BALANCING PARTY AUTONOMY AND EQUALITY: CHALLENGES OF MULTI-PARTY ARBITRATIONS IN INDIAN ARBITRATION LAW

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ABSTRACT

The fundamental tenets of arbitration are equality of treatment and party autonomy. Even though Indian courts have expanded the definition of "parties" to include non-signatories in Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc. and Cox & Kings Ltd. v. SAP India Pvt. Ltd., the Arbitration and Conciliation Act, 1996, still lacks a statutory framework for arbitrator appointments in multi-party scenarios. This legislative silence recalls the inequity emphasized in the landmark Dutco case, puts Indian law behind international best practices, and jeopardizes procedural fairness.

The actual difficulties brought about by India's lack of legal processes for multi-party nominations have not been well addressed in the literature that has already been written, which has mostly concentrated on non-signatory doctrines and the idea of party autonomy. By providing a thorough analysis of the challenges with tribunal constitution under Indian law, set within the framework of international reforms, this paper aims to close that gap.

The novelty of this work lies in moving beyond judicial and institutional analysis to propose specific legislative amendments to the Arbitration and Conciliation Act. Drawing inspiration from established frameworks under SIAC, ICC, and LCIA rules, it recommends default appointment procedures to safeguard equality, prevent challenges to awards, and strengthen confidence in Indian arbitration.

This article offers a roadmap for bringing Indian arbitration law into compliance with international norms by combining comparative analysis, doctrinal critique, and recommendations for the future. Its objective is to provide policymakers, practitioners, and academics with a practical answer to a long-ignored issue that has a direct bearing on efficiency, justice, and India's aspirations for international arbitration.

Introduction

The basic principle that every arbitration should follow is the arbitrator impartiality and independence towards the parties so that the final award is rendered according to merits. Consequently, choosing the arbitral panel is the most important phase in an arbitration.

Under Indian arbitration law, the definition of "parties" to an arbitration agreement has evolved significantly through judicial interpretation, particularly in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc*.[1] and *Cox & Kings Ltd. v. SAP India Pvt. Ltd*.[2] Traditionally, only signatories to an arbitration agreement were considered parties bound by its terms. However, in Chloro Controls, the Supreme Court expanded this definition, holding that non-signatory entities within a corporate group, not restricted to "parties" who are signatories and those whose conduct objectively manifests agreement to arbitrate.

This ascertains the matter of joinder in arbitration proceedings pertaining to the issue of what constitutes as parties, at this point, the ideas of party autonomy, party equality, and fairness are significantly important to ascertain the selection of arbitrator in multi-party arbitration proceedings. This article examines the challenges in arbitrator appointments for multi-party arbitrations under Indian law, emphasizing the tension between party autonomy, equality, and legislative gaps. While Indian courts have expanded the definition of "parties" to include non-signatories in cases like Chloro Controls and Cox & Kings, the Arbitration and Conciliation Act, 1996, remains silent on procedural mechanisms for multi-party scenarios. Institutional rules (e.g., MCIA, DIAC) address joint nominations, requiring claimants and respondents to jointly appoint arbitrators, with institutional intervention in deadlocks. However, statutory provisions under Section 11(3) of the ACA fail to account for multi-party disputes, creating risks of procedural inequity akin to the Dutco precedent. The Law Commission's 246th Report and the 2024 Draft Amendment Bill overlook this issue, despite international reforms in jurisdictions like Singapore. The article proposes legislative amendments to integrate default appointment mechanisms inspired by SIAC, ICC, and LCIA rules, ensuring fairness while preserving party autonomy. By aligning India's framework with global standards, such reforms could enhance procedural efficiency, reduce challenges to arbitral awards, and strengthen India's position as an arbitration hub.

[1] Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 (India).
[2] Cox & Kings Ltd. v. SAP India Pvt. Ltd., (2023) 8 SCC 1.

Idea of party autonomy, party equality and fairness in case of multi-party arbitration

"Party autonomy is the backbone of the arbitration"[3] and is designed to provide the disputing parties with the maximum scope of customization of the dispute resolution process to suit their needs and the existing commercial interests.[4] The governing principle with respect to the constitution of the arbitral tribunal is "party autonomy".[5] It is this foundational *Principle of Party Autonomy* and consent that shapes much of the legal landscape that governs arbitration,[6] which allows the parties to determine the procedural aspects of their dispute including the constitution of the arbitral tribunal. If one party is joined to the arbitration but denied the opportunity to participate in the appointment of the tribunal, this will violate the fundamental *Principle of Party Autonomy* in arbitration proceedings. Party autonomy is the "brooding and guiding spirit" in arbitration which empowers parties to decide on procedures governing the proceedings. The Apex Court has also recognized that party autonomy applies to not only the procedural laws but also to design the arbitration process.[7] Where several parties are involved in a single commercial project executed through more than one party, all parties can be covered within the arbitration clause in the main agreement. If a party is joined under the arbitration clause of the main agreement, it must be granted equal rights in the process to appoint an arbitrator that upholds party autonomy.[8] Equitable and fair treatment is a non-negotiable base upon which arbitration is built.[9] The SC went on to observe that "fair treatment forms the base of the alternate dispute resolution mechanism." Relying further on the judicial perspective that equality is integral to maintain the credibility of arbitration as a legitimate alternative to court litigation.[10] Arbitration relies on the trust of all parties in the process. Exclusion of the party from the tribunal's formulation process will create a procedural imbalance. This will force the excluded party to accept arbitrators and decisions made by them solely selected by the other party or parties.

[3] National Highways Authority of India v. Gammon Engineers & Contractor (P) Ltd., 2018 SCC OnLine Del 10183.
[4] Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Co. (2024) SCC OnLine SC 3219.
[5] UNCITRAL, *2012 Digest of Case Law on the Model Law on International Commercial Arbitration* (2012) 67.
[6] Shruti Sabharwal and Ujval Mohan, 'Addressing Asymmetry in Arbitrator Appointments: A Multi-Party Context' (SCC Online Blog, 2 August 2023) https://www.scconline.com/blog/post/2023/08/02/addressing-asymmetry-in-arbitrator-appointments-a-multi-party-context/accessed 9 June 2025.
[7] Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., (2006) 11 SCC 245.
[8] UNCITRAL Model Law on International Commercial Arbitration 1985, art 18.
[9] Union of India v. Vedanta Ltd., (2020) 10 SCC 1.
[10] Arbitration and Conciliation Act, § 18, No. 26, Acts of Parliament, 1996 (India).

The landmark dutco case

The Dutco case[11] transformed procedures for the appointment of arbitrators in multi-party arbitrations by making equal treatment a constitutional element of procedural justice. The case resulted from a tripartite consortium agreement between BKMI, Siemens, and Dutco with an ICC arbitration clause. When Dutco commenced arbitration against the respondents, the ICC Court demanded that BKMI and Siemens collectively nominate one of the arbitrators while Dutco nominated the other. The respondents objected on the grounds that this imposition of joint nomination trampled their respective rights of equal participation in the constitution of the tribunal, especially since they might have conflicting interests. The French Cour de Cassation concurred, ruling that equality in the appointment of arbitrators is a public policy that cannot be waived prior to the emergence of a dispute. This foundational judgment nullified asymmetrical appointment mechanisms in multi-party cases, which led to worldwide reforms in institutional arbitration rules.

Post-Dutco, significant institutions such as the ICC and LCIA amended their rules to require joint nominations by respondent/claimant groups, institutional intervention in case agreement fails. For example, ICC Rule 10(2) now obliges the Court to appoint all arbitrators when multi-party groups cannot agree, to prevent any one-party controlling tribunal composition. The decision emphasized that procedural fairness in multi-party disputes requires structural equality in appointments, even at the expense of party autonomy. By putting equality of treatment ahead of absolute contractual sovereignty, Dutco reshaped arbitrator appointment procedures, institutional control becoming a safeguard against procedural unfairness in multi-party disputes.

The current Indian arbitration Scenario

i. Joint Nomination in Multi-party Arbitration: An Overlooked Issue in Indian Arbitration Law

The appointment of arbitrators in multi-party arbitrations presents unique challenges that require careful consideration to maintain the fundamental principles of party autonomy and equality. Despite significant developments in international arbitration practice following the

[11] BKMI Industrieanlagen GmbH, Siemens AG v Dutco Construction Co [1992].

landmark Dutco decision, Indian arbitration legislation continues to overlook this critical issue.

ii. Institutional Rules Addressing Multi-Party Nominations in India

Indian arbitration institutions have recognized this gap and developed comprehensive frameworks to handle multi-party appointments. The Mumbai Centre for International Arbitration (MCIA) Rules provide a sophisticated mechanism for such scenarios. Where multiple claimants or respondents are involved, each side must jointly nominate an arbitrator. Specifically, "If such joint nominations by the Claimant(s) and Respondent(s) are not made within the timeframe," the MCIA Council gains authority to appoint the entire tribunal, ensuring no party gains an unfair advantage in the appointment process.[12] This approach reflects the post-Dutco evolution in institutional rules, prioritizing procedural fairness over strict adherence to party nomination rights when joint agreement proves impossible.

Similarly, the Delhi International Arbitration Centre (DIAC) Rules directly address multi-party scenarios, stipulating that "Where there are more than two parties to the arbitration, and three Arbitrators are to be appointed, the Claimant(s) shall jointly nominate one Arbitrator and the Respondent(s) shall jointly nominate one Arbitrator. The third Arbitrator, who shall be the presiding Arbitrator, shall be appointed by the two Arbitrators nominated by the parties". The rules further provide that if parties fail to make joint nominations, the DIAC Chairperson will step in to appoint arbitrators, offering a practical solution to potential deadlocks.[13] These institutional rules recognize that multi-party disputes often involve diverse interests even within claimant or respondent groups, making joint nomination particularly challenging.

The India International Arbitration Centre also adopts this approach, specifying that in multi-party arbitrations "the claimants shall jointly nominate one arbitrator and the respondents shall jointly nominate one arbitrator," with provisions for the Centre to appoint all three arbitrators if joint nominations are not made within twenty-eight days.[14] This approach balances party autonomy with pragmatic solutions when consensus proves unattainable.

iii. The Legislative Gap and Law Commission's Silence

Despite these institutional advancements, Indian arbitration legislation remains surprisingly

[12] Mumbai Centre for International Arbitration, Arbitration Rules (2016) r 9.3.
[13] Delhi International Arbitration Centre (Arbitration Proceedings) Rules 2023, r 9.
[14] Singapore International Arbitration Centre, *Arbitration Rules* r. 23.1 (effective 2025), https://www.siac.org.sg/our-rules (last visited June 9, 2025).

silent on multi-party appointments. Section 11(3) of the Arbitration and Conciliation Act (ACA) simply states that "each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator." This provision, modeled after Article 11 of the UNCITRAL Model Law, fails to contemplate scenarios involving multiple parties on either side of the dispute.

The 246th Law Commission Report, which formed the basis for significant amendments to the Arbitration and Conciliation Act in 2015, surprisingly overlooked this critical issue. While the Report addressed various procedural challenges including "tackling delay in courts" and judicial intervention in arbitral processes,[15] it missed the opportunity to recommend provisions for multi-party appointments. The Commission's silence is particularly unexpected given the international prominence of the Dutco decision and subsequent reforms in institutional rules worldwide.

However, it failed to address the more complex scenario of multi-party appointments despite this being a well-recognized challenge in international arbitration practice.

iv. Continued Neglect in Recent Legislative Reforms

The recent Draft Arbitration and Conciliation (Amendment) Bill, 2024, again fails to address this gap. Despite aiming to "modernise arbitration processes through clearer rules, stricter timelines, and increased reliance on institutional arbitration"[16] The draft amendments neglect the critical issue of multi-party appointments. This omission is surprising given the bill's objective to align Indian arbitration with international best practices.

v. The Implications of Legislative Silence

The absence of statutory provisions on multi-party appointments creates potential procedural uncertainties when parties have not agreed to institutional rules. Without clear statutory guidance, courts assisting in arbitrator appointments under Section 11 might struggle to balance

[15]Ashutosh Ray, *Law Commission's Report to Revamp the Indian Arbitration Experience*, Kluwer Arbitration Blog (Aug. 23, 2014), https://arbitrationblog.kluwerarbitration.com/2014/08/23/law-commissions-report-to-revamp-the-indian-arbitration-experience/ (last visited June 9, 2025).

[16] Abhisaar Bairagi, Milind Sharma & Ausaf Ayyub, *Future of Arbitration in India: Decoding the Draft Arbitration and Conciliation (Amendment) Bill, 2024*, SCC Online Blog (Dec. 10, 2024), https://www.scconline.com/blog/post/2024/12/10/future-of-arbitration-in-india-decoding-the-draft-arbitration-and-conciliation-amendment-bill-2024/ (last visited June 9, 2025).

party autonomy with equality of treatment in complex multi-party scenarios.[17] This gap could lead to challenges against arbitral awards, similar to the Dutco case, where parties argue that differential treatment in the appointment process violated fundamental principles of equality[18].

The legislative silence is particularly problematic given the increasing complexity of commercial relationships and the rising prevalence of multi-party disputes. Research indicates that "the need for parties to jointly nominate arbitrators and the consequent institutional nomination stems from the necessity of ensuring efficient conduct of arbitration proceedings"[19], making this legislative oversight significant for the development of arbitration in India.

Changes that can resolve the existing problems

The legislature should consider amending the Arbitration and Conciliation Act (ACA) to address challenges related to tribunal appointments in multiparty arbitration agreements. Drawing inspiration from international practices, such as Singapore's recent amendments to its International Arbitration Act, India could implement a default mechanism for arbitrator appointments in multi-party disputes to enhance procedural efficiency and fairness.

Additionally, the legislature should closely examine institutional arbitration rules, such as those of the Singapore International Arbitration Centre (SIAC), the International Chamber of Commerce (ICC), and the London Court of International Arbitration (LCIA). These institutions have developed robust frameworks for managing complex arbitration scenarios, including multi-party and multi-contract disputes. Incorporating elements from these institutional rules into Indian arbitration law would not only uphold key pillars of arbitration—such as neutrality, efficiency, and party autonomy—but also address procedural delays and inefficiencies.

Such reforms would align India with global best practices, strengthening its position as an arbitration-friendly jurisdiction. By modernizing its framework and adopting internationally

[17] Nasiruddeen Muhammad & Fatima Bello, *Appointment of Arbitrators in Multiparty Arbitrations: An Evaluation of Freedom of Parties to Appoint Arbitrators of Their Choice*, 25 J. Legal, Ethical & Regulatory Issues 1 (Oct. 7, 2022)

[18] Marie-Beatrix Tupy, *How to Deal with Multi-Party Nominations of Arbitrators in International Commercial Arbitration: A Comparative Study of Appointment Procedures with Emphasis on U.S.–European Commerce between Private Entities*, LLM Thesis, University of Georgia School of Law (2006), https://digitalcommons.law.uga.edu/stu_llm/91 (last visited June 9, 2025).

[19] Nasiruddeen Muhammad & Fatima Bello, *Appointment of Arbitrators in Multiparty Arbitrations: An Evaluation of Freedom of Parties to Appoint Arbitrators of Their Choice*, 25 J. Legal, Ethical & Regulatory Issues 25:6 1 (2022).

recognized standards, India could enhance its appeal as a preferred destination for dispute resolution. This would support its ambition to become a global hub for arbitration, attracting both domestic and international parties seeking reliable and efficient mechanisms for resolving disputes.

Conclusion

The selection of arbitrators in multi-party arbitrations under Indian law is still plagued by procedural difficulties owing to the absence of special statutory provisions dealing with such situations. While Indian courts have increasingly pushed the envelope with the definition of "parties" to encompass non-signatories, and while premier arbitral institutions such as the MCIA and DIAC have created comprehensive rules to provide for fairness and parity in the constitution of tribunals, the Arbitration and Conciliation Act, 1996, still ignores the intricacies of multi-party appointments. This legislative void causes uncertainty and threatens procedural unfairness, especially where parties are forced to mutually nominate arbitrators without proper safeguards, recalling the issues emphasized in the seminal Dutco case. The inability of the Law Commission's 246th Report and the new Draft Amendment Bill, 2024, to fill these lacunae renders Indian arbitration law behind international best practices and institutional developments. In order to consolidate the position of India as an arbitration center, it is crucial that the legislature include default appointment mechanisms for multi-party arbitrations in the statutory scheme, thus reinforcing party autonomy and procedural justice while limiting the field of judicial intervention and challenge to arbitral awards.