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Reasonable Doubts about Arbitrator's Independence & Impartiality under the Arbitration & Conciliation Act, 1996

Sreeja K V[*]

Abstract

The Arbitration and Conciliation Act, 1996, is designed to facilitate impartial and efficient dispute resolution. However, concerns regarding the independence and impartiality of arbitrators persist, often leading to challenges that undermine the arbitral process. This paper critically examines the concept of "reasonable doubts" about an arbitrator's independence and impartiality under the Act, particularly in light of Sections 12 and 13, and the 2015 and 2019 amendments. Through a detailed analysis of case law and statutory interpretation, the paper explores the thresholds for disqualification, disclosure obligations, and the impact of the 5th and 7th Schedules. It argues that while reforms have been introduced, ambiguities remain, necessitating further judicial clarification and legislative refinement to ensure trust in the arbitration process.

Keywords: arbitration, independence, impartiality, reasonable doubts, Arbitration & Conciliation Act, arbitrator bias, 5th schedule, 7th schedule, disqualification of arbitrators, 2015 amendments

Introduction

In the modern globalized economy, international commercial arbitration has emerged as the preferred method for resolving disputes between parties across borders. As a private and

[*] *Student of VIII Semester, B.B.A., LL.B. (Hons.), School of Legal Studies, CMR University*

flexible alternative dispute resolution (ADR) mechanism, arbitration is chosen for its efficiency, confidentiality, and ability to circumvent the formalities and delays often associated with traditional litigation. Arbitration's quasi-judicial nature brings with it a critical requirement: the independence and impartiality of arbitrators, which form the foundation of trust in the arbitral process.

Parties enter arbitration with the expectation that arbitrators will render decisions free from bias and external influence. The expectation of neutrality is integral to both party-appointed and institution-appointed arbitrators, reinforcing fairness as an essential component of the arbitral award's legitimacy. However, unlike judges who serve as agents of the state, arbitrators operate within a framework defined by private entities or appointing parties, which may subject them to commercial interests and potential conflicts of interest. As such, the importance of clear standards governing impartiality and independence in arbitration cannot be overstated.[1]

This need for arbitrator neutrality is reflected in legislative efforts worldwide, including in India, where the Arbitration and Conciliation Act[2], initially enacted in 1996 and significantly amended in 2015, incorporates international standards for arbitrator neutrality. The amendments, informed by the International Bar Association (IBA) Guidelines on Conflicts of Interest[3], seek to bolster both the reality and the perception of arbitrator independence. Nonetheless, questions remain around appointment practices and the challenges inherent in ensuring impartiality, especially where party influence might affect tribunal composition. This research paper aims to examine the evolving standards for arbitrator independence and impartiality and to assess their implications for fair and effective dispute resolution in international arbitration.

What Arbitration Requires from an Arbitrator

An arbitrator, as defined by Russell[4], serves as a private judge who resolves disputes within an arbitral tribunal and issues binding decisions, or awards, based on evidence and the principles

[1] Indian Arbitration Law Review Volume 1 February, 2019
[2] Arbitration and Conciliation Act, 1996, Act 26 of 1996
[3] International Bar Association, Guidelines on Conflicts of Interest in International Arbitration (approved May 25, 2024).
[4] David St John Sutton, Judith Gill, Matthew Gearing, Russell on Arbitration, 24th Edition

of fairness. Appointed under Section 11[5] of the Arbitration & Conciliation Act 1996, arbitrators are entrusted by disputing parties to act impartially and privately, outside the formal public court system.

To be effective, an arbitrator must possess certain qualities:

1. **Communication Skills:** They must listen patiently, understand each party's position, and ensure all parties have an opportunity to present their case.
2. **Competence:** Expertise in the subject matter, evidenced by professional experience or relevant qualifications, enables arbitrators to make informed decisions.
3. **Objectivity:** Fairness and impartiality are essential, requiring the arbitrator to consider all facts and avoid biases.
4. **Discretion:** Given the confidential nature of arbitration, arbitrators should handle proceedings privately and refrain from discussing case details with outsiders.

These qualities collectively ensure that arbitrators maintain the integrity and efficacy of the arbitration process, balancing privacy with impartiality.

Independence & Impartiality

The independence and impartiality of arbitrators constitute the core principles upon which the legitimacy of arbitration rests. This essential requirement ensures that arbitrators adjudicate without bias, promoting fair resolutions and maintaining trust in arbitration as an effective alternative dispute resolution mechanism. Given the growing complexity and globalization of business, especially in fields involving substantial financial stakes, maintaining arbitrator neutrality has become increasingly critical. However, despite legal frameworks designed to reinforce these qualities, challenges and complexities remain regarding their application and consistency.

These principles are foundational to the legitimacy of international arbitration. Arbitrators are expected to remain neutral, free from any personal, professional, or financial ties that might

[5] Arbitration & Conciliation Act 1996 , § 11

compromise their judgment. Independence refers to the absence of relationships or connections, such as familial or business links, that could influence the arbitrator's decision-making. Impartiality, on the other hand, relates to the arbitrator's unbiased state of mind, ensuring no favoritism or prejudice towards any party.[6]

In party-appointed arbitrators, the challenge of neutrality is more pronounced, as arbitrators are often selected based on perceived sympathies toward one party. Nonetheless, arbitral institutions such as the ICC and UNCITRAL[7] have established rules to encourage a balanced tribunal. For instance, the ICC requires the appointment of a third arbitrator by the institution to preserve impartiality in cases with three arbitrators, ensuring that the presiding arbitrator remains neutral. Additionally, the guidelines set by organizations like the International Bar Association (IBA) help standardize practices, with measures such as mandatory disclosures to prevent conflicts of interest.

The 2015 amendments to India's Arbitration and Conciliation Act further illustrate efforts to reinforce these principles. Section 12(5)[8] mandates that any arbitrator falling within specific conflict categories is ineligible unless parties expressly waive this requirement[9]. The amendments also introduced Schedule 5, which outlines grounds for raising "justifiable doubts" about an arbitrator's impartiality[10].

Cases like *Aravali Power Company Pvt. Ltd. v. Era Infra Engineering Ltd*[11]. underscore the evolving judicial stance on independence and impartiality in India, where courts are becoming more vigilant in scrutinizing arbitrator neutrality, especially in pre-amendment scenarios. These developments reflect a growing acknowledgment that impartiality and independence are inseparable from the integrity of the arbitral process and are crucial for maintaining arbitration as a credible alternative dispute resolution mechanism.

[6] Udian Sharma, Independence and Impartiality of Arbitral Tribunals: Legality of Unilateral Appointments, 9 INDIAN J. ARB. L. 121 (2020).
[7] United Nations Commission on International Trade Law (UNCITRAL)
[8] Arbitration & Conciliation Act 1996 , § 12(5)
[9] The Arbitration and Conciliation Act 1996,No. 26 Acts of Parliament, 1996 (India), §12(5).
[10] The Arbitration and Conciliation Act 1996,No. 26 Acts of Parliament, 1996 (India), §12(1)(b) & Fifth Schedule.
[11] Aravali Power Company Pvt. Ltd. v. Era Infra Engineering Ltd, AIR 2017 SUPREME COURT 4450

In *M/S Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd*[12] The Supreme Court of India addressed the distinct requirements of independence and impartiality in arbitration. The Court clarified that independence is typically assessed before arbitration begins, based on the arbitrator's disclosures. For instance, a CEO of a company involved in a dispute would not be considered independent if appointed as an arbitrator, as they are likely to have a vested interest in the outcome favoring their company. This potential conflict of interest can be identified from the outset through transparent disclosure.

Impartiality, however, is a quality that becomes evident during the arbitration proceedings. It concerns the arbitrator's conduct in ensuring both parties have a fair and equal opportunity to present their cases. There has been increased scrutiny of arbitrators' independence and impartiality providing balanced opportunities for both parties to argue their points.[13]

The Supreme Court emphasized that both independence and impartiality are fundamental to fair arbitration. Failure to meet either criterion renders an arbitrator unfit to preside over the proceedings, as these principles are crucial to upholding the integrity and neutrality of arbitration.[14]

The independence and impartiality of arbitrators have recently faced increased scrutiny across common law jurisdictions, reflecting the critical importance of avoiding bias in arbitration. Bias may be "actual" or "apparent."[15] While actual bias is straightforward to identify, apparent bias is often more complex, leading to the application of two primary tests across different jurisdictions:

- **Reasonable Apprehension of Bias:** This lower threshold test assesses whether a "fair-minded and informed observer" would conclude that there is a real possibility of bias. Commonly used in international arbitration, it originated in *Porter v Magill* [2002][16] and is widely applied in jurisdictions such as Canada and India.

[12] M/S Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd AIR 2017 SC 939
[13] A-Z OF ADR :INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS , ANAGHA MV
[14] The Independence and Impartiality of Arbitrators in International Commercial Arbitration , Leela Kumar
[15] Director General of Fair Trading v The Proprietary Association of Great Britain [2001]1 WLR 700
[16] Porter v Magill, ALL ER 465 at 507

- **Real Danger of Bias:** A stricter standard, this test requires a "reasonable likelihood" of bias, with the court serving as the observer. Originating in *R v Gough* [1993][17] . This test is adopted in Australia and parts of Canada, like British Columbia, particularly in cases where arbitrator challenges may become procedural tactics to delay proceedings.

Disqualification of Arbitrators under the Arbitration & Conciliation Act, 1966, under Section 12(5) & Schedule VII

The Arbitration and Conciliation (Amendment) Act, 2015, brought about significant changes to ensure impartiality and independence in arbitration proceedings in India. One of the key amendments was the insertion of Section 12(5)[18], which, read in conjunction with the Seventh Schedule, lays down specific circumstances under which an arbitrator is deemed ineligible to act.[19]

According to the provisions of Schedule VII, an individual shall be disqualified from being appointed as an arbitrator if they fall under any of the following categories:

- The individual is currently or has previously been employed as an advisor, consultant, or in any other commercial relationship with any party to the dispute.
- The individual provides advisory or other services to any of the parties or their associated entities.
- The individual represents or is affiliated with the legal counsel of either party.
- The arbitrator belongs to a law firm that currently represents one of the parties involved in the dispute.
- The individual holds a managerial or directorial role or exerts significant influence over an affiliate of any party that is directly involved in the dispute.

[17] R v Gough, AC 646 AT 670
[18] ibid
[19] The Seventh Schedule- Arbitration and Conciliation Act 1996, IBC LAWS (July 6, 2019), https://ibclaw.in/thefifth-schedule-arbitration-and-conciliation-act- 1996/

- Although the arbitrator may not have been directly involved, their law firm had previously participated in the matter.
- The arbitrator's law firm maintains a substantial business relationship with one of the parties or their affiliates.
- The arbitrator frequently advises the appointing party or its affiliates, even if the financial gain is not substantial.
- A close family relationship exists between the arbitrator and the party, or in the case of a corporate party, with those who control or manage it.
- A close relative of the arbitrator holds a significant financial interest in the party or its affiliate.
- The arbitrator is legally representing one of the disputing parties.
- The arbitrator holds a position of control or management within any of the parties.
- The arbitrator stands to benefit financially based on the outcome of the dispute.
- The arbitrator, or their firm, gains financially from frequently advising the appointing party.
- The arbitrator has previously provided legal advice or an expert opinion on the same dispute.
- The arbitrator has had prior involvement in the current case.
- The arbitrator holds, directly or indirectly, private equity or shares in any of the parties or their affiliates.
- A close family member of the arbitrator stands to gain or lose financially depending on the result of the arbitration.
- The arbitrator or their close relative maintains a personal relationship with a third party who might be affected by the result of the arbitration.

If any of the above relationships exist, the individual is considered legally ineligible to act as an arbitrator. However, Section 12(5) allows the parties to waive such disqualification, but only through an express written agreement made after the dispute has arisen.

Furthermore, the 2015 amendment emphasizes transparency and accountability by mandating that any proposed arbitrator disclose any facts likely to give rise to justifiable doubts regarding their independence or impartiality. This requirement aligns with the principles laid out in Schedule V of the Act, which, although broader in scope, outlines situations that could reasonably create doubts about the arbitrator's neutrality. Unlike Schedule VII, the provisions under Schedule V do not render an arbitrator de jure ineligible but serve as grounds for challenge.[20]

The judiciary has also reaffirmed this interpretation. In *Shubham Garg v. Ajay Kumar Maheshwari*[21], the Hon'ble Supreme Court clarified that once an arbitrator falls within any of the categories enumerated in Schedule VII, they are de jure disqualified from continuing in the role. This underscores the mandatory nature of these provisions, aimed at preserving the sanctity and fairness of arbitration proceedings in India.[22]

Jurisdictional Applications

Australia: In *Hancock v Hancock Prospecting Pty Ltd* [23][2022], the New South Wales Supreme Court applied the "real danger" test under the Commercial Arbitration Act 2012 (WA). The court rejected a challenge based on the arbitrator's spouse's former employment with the defendant's law firm, citing that the "real danger" standard is intended to deter tactical challenges and promote Australia as an arbitration-friendly jurisdiction. Similarly, the Federal Court reaffirmed this standard in *Sino Dragon Trading Ltd v Noble Resources International Pte Ltd*[24].

Canada: Generally applying the "reasonable apprehension of bias" test, Canadian provinces differ in their arbitration laws. Ontario, for instance, applies this lower threshold for bias, as

[20] Arisha Khan, Challenges on Neutrality on Arbitral Tribunals, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).
[21] Civil Misc. Arbitration Application No.91 of 2018
[22] The Independence and Impartiality of Arbitrators, O.P. KHAITAN & CO
[23] Hancock v Hancock Prospecting Pty Ltd NSWSC 724
[24] Sino Dragon Trading Ltd v Noble Resources International Pte Ltd, FCA 1131

reaffirmed in *Dufferin v. Morrison Hershfield*[25] [2022], where a challenge was dismissed despite allegations that the arbitrator had pre-judged issues. Conversely, British Columbia recently amended its legislation to adopt the stricter "real danger" test, which is expected to limit successful challenges in domestic and international arbitrations seated in the province.

India: India uses a variation of the reasonable apprehension test, focusing on the viewpoint of the concerned party rather than an impartial observer, although the test remains objective. The 2015 amendments to the Arbitration and Conciliation Act introduced the Fifth and Seventh Schedules, based on IBA Guidelines, to outline potential conflicts. The Seventh Schedule automatically disqualifies arbitrators in certain relationships with the parties. In *HRD Corporation v. GAIL (India) Ltd*[26]. The Supreme Court allowed parties to seek court intervention on arbitrator ineligibility under the Seventh Schedule, potentially giving rise to delays in arbitration proceedings. In *Indian Oil Corporation v. Raja Transport (P) Ltd*[27]. The court held that senior officers of government corporations could still act as arbitrators, reflecting a pro-arbitration stance for proceedings initiated before 2015.

Arbitration in India has a long history, originating from ancient practices where communities voluntarily submitted disputes to local councils or "panchayats" for binding resolutions. The formalization of arbitration law in India began during British rule with the Bengal Regulation of 1772, which provided for court-referred arbitration with party consent in matters such as partnership deeds and breach of contract. By the mid-20th century, arbitration law in India was governed by three key statutes: the Arbitration (Protocol and Convention) Act, 1937[28], the Indian Arbitration Act, 1940, and the Foreign Awards (Recognition and Enforcement) Act, 1961[29]. The 1940 Act, modeled on the English Arbitration Act of 1934, addressed domestic arbitration but required court intervention at multiple stages, leading to delays and

[25] Dufferin v. Morrison Hershfield, ONSC 3485
[26] HRD Corporation v. GAIL (India) Ltd, (2018)12 SCC 471
[27] Indian Oil Corporation v. Raja Transport (P) Ltd, (2009) 8 SCC 520
[28] Arbitration (Protocol and Convention) Act, No. 6 of 1937 (India).
[29] Foreign Awards (Recognition and Enforcement) Act, No. 45 of 1961 (India).

inefficiencies. In *M/s Guru Nanak Foundation v. M/S Rattan Singh & Sons*[30], the Supreme Court criticized the overly technical and protracted nature of proceedings under said Act.[31]

To modernize arbitration law and streamline dispute resolution, the Indian government enacted the Arbitration and Conciliation Act, 1996. This comprehensive legislation, based on the UNCITRAL Model Law[32], repealed the previous statutes and introduced provisions for both domestic and international arbitration, as well as conciliation procedures. Unlike the UNCITRAL Model Law, which applies primarily to international commercial arbitration, the 1996 Act encompasses both domestic and international disputes and limits judicial intervention to promote faster dispute resolution. Key parts of the Act include provisions on domestic arbitration, enforcement of foreign awards, and the adoption of international conventions such as the New York and Geneva Conventions.[33]

In *M/s. Guru Nanak Foundation vs. M/s. Rattan Singh & Sons*[34], a petition was filed in the Delhi High Court to remove an arbitrator during ongoing arbitration. Although the petition was initially denied, the Supreme Court granted special leave to appeal. By mutual consent, a new arbitrator was appointed to settle the disputes. After the award was made, confusion arose about where the award should be filed. The Supreme Court ultimately directed the award to be moved from the Delhi High Court to the Supreme Court.

The Court expressed frustration over the excessive legal complexities under the Arbitration Act, 1940, noting that the process, meant for quick resolution, had become overly technical and burdensome, turning arbitration into a legal maze.

Arbitration is a dispute resolution mechanism wherein parties agree to submit their conflicts to one or more arbitrators, whose decision is binding and final.

Section 89[35] of the Civil Procedure Code (CPC) allows courts to refer cases to alternative dispute resolution (ADR) methods if there is a possibility of settlement between the parties. It

[30] AIR 1981 4 SCC 634
[31] Jaiswal, Sneha, Arbitration Law in India – an Overview (December 11, 2020).
[32] United Nations Commission on International Trade Law (UNCITRAL), Model Law on International Commercial Arbitration, G.A. Res. 40/72, U.N. Doc. A/RES/40/72 (Dec. 11, 1985), as amended by G.A Res. 61/33, U.N.
[33] Divya Kumra, Independence and Impartiality of an Arbitrator, INT'l J.L. MGMT. & HUMAN. 254 (2023).
[34] AIR 1981 SC 2075
[35] Code of Civil Procedure,1908 ,§ 89

is the court's duty to propose terms for settlement, seek observations from the parties, and then refer the matter to ADR methods, provided both parties give their consent.

In *Jagdish Chander v. Ramesh Chander* (2007)[36], the Supreme Court emphasized that Section 89 mandates courts to refer disputes to ADR but requires mutual consent from all parties. The applicable laws for each ADR method are:

- Arbitration and conciliation are governed by the Arbitration and Conciliation Act, 1996.
- Lok Adalats are governed by the Legal Services Authorities Act, 1987. However, no specific law governs mediation under Section 89. Procedural aspects are covered under Order 10, Rules 1A, 1B, and 1C[37], which direct parties to choose an ADR mode, obligate them to appear before ADR authorities, and, if ADR fails, return to court.

ADR offers a practical solution to overcome delays in the judicial system, making Section 89 a more effective alternative than merely increasing the number of courts or judges.

In *Salem Advocate Bar Association v. Union of India*[38] (2005), the Supreme Court reinterpreted Section 89 of the CPC to resolve ambiguities. The Court clarified that the term "may" in Order X, Rules 1A-1C [39]of the CPC applies only to the court's role in reformulating settlement terms. It also addressed the issue with the phrase "terms of settlement" in Section 89, which mandates formulation at the pleadings stage. The Court found this impractical, as the judge lacks adequate knowledge of the case at that stage, and formulating settlement terms is the ADR forum's responsibility. The phrase was thus reinterpreted to mean a "summary of disputes" instead of detailed settlement terms.

An arbitration agreement is a contract where parties agree to resolve disputes through arbitration instead of going to court. Section 7[40] of the Arbitration and Conciliation Act, 1996,

[36] Appeal (civil) 4467 of 2002
[37] Under Arbitration and Conciliation Act,1996
[38] AIR 2005 SUPREME COURT 3353
[39] Code of Civil Procedure,1908 ,Order X rules 1A-C
[40] Arbitration and Conciliation Act, 1996 §7

defines it similarly to the New York Convention and UNCITRAL Model Law. It allows parties to submit existing or future disputes arising from a defined legal relationship to arbitration. The agreement must show a clear intention to resolve disputes through arbitration, and it creates binding obligations for both parties.

The arbitration agreement must be in writing, which can take the form of a signed document, letters, or other communications like emails or telegrams. A reference in a contract to a document containing an arbitration clause also forms an arbitration agreement.

For arbitration to proceed, there must be a genuine dispute between the parties. The agreement ensures that disputes are settled outside of court, avoiding lengthy litigation. Without a dispute, arbitration cannot begin.

Independence & Impartiality of Arbitrators: A Bedrock of Arbitration

The independence and impartiality of arbitrators constitute the core principles upon which the legitimacy of arbitration rests. This essential requirement ensures that arbitrators adjudicate without bias, promoting fair resolutions and maintaining trust in arbitration as an effective alternative dispute resolution mechanism. Given the growing complexity and globalization of business, especially in fields involving substantial financial stakes, maintaining arbitrator neutrality has become increasingly critical. However, despite legal frameworks designed to reinforce these qualities, challenges and complexities remain regarding their application and consistency.

Evolution & Legal Framework of Arbitrator Independence

Arbitration, an alternative dispute resolution method, appeals to parties seeking a more flexible, private, and efficient way to settle disputes compared to traditional litigation. International arbitration has seen significant development, with independence and impartiality firmly established as cornerstones. Independence often refers to an arbitrator's freedom from connections that could influence their judgment, such as financial, familial, or professional ties to either party. Impartiality, on the other hand, concerns an arbitrator's state of mind and requires that they remain unbiased toward any party involved.

In India, the Arbitration and Conciliation Act of 1996 (as amended in 2015) embodies these principles, mandating in Section 12[41] that arbitrators disclose any circumstances likely to affect their independence

[41] Arbitration and Conciliation Act, 1996 §12

or impartiality. This amendment incorporated guidance from the International Bar Association (IBA) [42]Guidelines on Conflicts of Interest, ensuring that India aligns with international best practices. Section 12(5) further strengthened impartiality by listing specific conditions in Schedule VII that automatically disqualify individuals from serving as arbitrators unless the parties, after the dispute arises, waive the provision in writing. This is a significant advancement, curtailing practices where government or corporate entities often appointed their employees as arbitrators, a practice fraught with potential bias.

Judicial Interpretation & Case Laws

Various judgments have elucidated and reinforced these statutory standards, shaping a robust legal precedent on arbitrator independence. For example, in *Aravali Power Company Pvt. Ltd. v. M/s Era Infra Engineering Ltd.* (2017)[43], the Supreme Court of India held that amendments made to the Act in 2015 would apply to disputes invoked after the amendment date. This decision underscored the applicability of stricter neutrality requirements to ensure impartial tribunal appointments and eliminate potential biases.

Further, the case *HRD Corporation v. GAIL (India) Ltd.* (2018)[44] reinforced that arbitrators falling under the disqualification categories of Schedule VII are deemed "de jure" ineligible, underscoring the intent of Section 12(5) to ensure objectivity and trust in arbitral proceedings. These rulings affirm the judiciary's commitment to enforcing the amendment's spirit, ensuring that impartiality is preserved even in pre-existing contractual arrangements.

Comparative Perspectives in International Arbitration

A comparative analysis highlights the commitment to arbitrator neutrality across various international arbitration institutions, such as the Stockholm Chamber of Commerce (SCC)[45], the International Chamber of Commerce (ICC), and the London Court of International Arbitration (LCIA). These institutions consistently promote impartiality, often mandating disclosures that align with the IBA's "justifiable doubts" principle to prevent conflicts of

[42] IBA Guidelines on Conflicts of Interest in International Arbitration Approved by the IBA Council, 25 May 2024
[43] AIR 2017 SUPREME COURT 4450
[44] (2018)12 SCC 471
[45] Article 17(6) states that "If the parties are of different nationalities, the sole arbitrator or the Chairperson of the Arbitral Tribunal shall be of a different nationality than the parties, unless the parties have agreed otherwise or the Board otherwise deems it appropriate."

interest. For instance, the SCC Rules (Article 14) and ICC Rules emphasize arbitrator independence and allow for challenges when "justifiable doubts" [46]exist regarding impartiality.

The IBA Guidelines[47] play an influential role by categorizing potential conflicts into red, orange, and green lists[48], providing a structured approach for evaluating arbitrator independence. The red list, for example, includes non-waivable conflicts, such as when an arbitrator holds a significant financial interest in the outcome. The ICC and LCIA also incorporate similar principles, reflecting a global consensus that independence and impartiality are essential for arbitrator credibility.

Implications & Ongoing Challenges

While legal amendments and case law aim to ensure impartiality, challenges persist. Party-appointed arbitrators, especially in three-member panels, can still pose concerns regarding partiality, given the potential for favoring the appointing party's interests. Although these arbitrators are expected to remain neutral, there exists a practical acknowledgment, as some legal scholars suggest, that subtle partiality may shape an arbitrator's perspective without necessarily undermining the fairness of the final award.

Furthermore, enforcing impartiality remains complex due to subjective elements in assessing potential bias, particularly with relationships and associations that might not have immediate financial implications. The disclosure requirement, though helpful, places an ongoing duty on arbitrators to reassess potential biases, which can sometimes blur into subjective interpretations. In this regard, comparative studies, such as those in Helena Jung's thesis[49] on standards across the SCC and ICC, illustrate that institutions differ slightly in managing challenges, reflecting varied thresholds for "justifiable doubts" regarding independence and impartiality.

[46] Hasmukhlal H. Doshi & Anr. v. J. M.L. Pendse & Ors., 2000 SCC OnLine Bom 242
[47] HRD Corp. v. GAIL (India) Ltd., (2018) 12 SCC 471 (India)
[48] Khaled Moyeed, Clare Montgomery & Neal Pal, A Guide to the IBA's Revised Guidelines on Conflicts of Interest, KLUWER ARB. BLoG (Jan. 29, 2015)
[49] Helena Jung , The Standard of Independence and Impartiality for Arbitrators in International Arbitration : Comparative Study between the standards of the SCC , the ICC , the LCIA and the AAA, 2008

Conclusion

The independence and impartiality of arbitrators are essential for maintaining the credibility of arbitration as a preferred mode of dispute resolution. Statutory amendments and judicial pronouncements, especially in India, reinforce this principle by disqualifying arbitrators with potential biases and ensuring thorough disclosure requirements. However, the effective implementation of these principles remains a continuous balancing act, requiring diligence from arbitral institutions and a nuanced understanding of impartiality from arbitrators themselves. Adherence to these evolving standards ensures that arbitration remains a credible, impartial, and efficient alternative to traditional litigation, aligning with the global business community's demands for fair dispute resolution.

The independence and impartiality of arbitrators are essential for maintaining the credibility of arbitration as a preferred mode of dispute resolution. Statutory amendments and judicial pronouncements, especially in India, reinforce this principle by disqualifying arbitrators with potential biases and ensuring thorough disclosure requirements. However, the effective implementation of these principles remains a continuous balancing act, requiring diligence from arbitral institutions and a nuanced understanding of impartiality from arbitrators themselves. By adhering to these evolving standards, arbitration can continue to offer an impartial, efficient alternative to traditional litigation, aligning with the global business community's demands for fair dispute resolution.

Key Takeaways

The analysis of apparent bias standards across jurisdictions shows a divide in approaches. The "real danger" test aims to prevent unnecessary arbitrator challenges, supporting the arbitral process's efficiency and neutrality. Meanwhile, the "reasonable apprehension" test is viewed as more accessible, allowing challenges based on perceived risks to impartiality. The adoption of either standard depends on balancing the need for impartiality with the desire to limit procedural delays, particularly in jurisdictions that seek to position themselves as international arbitration hubs.

In India, the introduction of objective grounds in the Seventh Schedule reflects a more formal approach to ensuring arbitrator independence, though it may introduce challenges regarding procedural delay. Overall, these developments highlight the evolving legal frameworks intended to uphold arbitrator impartiality while balancing procedural efficiency in international arbitration.