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**MULTI-PARTY ARBITRATION IN INDIA: STRUCTURAL
GAPS, PROCEDURAL ASYMMETRY IN INSURANCE AND
SCHEME-BASED DISPUTES, AND THE LIMITS OF
JUDICIAL INNOVATION**

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Abstract

The evolution of arbitration in India has been marked by a progressive shift towards party autonomy, minimal judicial intervention, and alignment with international standards. However, the Arbitration and Conciliation Act, 1996 continues to reflect a predominantly bilateral framework, creating significant challenges in disputes involving multiple parties. These challenges are particularly visible in sectors such as insurance, where government-backed schemes and tripartite contractual arrangements have become increasingly common. In the absence of statutory provisions governing joinder, consolidation, and tribunal constitution in multi-party scenarios, Indian courts have sought to bridge the gap through doctrines such as implied consent and the group of companies principle. While these judicial innovations have expanded the scope of arbitration, they have also led to uncertainty, increased litigation at the threshold stage, and procedural inefficiencies. This article critically examines the Indian position, analyses key judicial developments, compares international frameworks, and highlights the unique challenges faced by insurers in multi-party arbitration, arguing for a structured legislative response.

1. Introduction

Arbitration in India was envisaged as a streamlined alternative to litigation, offering speed, efficiency, and finality in dispute resolution. The Arbitration and Conciliation Act, 1996, modelled on the UNCITRAL Model Law, sought to minimise court intervention and promote party autonomy.¹ Over time, judicial pronouncements and legislative amendments have reinforced these objectives, particularly by limiting the scope of judicial review and encouraging institutional arbitration.

However, arbitration in India often begins with court proceedings, particularly at the stage of constitution of the arbitral tribunal under Section 11.² This challenge becomes significantly more pronounced in disputes involving multiple parties, where the statutory framework does not provide clear procedural guidance. As commercial transactions evolve into multi-layered and interdependent arrangements, the persistence of a bilateral legislative structure has resulted in procedural uncertainty, delay, and increased litigation.

2. Legislative Framework and Structural Silence

The Arbitration and Conciliation Act, 1996, while widely regarded as a progressive and arbitration-friendly statute, reveals a fundamental structural limitation when examined in the context of multi-party disputes. Derived from the UNCITRAL Model Law, the Act was conceptualised within a bilateral dispute framework, assuming a straightforward contractual structure involving two parties with aligned procedural rights.³ This foundational assumption continues to shape the statutory architecture.

Section 2(1)(h) defines a “party” strictly as a party to an arbitration agreement, thereby excluding recognition of layered or multi-tier relationships. Section 7, which defines an arbitration agreement, does not contemplate multiple agreements or composite transactions. Section 11, while providing for judicial intervention in cases of failure of appointment procedures, does not address how tribunal constitution is to function in multi-party scenarios, particularly where there are multiple claimants or respondents with divergent interests.⁴

The absence of provisions relating to joinder and consolidation further aggravates the problem. The Act does not empower tribunals or courts to add necessary parties or merge related arbitrations. Although Sections 8 and 45 have been interpreted to include persons “claiming through or under” a party, such extensions remain judicial constructs rather than statutory design.⁵

Equally significant is the lack of a structured framework for cost allocation. While Section 31A

empowers tribunals to determine costs, it provides no guidance for multi-party apportionment, often resulting in equal or arbitrary distribution irrespective of actual involvement or liability.⁶ This legislative silence has led to an over-reliance on judicial intervention, particularly at the threshold stage. Arbitration, instead of bypassing litigation, is frequently preceded by it.

3. Judicial Expansion and Its Limits

Indian courts have sought to address multi-party arbitration through judicial innovation. In *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.*, the Supreme Court recognised that arbitration could extend beyond signatories where the transaction constituted a composite arrangement.⁷ This approach was refined in *Cox & Kings Ltd. v. SAP India Pvt. Ltd.*, where the Court emphasised that inclusion of non-signatories depends on mutual intention inferred from conduct.⁸

At the same time, courts have reiterated that arbitration remains fundamentally grounded in consent. In *Vidya Drolia v. Durga Trading Corp.*, the Supreme Court clarified that courts must undertake a prima facie review of arbitrability while respecting the competence of the arbitral tribunal.⁹

This dual approach, expansion through interpretation and restraint through consent, creates a delicate balance. While arbitration is broadened in scope, its procedural foundation remains uncertain in multi-party contexts.

4. Equality in Tribunal Constitution

The Indian arbitration framework has, through judicial intervention, developed a strong doctrine emphasising equality and neutrality in the constitution of arbitral tribunals. This doctrine, while originally evolved in bilateral contexts, has significant implications for multi-party arbitration, where the absence of statutory guidance creates structural imbalance.

The foundation of this principle was laid in *TRF Ltd. v. Energo Engineering Projects Ltd.*, where the Supreme Court held that a person who is himself ineligible to act as an arbitrator cannot nominate another arbitrator. The Court observed: “Once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator.”¹⁰

This marked a clear shift towards removing unilateral control over tribunal constitution. This principle was significantly expanded in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, where the Supreme Court extended the restriction to cases where one party had exclusive power to appoint a sole arbitrator. The Court held: “A party interested in the outcome of the dispute

must not have the power to appoint a sole arbitrator.” The Court further clarified the broader rationale underlying the doctrine: “The person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator”.¹¹

This judgment firmly established that equality of parties in the appointment process is a fundamental requirement of arbitration, and that any clause giving unilateral control to one party would be invalid.

The issue becomes more complex in multi-party arbitration, where equality is not merely bilateral but must be maintained among multiple claimants and respondents. This concern has been increasingly recognised in judicial and academic discourse, culminating in recent developments such as the YSL (Yashoda Super Speciality Hospitals / related jurisprudence) line of cases, where courts have expressed concern over imbalance in tribunal constitution in multi-party scenarios.

The emerging concern can be summarised as follows:

In multi-party arbitration, where multiple parties are required to jointly nominate arbitrators, the failure of consensus may result in one group being effectively deprived of representation, thereby violating the principle of equality.

This creates a structural problem in Indian arbitration law. Unlike institutional frameworks such as ICC or SIAC, which provide that in case of failure of joint nomination the institution appoints the tribunal to ensure neutrality, Indian law provides no such fallback mechanism. Consequently, disputes are frequently brought before courts under Section 11, transforming the tribunal constitution stage into a litigation-heavy process.

The jurisprudence following TRF and Perkins thus highlights a deeper systemic issue. While the courts have successfully eliminated unilateral appointments in bilateral disputes, they have not been able to fully address inequality arising from procedural deadlock in multi-party arbitration. The absence of a statutory or institutional mechanism to ensure equal participation in such scenarios results in uncertainty, delay, and increased judicial intervention.

The principle that emerges is clear:

Equality in arbitrator appointment is now a non-negotiable requirement in Indian arbitration law; however, in the absence of legislative support, its application in multi-party disputes remains incomplete and inconsistent.

These rulings ensure fairness in bilateral arbitration but do not fully address multi-party complexities. In multi-party scenarios, inequality arises not from unilateral control but from procedural constraints such as forced joint nomination among parties with conflicting interests.

5. Structural Asymmetry in Multi-Party Arbitration

A deeper difficulty lies in the structural incompatibility between a bilateral legal framework and multi-party commercial realities. Arbitration assumes symmetry between two parties, but this symmetry collapses when multiple parties are grouped together for procedural purposes.

It has been observed that multi-party arbitration “distorts the arithmetic symmetry” inherent in party-driven appointment processes.¹² Where multiple respondents must jointly nominate an arbitrator, disagreements lead to deadlock, while forced consensus undermines fairness.

Indian law does not provide a mechanism to resolve this asymmetry. Courts are therefore compelled to intervene under Section 11, transforming tribunal constitution into a litigation-driven process.

6. Comparative Perspective: The Dutco Principle

The issue of equality in multi-party arbitration was addressed in *Siemens AG & BKMI Industrienlagen GmbH v. Dutco Construction Co.*, where the French Cour de cassation held that equality in arbitrator appointment is a matter of public policy.¹³ The Court ruled that parties with divergent interests cannot be compelled to jointly nominate an arbitrator.

This principle influenced international arbitration rules, leading to institutional mechanisms where, in case of disagreement, the institution appoints the tribunal to preserve neutrality.

7. Insurance Sector Realities and Tripartite Structures

The structural challenges of multi-party arbitration become even more evident in the context of crop insurance schemes, such as the Pradhan Mantri Fasal Bima Yojana (PMFBY) and similar State-level agricultural insurance programs. These schemes operate through a complex institutional framework involving the Central and State Governments, implementing agencies, insurers, financial institutions, and field-level administrative bodies. Unlike conventional insurance contracts, crop insurance is heavily dependent on external data inputs and administrative determinations, including yield assessments, crop-cutting experiments, weather indices, and loss notifications, all of which are generated or validated by government authorities or designated agencies. The insurer, in such cases, does not independently determine liability in the traditional sense but is required to act strictly in accordance with directions, data, and certifications issued by the competent authority under the scheme.

This creates a unique contractual and operational structure where the insurer’s role is contingent, reactive, and execution-oriented rather than discretionary. Claims are processed

and paid based on predefined formulae and officially notified data, leaving minimal scope for independent adjudication by the insurer. However, disputes arising from such schemes whether relating to yield calculations, delay in notifications, or discrepancies in data are often directed towards the insurer, despite the fact that the root cause of the dispute lies in the actions or determinations of government authorities or implementing agencies. When such disputes are escalated to arbitration under standard clauses embedded in the scheme agreements, the insurer is procedurally positioned as a primary party, even though its role is limited to acting upon directions received from other stakeholders.

In a multi-party arbitration framework, this results in a significant disconnect between decision-making authority and dispute attribution. The insurer is required to defend claims or grievances that arise from data or directions over which it has no control, while simultaneously bearing procedural obligations such as participation in tribunal constitution and sharing of arbitration costs. The absence of a statutory mechanism to recognise such differentiated roles leads to the inclusion of parties in arbitration proceedings based on formal contractual status rather than substantive responsibility. This not only complicates the arbitral process but also undermines the principle that liability in arbitration should correspond to control over the underlying decision or action. In high-volume crop insurance disputes, where claims are often standardised and formula-driven, the imposition of arbitration costs and procedural burdens on insurers further accentuates the inefficiency of applying a traditional bilateral arbitration framework to inherently multi-party, direction-dependent contractual arrangements.

8. High Volume, Low Value Disputes and Cost Externality

Insurance schemes generate a high volume of low-value disputes, often arising from routine claim grievances. Despite the limited monetary stakes, such disputes escalate into arbitration proceedings, resulting in disproportionate cost implications.

The financial burden extends beyond the claim amount to include arbitrator's fees, legal representation costs, administrative expenses, expert fees, and incidental expenditures. Tribunals may also award interest, compensation, and litigation costs.¹⁴

In multi-party settings, equal cost-sharing clauses further exacerbate the burden, imposing financial liability on insurers irrespective of their role. This creates a cost externality, where procedural participation results in disproportionate financial exposure.

9. Contractual Design and Practical Failure

Although Indian law permits contractual design of arbitration clauses, multi-party clauses often fail in execution. Common issues include unclear nomination mechanisms, absence of deadlock resolution provisions, and inequitable cost allocation.

These deficiencies lead to procedural deadlock and increased reliance on courts under Section 11, undermining the efficiency of arbitration.

10. Comparative Institutional Frameworks

International arbitration institutions such as ICC, SIAC, and LCIA provide structured mechanisms for multi-party arbitration, including joinder, consolidation, and institutional appointment in case of deadlock.¹⁵ These frameworks ensure procedural certainty and reduce reliance on courts.

11. Policy Recommendation

Proposed Multi-Party Arbitration Clause (India-Specific)

Model Clause

“Any dispute, controversy, or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, performance, or termination, shall be referred to and finally resolved by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

In the event that the dispute involves more than two parties, all claimants shall jointly nominate one arbitrator, and all respondents shall jointly nominate one arbitrator, in accordance with the principles underlying Section 11 of the Act.

Where the claimants or respondents fail to jointly nominate an arbitrator within thirty (30) days of receipt of a request for arbitration under Section 21 of the Act, the appointment shall, upon application by any party, be made by the High Court or Supreme Court, as the case may be, under Section 11(6) of the Act, or by an arbitral institution designated under Section 11(3A).

Notwithstanding the above, where the arbitral tribunal cannot be constituted due to disagreement among multiple parties, the entire arbitral tribunal shall be appointed by the Court or designated arbitral institution to ensure compliance with the principles of independence, impartiality, and equality of parties as recognised under Sections 12 and 18 of the Act and as interpreted by judicial precedents.

The arbitral tribunal shall have the power to join additional parties to the arbitration, provided

such parties are prima facie bound by the arbitration agreement, in line with the principles recognised under Sections 8 and 45 of the Act.

Where multiple arbitrations arise out of the same or related transactions, the parties agree that such arbitrations may be consolidated, subject to the consent of the parties or appropriate orders of the Court, to avoid multiplicity of proceedings.

The costs of arbitration shall be determined by the arbitral tribunal in accordance with Section 31A of the Act, taking into account the relative roles, conduct, and degree of involvement of each party in the dispute, and shall not necessarily be apportioned equally.

The seat of arbitration shall be, and the proceedings shall be conducted in accordance with Indian law.”

Proposed Legislative Amendments for Multi-Party Arbitration (India)

a. Amendment to Section 2 (Definitions)

Insert Section 2(1)(ha):

“ ‘multi-party arbitration’ means an arbitration involving more than two parties, whether as claimants, respondents, or otherwise, arising out of one or more arbitration agreements.”

b. Amendment to Section 7 (Arbitration Agreement)

Insert Section 7(6):

“An arbitration agreement may provide for reference of disputes involving multiple parties or multiple agreements, and shall be valid notwithstanding that such parties are not signatories to the same instrument, provided that such parties are claiming through or under a party to the arbitration agreement or are otherwise bound by it.”

c. Insertion of New Section 7A – Composite and Multi-Contract Arbitration

“Where disputes arise out of multiple agreements forming part of a composite transaction, and such agreements contain compatible arbitration clauses, the disputes may be referred to a single arbitral proceeding, unless the parties agree otherwise.”

d. Amendment to Section 8 (Power to Refer Parties to Arbitration)

Insert proviso to Section 8(1):

“Provided that the judicial authority may refer all or any of the parties to arbitration where it is prima facie satisfied that the disputes arise out of a common transaction or series of transactions and that such parties are necessary for the effective adjudication of the dispute.”

e. Amendment to Section 11 (Appointment of Arbitrators)

Insert Section 11(3B):

“In a multi-party arbitration where there are multiple claimants or multiple respondents, the claimants shall jointly appoint one arbitrator and the respondents shall jointly appoint one arbitrator.”

Insert Section 11(3C):

“Where any group of parties fails to jointly appoint an arbitrator within the time specified, the Supreme Court or High Court, or an arbitral institution designated under sub-section (3A), shall appoint the arbitral tribunal, having due regard to the principles of independence, impartiality, and equality of parties.”

Insert Section 11(3D):

“In cases where the arbitral tribunal cannot be constituted in accordance with the agreed procedure due to disagreement among parties, the Court or designated arbitral institution may appoint the entire arbitral tribunal.”

f. Insertion of New Section 11A – Joinder of Parties

“The arbitral tribunal, or the Court at the stage of appointment, may allow joinder of additional parties to the arbitration, provided that such parties are prima facie bound by the arbitration agreement and that such joinder is necessary for effective adjudication of the dispute.”

7. Insertion of New Section 11B – Consolidation of Arbitrations

“The Court or arbitral tribunal may, upon application by any party, consolidate two or more arbitral proceedings where:

- (a) the parties agree to consolidation; or
- (b) the disputes arise out of the same or a series of related transactions; or
- (c) common questions of law or fact arise.”

g. Amendment to Section 18 (Equal Treatment of Parties)

Add Explanation:

“For the purposes of this section, equal treatment shall include equality in the appointment of arbitrators in multi-party arbitration, and no party shall be placed at a procedural disadvantage due to grouping or joint nomination requirements.”

h. Amendment to Section 31A (Costs)

Insert Section 31A(2A):

“In multi-party arbitration, the arbitral tribunal shall determine costs having regard to the relative role, responsibility, and conduct of each party, and shall not be bound to apportion costs equally.”

i. Insertion of New Section 43A – Procedural Efficiency in Multi-Party Arbitration

“The arbitral tribunal shall adopt procedures that ensure efficient resolution of disputes involving multiple parties, including timelines, coordinated hearings, and avoidance of duplication of proceedings.”

The proposed amendments seek to introduce a structured statutory framework for multi-party arbitration in India by incorporating provisions for joinder, consolidation, and tribunal constitution, while preserving party autonomy and aligning with judicial principles of equality and consent.

12. Conclusion

In light of the structural challenges identified, there is a compelling need for a calibrated legislative and institutional response. The Arbitration and Conciliation Act, 1996 should be amended to recognise multi-party disputes and incorporate provisions for joinder, consolidation, and tribunal constitution in default scenarios. Such provisions must ensure equality while preserving party autonomy, particularly through neutral institutional appointment mechanisms.

Sector-specific realities, especially in insurance and government schemes, require flexible cost-allocation frameworks to prevent disproportionate burdens. The promotion of institutional arbitration is equally essential to manage procedural complexity effectively.

Without such reforms, arbitration in India risks continuing as a litigation-dependent process at its threshold stage, thereby undermining its role as an efficient alternative to judicial adjudication.

Footnotes (Bluebook Style)

1. Arbitration and Conciliation Act, 1996, No. 26 of 1996, § 5 (India); UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006).
2. Arbitration and Conciliation Act, 1996, § 11.
3. *Id.* § 2(1)(h).
4. *Id.* §§ 7, 11(6).
5. *Id.* §§ 8, 45.
6. *Id.* § 31A.
7. *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc.*, (2013) 1 S.C.C. 641 (India).
8. *Cox & Kings Ltd. v. SAP India Pvt. Ltd.*, (2023) 8 S.C.C. 1 (India).

9. Vidya Drolia v. Durga Trading Corp., (2021) 2 S.C.C. 1 (India).
10. TRF Ltd. v. Energo Eng'g Projects Ltd., (2017) 8 S.C.C. 377 (India).
11. Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 S.C.C. 760 (India).
12. Addressing Asymmetry in Arbitrator Appointments: A Multi-Party Context, SCC Online Blog (Aug. 2, 2023).
13. Siemens AG & BKMI Industrienlagen GmbH v. Dutco Constr. Co., Cour de cassation, Jan. 7, 1992 (Fr.).
14. Oil & Natural Gas Corp. Ltd. v. Afcons Gunanusa JV, (2022) 6 S.C.C. 758 (India).
15. ICC Arbitration Rules art. 12(6) (2021); SIAC Rules rr. 7–8 (2016); LCIA Rules art. 22A (2020).

