Sara Saleem, *An In-Depth Examination of the Arbitration Act 1940*, THE LEGAL (Oct. 28, 2023), https://the-legal.org/an-in-depth-examination-of-the-arbitration-act-1940/.

[16] Id.

[17] The Arbitration Act, 1940, § 11. This section empowers the court to remove an arbitrator for misconduct or delay and to appoint a substitute, ensuring the fairness and efficiency of the arbitration process.

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only actual bias but also procedural irregularities which prejudiced the fairness of the arbitration process.

Indian courts, in a series of judgements, have reiterated the principle that while unilateral appointments were sanctioned by law, they could not violate basic principles of justice and equality of arms[18]. The judicial stance was driven by the broader objective of upholding the credibility and legitimacy of arbitration as a process of dispute resolution.A milestone example of judicial reasoning in this matter was in the case of *Dharma Prathishthanam v Madhok Construction (P) Ltd*[19]. The Supreme Court while interpreting the provisions of the 1940 Act, held categorically that unilateral appointment and unilateral referral to arbitration would generally be illegal. But the Court did impose an important rider—if the other party had voluntarily attended hearings before the sole arbitrator appointed unilaterally, it could be said to have waived its objection. The party would in such a case be estopped from later challenging the appointment. This ruling emphasized the role conduct plays in the generation of procedural rights. Active cooperation or passive acquiescence could very well cure procedural defects, if voluntary and not compelled[20].

This judicial ruling was a balanced one. On the one hand, the Court recognized the inherent dangers of unilateral appointments, specifically the risk of biased or one-sided decision-making. On the other hand, it recognized that parties who knowingly engaged in such proceedings without objection could not subsequently use technical flaws to invalidate the process after an adverse award had been made.

Although the 1940 Act made some attempts towards independence and impartiality, its provisions were not strong enough to effectively stop unilateral appointments, which persisted under its regime. This Act was largely premised on mistrust of the arbitral process and afforded

[18]LAW INSIDER, https://www.lawinsider.com/dictionary/equality-of-arms (last visited Oct. 4, 2025). Equality of arms refers to the principle that all parties in a legal proceeding must have a fair and equal opportunity to present their case, ensuring procedural fairness.
[19]Dharma Prathishthanam v. Madhok Construction (P) Ltd., (2005) 9 SCC 686.
[20] Vasanth Rajasekaran, *The Conundrum Surrounding the Unilateral Appointment of Arbitrators and Its Implications on the Enforceability of Arbitral Awards: An Analysis*, SCC ONLINE (June 2, 2023), https://www.scconline.com/blog/post/2023/06/02/the-conundrum-surrounding-the-unilateral-appointment-of-arbitrators-and-its-implications-on-the-enforceability-of-arbitral-awards-an-analysis/.

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multiple opportunities to litigants to approach the court for intervention[21], coupled with a sluggish judicial system[22]. Justice D.A. Desai also remarked upon the way proceedings are conducted under the 1940 Act can make lawyers and philosophers weep[23],Compared to the 1996 Act, the existing legislation, , the 1940 Act lacked the provisions needed to avoid such actions. Indian courts, nevertheless, always tried to enforce common law principles so that arbitration would not turn into a procedural ambush or give an unfair advantage to one party. In the end, the arbitration appointment provisions of the 1940 Arbitration Act embodied a precarious balance between party autonomy, judicial supervision, and procedural fairness—a balance that opened ample space for unilateral appointments to flourish, until subsequent legislative developments and judicial construction began to close these loopholes.

THE 1996 REGIME: PRE 2015 AMENDMENT ERA

The 1996 Act was a path-breaking legislation aimed to overhaul India's archaic arbitration regime that had so far been regulated by the 1940 Act. The 1940 Act had acquired a reputation of encouraging inordinate judicial intervention, which diluted the speed and effectiveness of arbitration. With liberalisation of the economy in the 1990s and the need to attract foreign investment, India was forced to align its arbitration law with the international standards. This spur led to the enactment of the 1996 Act, which was widely based on the UNCITRAL Model Law 1985 on International Commercial Arbitration.

One of the key reforms in the 1996 Act was the procedure of appointment of arbitrators and their impartiality and independence. The 1996 Act under Section 11[24] granted the parties autonomy in the appointment of arbitrators by mutual consent with minimum judicial interference. The Courts (on behalf of the Chief Justice) would step in only if the parties were unable to agree on the arbitrator(s) within stipulated time limits. This was a sharp departure from the regime of the 1940 Act, where courts had sweeping powers to step in at various points in the arbitration process.

[21] Sumeet Kachwaha, *Arbitration Law of India: A Critical Analysis*, MONDAQ (Jan. 4, 2022), https://www.mondaq.com/india/arbitration-dispute-resolution/1165690/arbitration-law-of-india-a-critical-analysis.
[22] Id.
[23]Guru Nanak Foundation v. Rattan Singh & Sons, 1981 AIR 2075.
[24] The Arbitration Act, 1940, § 11.

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But even in this effort to rationalise appointments, the 1996 Act fell short of robust procedural safeguards to guarantee arbitrators' impartiality, especially where one side had a sole right to appoint the arbitrator. Sections 12[25] and 13[26]of the 1996 Act tried to deal with neutrality concerns, but these sections were imprecise and not adequately robust. Section 12(1)[27] obligated arbitrators to make known any situation likely to raise justifiable doubts as to their impartiality. Section 12(3)[28] enabled a party to object to an arbitrator in case there existed such reasonable doubts, or in case the arbitrator failed to possess qualifications which the parties themselves had agreed on. Section 13 detailed how an arbitrator could be challenged, but more importantly, left the determination of such challenges entirely in the hands of the arbitral tribunal itself — de facto enabling arbitrators to decide upon their own neutrality.

This mechanism of self-regulation posed serious issues with regard to equity, particularly where the arbitrators were unilaterally appointed by strong players like government ministries or public sector organisations (PSUs). Practically, appointees were often their own employees, consultants, or officers from the appointing organisation, and these persons could only be suspect with regard to neutrality if the opposite party had credible proof of such bias. The lack of specific disqualifications meant that simply being employed or affiliated with a party was not regarded as disqualifying — a position which was at odds with international best practice.

JUDICIAL APPROACH

The judicial response on the appointment of arbitrators and neutrality under the 1996 Act, from the time of its coming into force until 2015 amendment, was a profound tension between party autonomy and the basic need for neutrality in arbitration proceedings. The most controversial issue of this time was the enforceability of unilateral appointment clauses — clauses that provided for giving one party, sometimes the dominant party, the sole right of appointing the arbitrator. The issue came most vigorously into play in government department contracts, public sector undertakings (PSUs), and statutory arbitrations under special statutes.

[25] The Arbitration Act, 1940, § 12.
[26] The Arbitration Act, 1940, § 13.
[27] The Arbitration Act, 1940, § 12(1).
[28] The Arbitration Act, 1940, § 12(3).

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When the 1996 Act took effect, the judiciary's initial approach was significantly influenced by the general legislative purpose of reducing judicial intervention. The 1996 Act was intended to correct the evils of excessive court interference under the 1940 Act, and instead establish a system where party autonomy prevailed. Such parliamentary intention had an important bearing upon judicial interpretation of Section 11[29] (appointment of arbitrators) and Sections 12[30] and 13[31] (provision for challenging) of the 1996 Act. The judiciary interpreted these very narrowly, ensuring that their power to intervene should be restricted, except where explicitly agreed procedure failed by parties themselves or where practical bias or process of impropriety was indicated.

In *Ace Pipeline Contracts Pvt. Ltd. v Bharat Petroleum Corporation Ltd. (2007)*[32], the Supreme Court upheld such a clause by which Bharat Petroleum Corporation Ltd. (BPCL), being a public sector organization, could nominate the arbitrator unilaterally. BPCL nominated an arbitrator according to the agreement, and the contractor approached the court under Section 11(5)[33] on the grounds that there should be the appointment of a retired Supreme Court judge as the independent arbitrator. The Court dismissed the application, ruling that party autonomy had to be respected unless the agreed procedure under the contract had collapsed (e.g., failure to appoint within the agreed time). The Court was eager to emphasise that intervention by the judiciary under Section 11(6)[34] was only activated where the appointment procedure was at fault, and not where the procedure was questioned as being unfair.

The focus on procedural compliance as opposed to substantive fairness became a constant refrain in judicial decisions throughout this period. The court recognised that fairness mattered, but continually prioritised party autonomy even when it resulted in the kind of scenarios where one party (usually a government agency) could appoint its own employee as an arbitrator. This approach successfully placed the burden on the aggrieved party to demonstrate that the appointed arbitrator was indeed biased, instead of challenging the structural impartiality of the appointment process itself.

[29] The Arbitration Act, 1940, § 11.
[30] The Arbitration Act, 1940, § 12.
[31] The Arbitration Act, 1940, § 13.
[32] Ace Pipeline Contracts Pvt. Ltd. v. Bharat Petroleum Corporation Ltd, AIR 2007 SC 1764.
[33] The Arbitration Act, 1940, § 11(5).
[34] The Arbitration Act, 1940, § 11(6).

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This role was reaffirmed in *Indian Oil Corporation Ltd. v Raja Transport Pvt. Ltd. (2009)*[35], wherein Indian Oil Corporation Ltd. (IOCL) appointed one of its officers as arbitrator pursuant to a unilateral appointment clause. Raja Transport protested such appointment, asserting that natural justice and principles of impartiality were compromised when one of the parties to the dispute was able to appoint one of its own employee as arbitrator[36]. Again, the Supreme Court upheld the enforceability of the unilateral appointment clause, asserting that party autonomy was the very essence of arbitration agreements[37]. The rationale of the Court was that association or working for a party did not *ipso facto* make an arbitrator disqualified, unless specific facts or behaviour manifested well-founded doubts under Section 12(3)[38].

But the Raja Transport[39] judgment is important in the sense that, in upholding the clause, the Supreme Court acknowledged the need for progressive jurisprudence. It realized that in the future, the independence could have to be interpreted more strictly, so that the arbitrators have to be independent in the real sense of the word, i.e., not having any connection with either party. This cautious admonition by the Supreme Court was a growing recognition that unbridled party autonomy might erode the integrity of arbitration in India.

The courts' approach was further complicated by statutory arbitration arrangements that were included in specific legislations such as the National Highways Act, 1956[40], the Micro, Small and Medium Enterprises Development Act, 2006[41], and the Electricity Act, 2003[42]. These legislations provided for mechanisms of arbitrator appointment, usually giving powers of unilateral appointment to government departments or vesting appointment powers in sectoral regulators. In *Gujarat Urja Vikas Nigam Ltd. v Essar Power Ltd.*[43], it was held by the Supreme Court that where a special enactment laid down a particular mode of appointment, such a mode

[35]Indian Oil Corporation Ltd. v. Raja Transport Pvt. Ltd., [2009] 13 (ADDL) SCR 510.
[36]Indian Oil Corporation Ltd. v. Raja Transport Pvt. Ltd., [2009] 13 (ADDL) SCR 510.
[37]Indian Oil Corporation Ltd. v. Raja Transport Pvt. Ltd., [2009] 13 (ADDL) SCR 510.
[38] Arbitration and Conciliation Act, 1996, § 12(3). This provision allows a party to challenge the appointment of an arbitrator if there are circumstances giving rise to justifiable doubts as to the arbitrator's independence or impartiality, or if the arbitrator does not possess qualifications agreed upon by the parties. It is a safeguard to ensure procedural fairness and the integrity of the arbitral process, reflecting the fundamental principle of neutrality in arbitration.
[39]Indian Oil Corporation Ltd. v. Raja Transport Pvt. Ltd., [2009] 13 (ADDL) SCR 510.
[40] The National Highways Act, 1956.
[41] The Micro Small and Medium Enterprises Development Act, 2006.
[42] The Electricity Act, 2003.
[43] Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., AIR 2008 SC 1921.

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would prevail over the general legislative provisions of the 1996 Act. If section 86 (1)(f)[44] of the Electricity Act, 2003 fixes a special way of making references to an arbitrator, the same would mean that all other ways are excluded. The Electricity Act, 2003 being a special legislation would prevail over the general law i.e. the 1996 Act in case of arbitration of disputes. Therefore, the State Commission was held to have exclusive jurisdiction to decide disputes either itself or by appointing an arbitrator. This doctrine further strengthened the tendency of the judiciary to uphold unilateral appointments made pursuant to statutory guidelines, curtailing further the grounds for challenging such appointments.

Even when the parties moved the courts under Section 12[45] or Section 13[46] of the 1996 Act to object to the impartiality of arbitrators, the judiciary required high standards of evidence. The Courts insisted upon tangible evidence of bias, instead of presuming inherent structural bias (e.g., working for the appointing party) as evidence. This left challenges under Section 12(3)[47] incredibly rare to succeed.

The Law Commission of India noted this judicial trend in its 246th Report (2014)[48]. The Commission noted that the judiciary's pro-autonomy approach, although aligned with the objective of promoting arbitration, had produced a grave imbalance between party autonomy and procedural fairness. It condemned the courts' resistance to declaring inherently biased appointments as invalid on the ground that impartiality forms the cornerstone of any credible system of arbitration. The Commission cautioned that to let structurally biased appointments continue would erode investor confidence, especially in the light of India's goal to become a global hub for arbitration[49].

The Commission's apprehensions were not misplaced. Globally, the courts in the UK, Singapore, and Hong Kong had started to take a stricter view, holding independence and impartiality as non-

[44]Electricity Act, 2003, § 86(1)(f).
[45] The Arbitration Act, 1940, § 12.
[46] The Arbitration Act, 1940, § 13.
[47] The Arbitration Act, 1940, § 12(3).
[48]*Amendments to the Arbitration and Conciliation Act 1996*, Law Com No. 246 (2014).
[49] Aditi Mittal, Aditya Narayan Mahajan, and Siddhant Tripathi, *Appointment of an Arbitrator: Party Autonomy vs Equity*, MONDAQ (Nov. 21, 2021), https://www.mondaq.com/india/arbitration-dispute-resolution/1128890/appointment-of-an-arbitrator-party-autonomy-vs-equity.

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derogable procedural guarantees even where parties had contracted out of them. The International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration[50], initially released in 2004, had already established detailed disclosure requirements and non-waivable red lists to maintain impartiality. The Indian courts were behind, still favouring contractual freedom over procedural impartiality until legislative action was unavoidable[51].

The net result of this pro-autonomy bias was a judicial system in which one-party appointments, especially by governing parties, were the rule rather than the exception. Such appointments were rarely revoked by the courts, and the procedural protection of Sections 12[52] and 13[53] were of little effect in the majority of cases. This judicial deference to party autonomy — at the expense of appearances of fairness — had a profound negative effect on trust in arbitration, particularly for private parties contracting with the government.

The watershed moment came with the 2015 Amendments, which responded directly to the Law Commission's criticism and brought in mandatory disclosure requirements, default prohibition on appointment of employees of interested parties, and harmonisation with the IBA Guidelines[54]. These reforms, while legislative as opposed to judicial, were a direct result of the courts' inability to evolve a strong, fairness-driven approach to arbitrators' independence between 1996 and 2015.

Briefly, between 1996 and 2015, Indian courts took an extremely deferential attitude towards unilateral appointments, giving weight to party autonomy over procedural justice. Although at times the courts noted the dangers of structural bias, they consistently refused to establish judicial standards that would exclude interested arbitrators unless established bias was shown. This method, albeit in keeping with the pro-arbitration philosophy of the 1996 Act, ended up undermining public faith in arbitration, especially in cases concerning government contracts. The amendments introduced in 2015, based on the Law Commission's proposals and international

[50] *Guidelines on Conflicts of Interest in International Arbitration*, INTERNATIONAL BAR ASSOCIATION (2024), https://www.ibanet.org/document?id=Guidelines-on-Conflicts-of-Interest-in-International-Arbitration-2024.
[51] Shweta Sahu, Moazzam Khan, and Payel Chatterjee, *Legitimacy of Arbitral Appointments in India*, KLUWER ARBITRATION BLOG (Nov. 3, 2018), https://arbitrationblog.kluwerarbitration.com/2018/11/03/legitimacy-arbitral-appointments-india/.
[52] The Arbitration Act, 1940, § 12.
[53] The Arbitration Act, 1940, § 13.
[54] International Bar Association, *supra* note 48.

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developments, were thus a measure that was essential in filling the gap left by two decades of judicial inertia with regard to the impartiality of arbitrators.

POST2015 AMENDMENT TO THE 1996 ACT

The Arbitration and Conciliation (Amendment) Act, 2015[55], was a landmark amendment in the arbitration law of India. It has mainly focused on giving greater independence and impartiality as independence is the very foundation of any efficient mechanism to settle disputes. The amendment brought Schedules V[56] and VII[57] into the 1996 Act, which borrowed from the IBA Guidelines on Conflict of Interest in International Arbitration[58]. These schedules address the long-standing issues of bias and partiality in the appointment of arbitrators, especially in the cases involving unilateral appointments[59].

Schedule V[60] details specific situations that may give rise to justifiable doubts as to an arbitrator's independence or impartiality; it falls under Section 12(1)[61], which mandates disclosure of such situations. Schedule VII[62] categorically puts out lists of classes of persons who are prohibited by statute from acting as arbitrators under Section 12(5)[63]. Importantly, Section 12(5)[64] requires such ineligibility to be only waived with mutual agreement in writing, under the same circumstances after the emergence of the issue. These amendments have significantly impacted the overall jurisprudence that now forms in respect of that and have endowed a strong groundwork for communicating reservations against unilateral appointment but keeping its base principles unchanged with regard to arbitration in respect of neutralism and egalitarianism[65].

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[55] The Arbitration and Conciliation (Amendment) Act, 2015.
[56] The Arbitration Act, 1940, sch. V.
[57] The Arbitration Act, 1940, sch. VII.
[58] International Bar Association, *supra* note 48.
[59] Abhileen Chaturvedi, Sparsh Khosla and Sayyad Saqib Ali, *Revisiting Unilateral Arbitrator Appointments: The Supreme Court's New Stance on Fairness and Equality,* LEXOLOGY (Jan. 2, 2025), https://www.lexology.com/library/detail.aspx?g=8296e05b-3e04-47a9-abdd-2863bef295dc.
[60] The Arbitration Act, 1940, sch. V.
[61] The Arbitration Act, 1940, § 12(1).
[62] The Arbitration Act, 1940, sch. VII.
[63] The Arbitration Act, 1940, § 12(5).
[64] The Arbitration Act, 1940, § 12(5).
[65] *Balancing Party Autonomy and Equal Treatment of Parties: Indian Supreme Court's Decision on Unilateral Arbitrator Appointments,* HERBERT SMITH FREEHILLS (Jan. 5, 2025),

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Subsequent case laws over this period have extensively worked towards reaffirming this law. Courts have viewed arbitration clauses and appointment procedures by analysing the new provisions' extent, which helped clarify the degrees to which such reforms affect unilateral appointments. Following are some significant cases that prove the judicial trend on this very issue after the 2015 Amendments.

JUDICIAL DEVELOPMENTS THROUGH THE YEARS

It was one of the most important and initial rulings by the Supreme Court after the 2015 amendment in *TRF Ltd. v Energo Engineering Projects Ltd*.[66], wherein the court addressed a critical issue about the appointment of arbitrators under an arbitration clause that granted the Managing Director of one party the sole right to act as the arbitrator or appoint another arbitrator. The case proceeded in the ambit of the 2015 Amendments, which extensively brought about radical changes to achieve the independence of and impartiality on the part of arbitrators.

The Court determined that a person barred under Section 12(5)[67]of the 1996 Act cannot appoint another arbitration[68]. This move was seen from the standpoint that giving a party a stake in the outcome a chance to nominate its arbitrator would only perpetuate bias, which was against the purpose of 2015 Amendments aimed at ensuring fairness in arbitration. The court remarked that arbitration sits on the twin pillars of independence and impartiality; no provision on unilateral appointments shall overstep to render contractual terms ineffective. This judgment mostly changed the face of Indian arbitration law by setting aside clauses allowing unilateral appointments by interested parties and strengthening the statutory requirements in relation to the grounds of impartiality[69].

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https://www.herbertsmithfreehills.com/notes/arbitration/2024-posts/Balancing-party-autonomy-and-equal-treatment-of-parties--Indian-Supreme-Court-s-decision-on-unilateral-arbitrator-appointments-.

[66] TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 7 SCR 409.

[67] The Arbitration Act, 1940, § 12(5).

[68] Krusch Antony, *Unilateral Arbitration Clause and Arbitrator Appointments*, KING STUBB &KASIVA (Dec. 27, 2024), https://ksandk.com/adr/unilateral-arbitration-clause-and-arbitrator-appointments/.

[69]Abhileen, *supra* note 57.

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The Court's decision was in line with the principle that contractual terms cannot override statutory provisions, thereby making such provisions void. This is an important precedent to maintain the sanctity of arbitration as a means of settling disputes[70]. This judgment had far-reaching effects in future cases where similar arbitration clauses have been involved, so that no party can unilaterally affect the appointment of arbitrators in a manner that creates unfairness and lack of neutrality[71].

In *Perkins Eastman Architects DPC & Anr. v HSCC*[72], the Supreme Court extended the principles decided in *TRF Ltd. v Energo Engineering Projects Ltd*[73]. by discussing further nuances of unilateral nominations in an arbitration. The case involved an arbitration clause where an interested party can nominate a sole arbitrator with a possibility of raising the issues of bias and impartiality.

The Court held that even unilateral nominations by an interested party are impermissible under the 1996 Act after the 2015 Amendments. It differentiated between two situations: one where an employee of an interested party appoints an arbitrator, as was the case in TRF, and another where the interested party itself nominates a sole arbitrator.In both the cases, the Court determined that allowing such nominations would violate the integrity of arbitration because of the basic bias of having vested interests[74].

This ruling made it clear that the importance of independence and impartiality is not just for the arbitrators but also in *how* they are appointed. The Court stated that any such provision under which a party with a vested interest could either directly or indirectly affect the appointment of the arbitrators goes against the aims of impartiality envisaged by the 2015 Amendments.

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[70]Tawishi Beria, *Clearing the Mist on Unilateral Appointment of Arbitrators in India*, LAW AND DISPUTE RESOLUTION BLOG (Dec. 17, 2025), https://jgu.edu.in/mappingADR/clearing-the-mist-on-unilateral-appointment-of-arbitrators-in-india/.

[71] Niti Dixit, Abhishek Tewari and Zahra Aziz, *Leveling the Playing Field: Supreme Court Decides on Unilateral Appointment of Arbitrators*, SNR LAW (Jan. 2, 2025), https://www.snrlaw.in/levelling-the-playing-field-supreme-court-decides-on-unilateral-appointment-of-arbitrators/.

[72] Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.

[73] TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 7 SCR 409.

[74] R. Sudhinder, Nikhil Kumar Singh and Pierre Uppal, *Perkins Eastman Architects DPC v. HSCC: A Critical Analysis*, ARGUS PARTNERS (Jan. 2, 2025), https://www.argus-p.com/uploads/blog_article/download/1588417843_Perkins_-_A_Critical_Analysis.pdf.

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This judgment brought far-reaching consequences for the corporate houses, mainly banks and Non-Banking Financial Companies (NBFCs) that were indulging in unilateral appointments despite judicial warnings earlier. In this case, a more balanced framework of arbitration in India will be formed by which no party can dominate the selection process in order to get an unfair advantage in the settlement of disputes.

Despite these judgments, big corporates, mostly banks, NBFCs, infrastructure companies, financial sector entities etc., kept unilaterally appointing their own arbitrators in numerous cases.The Court insisted that principles of independence and impartiality have to be incorporated in the selection process of the panel, which, it was stipulated, shall not impair the impartiality of the arbitral process. In response to these practices by banks and big corporates which continued to make unilateral appointment of arbitrators, the Bombay High Court passed the judgment in*SawarmalGadodia v Tata Capital Financial Services Limited & Ors*[75] where this practice was condemned by the court[76].

The Bombay High Court, in this case, had to confront the repeated issue of unilateral appointments by the NBFCs, which had been going on even after the judicial pronouncements were made to check such unilateral appointments. The case brought to light how the NBFCs continued to appoint sole arbitrators unilaterally into contracts across the board, thus institutionalising practices violating principles of impartiality, which have been established under the 2015 Amendments[77].

The Court specifically pointed out that these unilateral appointments of arbitrators violated statutory provisions. They were damaging to the administration of fairness in arbitration proceedings, as well. The Bombay High Court ruled for setting aside of an arbitral award by an arbitrator who had been appointed by one party on its own. The judgment highlights the principle

[75]SawarmalGadodia v. Tata Capital Financial Services Ltd. & Ors., 2019 SCC OnLine Bom 849.
[76] Lalit Munshi, *Unilateral Appointment of Arbitrators in India: An Analysis*MONDAQ (Jan. 7, 2025), https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1222632/unilateral-appointment-of-arbitrators-in-india-an-analysis.
[77]Sawarmal, *supra* note 73.

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that allowing one party to appoint an arbitrator unilaterally destroys the neutral effect which arbitration seeks to achieve, especially in a case where one party occupies a dominant position in a contract[78].

The Court stressed on the importance of procedural fairness, especially in adhesion contracts wherein the bargaining power of contracting parties is uneven. The permission granted for one party to unilaterally appoint an arbitrator is deemed to vitiate the neutral effect supposedly underlying arbitration, much more so when one of the parties concerned exercises a dominant position in the said contract[79].

The Court emphasised that procedural fairness has to be achieved, especially in the context of adhesion contracts, which are highly reflective of imbalance in bargaining powers between the contracting parties. The case necessitated a fair and balanced process for appointments such that both the parties would have equal standing when making the choices of arbitrators[80].

This judgment strengthened judicial commitment towards preserving principle of independence and impartiality within arbitration frameworks in India by annulling unilateral appointments by NBFCs. It reminded corporate entities of their statutory obligations while providing a significant imprint to future practices concerning arbitrator appointments[81].

In *Poddatur Cable TV Digi Services v SITI Cable Network Limited*[82], the Court held that even if the clause delegated the appointing authority to the Board of Directors instead of an individual, the situation was such that the appointing authority had a vested interest in the outcome of the dispute[83]. The Delhi High Court held that while party autonomy is an underlying principle in an arbitration agreement, the procedure laid down in the arbitration clause cannot be permitted to

[78] Id.
[79] Id.
[80] Id.
[81] Id.
[82] Poddatur Cable TV Digi Services v. SITI Cable Network Ltd., 2020 SCC OnLine Del 350.
[83] Id.

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override considerations of impartiality and fairness in arbitration proceedings[84]. The High Court squarely relied on *Perkins* for arriving at this conclusion.[85].

The Court ruled that the same considerations in *Perkins*[86] were equally relevant where the appointing authority was a corporation. This is because, in that situation, it is apparent that the entity would not act otherwise but for its self-interest in the arbitration decision. Therefore, the unilateral appointment of the arbitrator was found invalid in the instant case. The judgment placed a broad spin on the implications of the decision in Perkins holding that any such procedure that gives exclusive authority to a party to name arbitrators in its favour has a fundamental defect, irrespective of the guise which this takes.

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The Supreme Court further reiterated the dicta in *TRF*[87] and *Perkins*[88] in *Bharat Broadband Network Limited v United Telecoms Limited*[89]. The dispute arose from an arbitration clause that allowed the Chairman and Managing Director (CMD) of one party to nominate an arbitrator. The Court held that once a person becomes ineligible under Section 12(5)[90], they lose the authority to nominate another arbitrator. The judgment further clarified that such ineligibility is absolute unless explicitly waived by the parties after the dispute has arisen, as provided under Section 12(5)'s proviso[91].

The Court dealt with the effect of awards made by ineligible arbitrators or by persons nominated by ineligible persons. It held that such awards are non-est and unenforceable, for the illegality runs to the very root of the arbitral process. Such a judgment showed how the stringent standards

[84] Id.
[85] Ashutosh Ray, Ketul Hansraj, *The Legality of Unequal Arbitrator Appointment Powers in India: The Clarity & The Mist*, KLUWER ARBITRATION BLOG (Jan. 5, 2025), https://arbitrationblog.kluwerarbitration.com/2020/03/03/the-legality-of-unequal-arbitrator-appointment-powers-in-india-the-clarity-the-mist/.
[86] Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.
[87] TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 7 SCR 409.
[88] Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.
[89] Bharat Broadband Network Ltd. v. United Telecoms Ltd., 2019 (5) SCC 755.
[90] The Arbitration Act, 1940, § 12(5).
[91] Arbitration and Conciliation Act, 1996, § 12(5) proviso. The proviso allows parties to waive an arbitrator's ineligibility under the Seventh Schedule after a dispute arises, by express written agreement.

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introduced by the 2015 Amendments had serious implications for the validity of arbitration proceedings[92].

In *Lite Bite Foods Pvt. In Ltd. v Airports Authority of India*[93], the Bombay High Court invalidated one-sided appointment of an arbitrator by one party, relying on the precedents set in Perkins[94] and Voestalpine[95]. It was explained that the composition of the arbitral tribunal must not give rise to reasonable doubts regarding impartiality, which principle extends to the appointment procedure as well. The ruling emphasised that the establishment of an arbitral tribunal has to be done by mutual agreement or by intervention of a court and cannot be done unilaterally.

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This debate further heated up in *CORE v ECI-SPIC-SMO-MCML*[96].The issue was whether an arbitration clause allowing three superannuated officers of the Indian Railways act as arbitrators was permissible in practice under altered provisions related to impartiality parameters post-2015 Amendments.One of the major premises of these amendments was to further advance neutrality in dispute resolution procedure under the 1996 Act[97].

The Court agreed with this approach arguing that it offered meaningful choice consistent with neutrality principles that have been embedded in statutory frameworks governing arbitral processes, notwithstanding issues raised over quasi-unilateral mechanisms potentially eroding the fairness standards established through prior judicial pronouncements concerning independent decision-making among appointed members involved throughout the proceedings[98].

This judgment recognised the ways in which representative panels might limit potential risks

[92] Bharat Broadband Network Ltd. v. United Telecoms Ltd., 2019 (5) SCC 755.
[93] Lite Bite Foods Pvt Ltd. v. Airports Authority of India, 2019 SCC OnLine Bom 5163.
[94] Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.
[95] Voestalpine Schinen GmbH v. Delhi Metro Rail Corporation Ltd., (2017) 4 SCC 665.
[96] Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712.
[97] Abhileen, *supra* note 57.
[98] Himanshu and Umang, 'Quasi-Unilateral Appointment of Arbitrators: Where Did India Get It Wrong?' (Indian Review of Comparative Commercial Law, 18 January 2025) <https://www.irccl.in/post/quasi-unilateral-appointment-of-arbitrators-where-did-india-get-it-wrong#:~:text=In%20November%202019%2C%20the%20Supreme%20Court%20of%20India,of%20a%20party%20unilaterally%20appointing%20the%20sole%20arbitrator> accessed 16 March 2025.

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related to bias and yet remain substantially aligned with goals driving current legislative initiatives framed directly in relation to furthering fairness within arbitration processes. And, in the process positively advancing clearer directives relating to permissible conduct going forward within ongoing dialogue relating to suitable mechanisms that would apply uniformly across diverse industries participating vigorously in dispute resolution forums within India today.

In *Union of India v Tantia Constructions Ltd.*[99], the Supreme Court Bench issued an expression of disagreement with the decision in ECI-SPIC[100]. The Bench explained that the sole reason that the appointing authority loses the power to refer a dispute to arbitration is not necessarily a validification of the appointment of an arbitrator, regardless of the case. In effect, the Bench disapproved the suggestion that an arbitration appointment should still be regarded as valid by virtue of the facts of the case in point even if the appointing authority cannot fulfill its function[101]. The Bench further advised that the then Chief Justice of India form a larger Bench to review the correctness and validity of the approach taken in ECI-SPIC[102]. This proposal was made to reconsider if the previous ruling should be reaffirmed or retracted, taking into consideration the new issues arising in Tantia.It showed the continued efforts of the judiciary in making arbitration an efficient, fair, and equitable mode of dispute resolution that would help meet the ends stated in the Arbitration and Conciliation (Amendment) Act, 2015.

Moreover, in *McLeod Russel India Ltd. v Aditya Birla Finance Ltd*.[103], important subtleties came to the fore regarding unilateral appointments in the face of a changing jurisprudential landscape largely forged through earlier decisions. Those decisions had placed great emphasis on strict adherence to neutrality standards throughout arbitral proceedings. The proceedings were specifically designed to promote equitable outcomes between disputing parties actively engaged in resoving the dispute. It is pertinent in the present context in the face of growing concerns over potential biases arising from existing structures underpinning current practices employed widely throughout various industries.

[99] Union of India v Tantia Constructions Ltd 2021 SCC OnLine SC 271.
[100]Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712.
[101]Union of India v Tantia Constructions Ltd 2021 SCC OnLine SC 271
[102]Union of India v Tantia Constructions Ltd 2021 SCC OnLine SC 271
[103]McLeod Russel India Ltd v Aditya Birla Finance Ltd 2023 SCC OnLine Cal 330.

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Here, the Supreme Court ruled that blanket invalidation did not apply unless the arbitrators were unilaterally appointed and came specifically under disqualifications as laid down under Schedule VII[104]. Such provisions were expressed clearly, in addition to the general mandates instituted through earlier judgments. The Court highlighted the emphasis laid on adhering to statutory requirements, especially those brought through recent amendments[105]. These changes were directed at strengthening standards of neutrality and enhancing accountability amongst the stakeholders who participated during arbitration proceedings.

The ruling made it clear what is acceptable behavior by differentiating between instances in which procedural integrity applies and instances in which basic conflicts immediately resurface because of imperfections in the underlying structure. It called for more precise rules, particularly as criticism intensifies over systems giving one side sole power to appoint panels heavily identified with the appointing entity through professional relationships..

Now, in the 2024 judgment of *Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML (JV)*[106], the Supreme Court restated principles governing unilateral appointments, laying emphasis upon supremacy of impartiality and neutrality of an arbitrator. In this case, a unilateral arbitration clause had provided one party with exclusive authority to appoint an arbitrator. The Court held that such clauses violate the fundamental principles of fairness as enshrined in the 1996 Act, particularly after the 2015 amendments[107].

The judgment emphasized that the unilateral control in the appointment process itself creates animbalance, and hence, it would give rise to the possibility of bias. It declared the clause invalid, insisting that even the procedural mechanisms need to be devised in such a manner that

[104]The Arbitration Act 1940, sch VII.
[105]McLeod Russel India Ltd v Aditya Birla Finance Ltd 2023 SCC OnLine Cal 330.
[106]Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712.
[107]Anmol Kaur Bawa, 'Unilateral Arbitrator Appointment Clauses in Public-Private Contracts Invalid; Can't Compel Selection of Arbitrators from PSUs Panels: Supreme Court' (Live Law, 28 November 2024) https://www.livelaw.in/top stories/unilateral-arbitrator-appointment-clauses-in-public-private-contracts-invalid-cant-compel-selection-of arbitrators-from-psus-panels-supreme-court-274610 accessed 24 March 2025.

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no party has the upper hand over the arbitral process. On the basis of TRF Ltd.[108] and Perkins Eastman[109], the Court made it clear that statutory disqualifications under Schedule VII[110] must strictly be followed for the sanctity of arbitration.

LACK OF CONSISTENCY AND CONFUSION CREATED BY THE JUDICIARY

The question of unilateral appointments in arbitration has always led judicial controversy to produce a scattered and overall conflicting jurisprudence. Despite the aim of the 2015 Amendments—to make the arbitral proceedings more independent and neutral—the courts have been unable to render a unified interpretation. Rather than establishing the law, a succession of contradictory judgments has cast a pall of doubt upon what is fair within the realm of equitable arbitration.

The kernel of this current confusion is the conflict between two competing ideals: party autonomy and procedural fairness. Courts have time and again swayed between the two extremes. On the one hand, some judgments have been strict in their approach, affirming that any mechanism that allows a party to have control over the arbitral process undermines the very spirit of impartiality. Judgments such as *TRF Ltd. v Energo Engineering Projects Ltd*[111]. and *Perkins Eastman Architects DPC v HSCC (India) Ltd*[112]. have been representative of this strict approach, drawing a clear line against any kind of party-influenced appointment.

One the other hand, another judicial approach has emerged in cases such as *Central Organisation for Railway Electrification (CORE) v ECI-SPIC-SMO-MCML (JV)* and *McLeod Russel India Ltd. v Aditya Birla Finance Ltd.*[113], where courts have been more lenient in their approach[114]. Such judgments demonstrate a balanced deviation from the strict enforcement of disqualification criteria, providing room for quasi-unilateral devices under the guise of broad-

[108]TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 7 SCR 409.
[109]Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.
[110]The Arbitration Act 1940, sch VII.
[111]TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 7 SCR 409.
[112]Perkins Eastman Architects DPC v. HSCC (India) Ltd,. (2019) 17 SCR 275.
[113]McLeod Russel India Ltd v Aditya Birla Finance Ltd 2023 SCC OnLine Cal 330.
[114]Lalit, *supra* note 74.

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based panels or institutional mechanisms. This shift of interpretation, appearing as pragmatic, adds uncertainty through ambiguity by effacing the distinction between allowable autonomy and disallowed dominance.

This judicial dualism has weakened the uniform enforcement of the 2015 Amendments. While the law expressly strives to eliminate both actual and perceived bias, the indulgence in some judgments of procedures that look procedurally "broad" or "institutional"—but are actually skewed—has diluted the efficacy of enforcement. Rather than fortifying the legislative intent, judicial ambivalence has promoted cerebral contractual drafting with the aim of evading tougher interpretations of fairness.

The problem is compounded in the case of adhesion contracts and financial industry cases, where unequal bargaining power is inherent. Although holdings like *SawarmalGadodia v Tata Capital Financial Services Ltd*.[115] acknowledged this inconsistency, courts have not always elevated the resulting issue to a tangible, enforceable standard. The net effect is a haphazard patchwork of rulings under which the same provisions are characterized in dissimilar fashion, more in accord with judicial taste than any prevailing standard of law.

Adding to the confusion is the incoherent judicial gloss on "neutrality." Some courts have accepted the argument that offering a selection from a preselected group—though picked by one of the parties—is sufficient to meet the test of neutrality. Others have refused this, observing that even indirect control over appointments dilutes the neutrality of arbitration. The absence of consensus here betrays a more fundamental conceptual ambiguity about what neutrality actually requires in the arbitral context.

Even where courts have struck down biased clauses, they have usually failed to set out a clear template to review future clauses. Lacking a concrete judicial test has provided fertile terrain for

[115]SawarmalGadodia v. Tata Capital Financial Services Ltd. & Ors., 2019 SCC OnLine Bom 849.

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ongoing litigation, where each successive clause straddles formality and equity, waiting yet again for yet another decision to decide its fate[116].

Although recent rulings such as the *2024 CORE v. ECI-SPIC-SMO-MCML (JV)*[117] suggest a possible convergence towards higher standards, the jurisprudence is uncertain. Until such time as the judiciary takes an orderly and principled stance on this—based on the founding ambitions of arbitration as a balanced, impartial process—the legitimacy of the system will continue to be contestable.

Finally, arbitration not only thrives on actual neutrality but also on the image of fairness. Erosion of predictability of judicial thought runs the risk of undermining the image. In order to recreate coherence, Indian law of arbitration does not need further case-specific exceptions, but an unambiguous, uncompromising judicial position which is consonant with the philosophy of the 2015 reforms and confirms the basic pillars of equality, neutrality, and integrity of procedure.

CONCLUSION

Evolution of appointment of arbitrator in India sees a continuous struggle between the autonomy of the parties and the principles of fairness, neutrality, and impartiality. It has evolved from the 1940 Act that allowed widespread judicial intervention to the 1996 Act with heavy intent on party autonomy but lacking in effective insulations against impartiality, until the enactment of the existing Law. The 2015 Amendments were path-breaking, including strict disclosure standards and tests of disqualification to guarantee arbitrator neutrality. The decisions of the courts, specifically in TRF Ltd. v Energo Engineering Projects Ltd., Perkins Eastman Architects DPC v HSCC (India) Ltd., and Central Organisation for Railway Electrification v ECI-SPIC SMO-MCML (JV) have supplemented the demands of neutrality by rendering one-sided appointment clauses nugatory.

[116]Shalaka Patil and Surbhi Shah, 'Unilateral Appointment of an Arbitrator: The Lack of Clarity in the Judicial Approach and the Way Forward' (SCC Online, 28 December 2025) <https://www.scconline.com/blog/post/2024/11/28/unilateral-appointment-of-an-arbitrator-the-lack-of-clarity-in-the-judicial-approach-and-the-way-forward/> accessed 10 April 2025.
[117]Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712.

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However, inconsistency in judicial interpretations has at times brought uncertainty regarding the enforceability of such clauses. The 2024 Central Organisation for Railway Electrification judgment reaffirms the judiciary's determination to align Indian arbitration law with international best practices by eliminating structural bias in the appointment of arbitrators. In the future years, consistency in judicial decisions and implementation of reforms introduced through the 2015 Amendments will be important to impart consistent confidence in arbitration as a working mechanism for dispute resolution. While the legislative reforms have opened the doors for a balanced system, judicial supervision and pro-neutrality are required to infuse arbitration in India with credibility and neutrality and the 2024 judgments appear to be moving in that direction.

For making this system stronger, judicial guidelines on the appointment of arbitrators as set out in seminal judgments should be codified so that there is no vagueness and the same is applied uniformly. Compulsory training and certification of the arbitrators on ethical practices and neutrality principles would improve professionalism and public trust. Promoting institutional arbitration can also give a formal and neutral framework for appointments. In addition, the creation of a central power to oversee the appointment of arbitrators in disputes with government institutions or the public interest could be used as a neutralizing factor. Last but not the least, regular legislative checks on salient schedules and provisions—like the Fifth and Seventh Schedules to the Arbitration and Conciliation Act—would guarantee that the law keeps pace with international best practices and domestic needs.

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