THE NEUTRALITY PARADOX: HOW REPEAT PLAYERS AND INSTITUTIONAL INCENTIVES SHAPE BIAS IN ARBITRATION

by

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ABSTRACT

Arbitration is based on the twin pillars of independence and impartiality. Yet, as arbitration becomes more professionalized and commercialized, there are legitimate concerns about whether these values are being adhered to in practice. This paper explores the "neutrality paradox" of arbitration, i.e., the balance between impartial adjudication and the systemic pressures of a model where participation is far from equal. An important feature of the model is the "repeat player problem," where corporations, state entities, and institutions are regular participants, while individuals or small entities are sporadic participants at best. Such a model creates systemic pressures, especially in relation to the choice of arbitrators, where parties have influence over appointments. What are the implications of an arbitration market where reputation and the chances of reappointment are critical? What are the implications of "double hatting"? What are the differences between actual bias and perceived bias? Can the appearance of partiality negate the legitimacy of the arbitration process? What are the implications of recent institutional innovations in relation to disclosure of arbitrator appointments?

Keywords: Arbitration, Neutrality Paradox, Repeat Player Problem, Double Hatting, Actual and Perceived Bias, Institutional Reforms

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I. Introduction

In a study of over 3,900 arbitration decisions, Alexander Colvin discovered that when employees dealt with repeat player employers, they succeeded only 16.9% of the time, whereas they succeeded 31.6% of the time when they dealt with one-shot players, with significantly lower damages awarded in repeat player cases.[2]This validates the theory of Marc Galanter, first proposed in 1974, that "repeat players" have a higher chance of success in dispute resolution systems than "one-shot" players.[3]The repeat player issue has been extensively discussed in arbitration. In the context of the American Arbitration Association (AAA), the issue was framed as a justice issue in the study carried out by Lisa Bingham.[4]However, the issue remains divided on the question of whether the success of repeat players, especially corporations, is a result of their inherent characteristics, like financial status and quality of legal representatives, or their experience in arbitration. In the context of arbitration, the framework of the Arbitration and Conciliation Act, 1996, is centred on the principles of independence and impartiality, which require the disclosure of the circumstances that raise "justifiable doubts." However, the presence of party autonomy in the selection of arbitrators and the lack of precedent may lead to a situation where repeat players have more influence. This is compounded by the phenomenon of double hatting, which may lead to pre-dispositional bias.[5] Therefore, the persistence of repeat players, which may have been motivated by the financial and professional benefits, challenges the assumption of arbitral neutrality and the phenomenon of the neutrality paradox, which this paper aims to explore.

A. Research Problem

Although the issue of repeat player problems, which causes bias in arbitration, has been addressed through empirical research by leading scholars, it has only been focused on a few countries. With regard to India, there have been growing concerns over the existence of bias in the arbitral process. The repeat participation of some parties, their involvement in the appointment of arbitrators, and the coincidence of professional interests within the arbitral

[2] Colvin, Alexander. 2011. An Empirical Study of Employment Arbitration: Case Outcomes and Processes. Journal of Empirical Legal Studies 8(1): 1-23.

[3] Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, IN LITIGATION: DO THE "HAVES" STILL COME OUT AHEAD? 13 (Herbert M. Kritzer & Susan Silbey ed., 2003).

[4] Lisa B. Bingham, On Repeat Players, Adhesive Contracts, and the Use of Statistics in Judicial Review of Employment Arbitration Awards, 29 MCGEORGE L. REV. 223, 234 (1998).

[5] Siddhant Shinde, *Double-Hatting in Indian Arbitration: Addressing Pre-Dispositional Bias*, NLSBLR Blog (May 19, 2025), https://forum.nls.ac.in/nlsblr-blog-post/double-hatting-in-indian-arbitration-addressing-predispositional-bias/.

community can cause a state of imbalance, which can influence the process of resolving disputes. The issue being addressed in this paper is whether there is an inherent bias in arbitration, which can influence the process of resolving disputes in a manner that is not expected under Indian arbitration.

B. Existing Legal Situation

In India, the Arbitration and Conciliation Act of 1996 deals with the issue through the inclusion of Section 12,[6] which requires the disclosure of any circumstances which may give rise to any justifiable doubts as to the independence or impartiality of the arbitrator. The Fifth Schedule[7]includes the circumstances which give rise to justifiable doubts as to the independence or impartiality of the arbitrator, whereas the Seventh Schedule[8]includes the grounds which render the arbitrator ineligible to act as such. At the international level, Article 12 of the UNCITRAL Model Law[9]requires the disclosure of any circumstances which may give rise to any justifiable doubts as to the impartiality or independence of the arbitrator. Article 11 of the ICC Arbitration Rules[10]requires the arbitrators to be and remain independent and impartial, whereas Article 57 of the ICSID Convention[11]allows the disqualification of the arbitrator on the ground of the manifest lack of the qualities required for the dispute resolution process, including impartiality.

C. Literature Review

1. Marc Galanter, Why the "Haves" Come Out Ahead (1974)

The author introduces the terms "repeat players" and "one-shotters" as they relate to the process of dispute resolution. The author identifies some structural advantages enjoyed by repeat players, which enable them to access resources, expertise, and formulate long-term strategies. The research indicates that the advantages are not limited to the courtroom but can be applied to all forms of dispute resolution.[12]

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[6] The Arbitration and Conciliation Act, No. 26 of 1996, § 12, INDIA CODE (1996).
[7] The Arbitration and Conciliation Act, No. 26 of 1996, Fifth Schedule, INDIA CODE (1996).
[8] The Arbitration and Conciliation Act, No. 26 of 1996, Seventh Schedule, INDIA CODE (1996).
[9] UNCITRAL Model Law on International Commercial Arbitration art. 12 (1985), with amendments as adopted in 2006.
[10] International Chamber of Commerce, ICC Arbitration Rules art. 11 (2021).
[11] Convention on the Settlement of Investment Disputes Between States and Nationals of Other States art. 57, opened for signature Mar. 18, 1965, 575 U.N.T.S. 159.
[12] Marc Galanter, Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change, IN LITIGATION: DO THE "HAVES" STILL COME OUT AHEAD? 13 (Herbert M. Kritzer & Susan Silbey ed., 2003).

2. Lisa B. Bingham, Employment Arbitration: The Repeat Player Effect (1997)

In the study, the author discusses employment arbitration and points out that employers, especially the repeat players, fare better than employees. The study indicates that employers gain an advantage over employees in terms of their better knowledge about the arbitrator selection process and the strategic advantages.[13]

3. Andrea Chandrasekher & David Horton, Empirically Investigating the Source of the Repeat Player Effect in Consumer Arbitration (2019)

The authors also carry out an empirical study on consumer arbitration awards and observe that repeat playing companies secure higher success rates compared to one-shot players. They also investigate whether this success is a result of experience gained in arbitration or if it is a result of inherent characteristics like financial power and better legal representation.[14]

4. Siddhant Shinde, Double-Hatting in Indian Arbitration: Addressing Pre-Dispositional Bias (2025)

In the study, the author considers the issue of double-hatting in the context of arbitration, where individuals act as arbitrators as well as counsel or experts in similar disputes. The study raises the issue of pre-dispositional bias and suggests that the legal frameworks in India do not effectively deal with such bias.[15]

5. Edward P. McDermott, Is Current "Repeat Player" Theory Much Ado Over Much Less —An Evidence-Based Overhaul (2025)

The author critically examines the theory of the repeat player effect by presenting empirical data based on the mediation process, especially within the EEOC framework. The study disputes the general assumption that the effect of the repeat player effect is inherently significant, suggesting that the effect may be situational and, in some cases, negligible. The study suggests that the advantages do not have a major impact on the rates of settlements. The

[13] Lisa B. Bingham, Employment Arbitration: The Repeat Player Effect, 1 Emp. Rts. & Emp. Pol'y J. 189 (1997).
[14] Andrea Chandrasekher & David Horton, Empirically Investigating the Source of the Repeat Player Effect in Consumer Arbitration, 71 Stan. L. Rev. 1609 (2019).
[15] Siddhant Shinde, *Double-Hatting in Indian Arbitration: Addressing Pre-Dispositional Bias*, NLSBLR Blog (May 19, 2025), https://forum.nls.ac.in/nlsblr-blog-post/double-hatting-in-indian-arbitration-addressing-predispositional-bias/.

study suggests that the strategies employed by the repeat players are more focused and monetary-driven, and the overall effect does not negate the principle of fairness.[16]

6. Shauhin A. Talesh & Peter C. Alter, The Devil is in the Details: How Arbitration System Design and Training Facilitate and Inhibit Repeat-Player Advantages (2020)

The authors examine the implications of the design of the arbitration system and the training of the arbitrators on the advantages of the repeat players. The study demonstrates how the use of procedures such as passive adjudication and the use of experts can result in greater advantages for the repeat players, while active systems can help to eliminate such biases. The study concludes that the design of the system is critical to the degree of bias present in the arbitration system.[17]

D. Scope and Objectives

The project aims to discuss the issue of bias in arbitration from an Indian law perspective. The project will cover structural issues, which include the repeat player issue, the issue of double-hatting, and the role of financial and professional incentives. The project will discuss the provisions of the Arbitration and Conciliation Act, 1996, which deal with the independence and impartiality of arbitrators. The project will also discuss some of the international standards, which will be relevant to the issue. The objectives of the research work conducted as a part of this project are as follows:

1. To analyse the impact of repeat participation of parties on the outcome of arbitration.
2. To examine the practice of double hatting and its implications on the impartiality of the arbitrators.
3. To evaluate the impact of financial and professional incentives on the arbitral process.
4. To assess the effectiveness of the existing legal provisions on the independence and impartiality of the arbitrators.
5. To analyse the institutional reforms in the context of the disclosure requirements and the appointment of the arbitrators.
6. To suggest measures to strengthen the impartiality of the arbitral process.

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[16] Edward P. McDermott, Is Current "Repeat Player" Theory Much Ado Over Much Less—An Evidence-Based Overhaul, 2025 J. Disp. Resol. (2026) Available at: https://scholarship.law.missouri.edu/jdr/vol2025/iss2/8

[17] Shauhin A. Talesh & Peter C. Alter, The Devil is in the Details: How Arbitration System Design and Training Facilitate and Inhibit Repeat-Player Advantages, 34 Law & Pol'y 1 (2020).

E. Research Questions

The research questions to be answered in the process of the project, and that are set out to be answered, are:

1. Whether the structural features of arbitration, such as the participation of repeat parties, double hatting, and professional incentives, make a difference to the neutrality and fairness of the arbitral process?
2. Whether the existing legal and institutional framework is sufficient to address the concerns relating to bias in arbitration?

F. Hypothesis

The structural characteristics of arbitration, such as participation, double-hatting, and monetary and professional rewards, may lead to the development of conditions that impact the neutrality of the arbitral process and may generate actual and perceived issues of bias. The legal and institutional framework does not fully address the issues, and thus stronger measures to address the issues of neutrality and impartiality in the arbitral process are needed.

G. Research Methodology

The research work done for the project is purely doctrinal in nature. Such research work is done on the basis of the study of different primary and secondary sources. Different case laws are studied in detail to understand the context of bias in arbitration. Developments in the arbitration law in India as a whole have also been taken into consideration.

II. Bias in Arbitration in India

A. Actual and Perceived Bias

Independence and impartiality of the arbitrator are the cornerstones of any arbitral proceeding. The principle of bias, being one of the fundamental principles of natural justice, applies as much to judicial as it does to quasi-judicial adjudication or arbitration. This principle is based on the fundamental obligation of the arbitrator, who is appointed by the parties, to be independent of them and conduct himself in a manner that is just, unbiased, and without any element of partisanship or partiality.

It was noticed that the earlier version of the Arbitration and Conciliation Act, 1996 did not have a complete mechanism in place to ensure the arbitrator was not biased or had any element of partisanship or partiality. The Arbitration and Conciliation (Amendment) Act,

2015[18]was enacted specifically to address the above issue by bringing in specific provisions to enhance transparency, justice, and credibility in the conduct of arbitration proceedings.

The amendments have also led to significant changes in the grounds for challenging an arbitrator. Section 12(1) has been amended to require an arbitrator to disclose in writing any direct or indirect, past or present relationship with the parties which may justify doubts about his or her impartiality. For this purpose, the Fifth Schedule has been added, which provides examples of situations which may justify doubts about an arbitrator's impartiality. Further, Section 12(5), as explained in the Seventh Schedule, has been added to specify relationships which may make a person ineligible to act as an arbitrator, which is a more stringent requirement for an arbitrator's neutrality. Section 14[19]has also been amended to allow for the substitution of an arbitrator on termination of his or her mandate.

In order to understand the effectiveness of these amendments, it is necessary to understand the concept of bias. The Supreme Court of India has distinguished between independence and impartiality and recognized that the two concepts, though closely related, are not identical.[20]Typically, independence is an objective standard and can be assessed at the outset on the basis of disclosures made by the arbitrator. On the other hand, the concept of impartiality is more subjective in nature and may become evident over the course of the proceedings. A distinction between actual bias and apparent bias has also been recognized in the law. In Director General of Fair Trading v. The Proprietary Association of Great Britain, the Court of Appeal in the UK[21]clarified the distinction between the two concepts and stated: "Actual bias refers to bias which is demonstrably present and which has influenced the decision-maker. Apparent bias refers to circumstances from which a reasonable apprehension of bias may be seen to exist or to have existed." The courts have been of the opinion that it is not the presence of actual bias but the presence of a reasonable likelihood or apprehension of bias which is to be assessed.

Thus, the legal framework of arbitration increasingly acknowledges that the legitimacy of the arbitral process is not only concerned with the absence of real prejudice, but also with the absence of circumstances that may create a lack of confidence in the decision-maker.

[18] The Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, INDIA CODE (2016).
[19] The Arbitration and Conciliation Act, No. 26 of 1996, § 14, INDIA CODE (1996).
[20] Pooja Chakrabarti & Adheesh Agarwal, *Law of Bias in Arbitrators: Certain Interesting Aspects* (Argus Partners, Feb. 25, 2019).
[21] Director General of Fair-Trading v. The Proprietary Association of Great Britain [(2001) 1 WLR 700, decided on December 21, 2001 (Court of Appeal)].

B. Current Stance in India regarding bias in an arbitration dispute

Although the Arbitration and Conciliation Act, 1996 does not specifically refer to the term "bias," it refers to the same through the concepts of independence and impartiality. Section 12(1)(a) provides that an arbitrator must disclose any relationship or interest that may give rise to justifiable doubts, whereas Section 12(3)(a) along with the Fifth Schedule allows a challenge on the same. In the case of Voestalpine Schienen GmbH v. DMRC Ltd.,[22]the Supreme Court held that the test to be applied is the test of "apprehension of bias," and if apprehension exists, then the remedies available are under Sections 13[23]and 34.[24]

The Calcutta High Court was of the view that mere apprehension of bias was not enough to upset an arbitral award. The Court was keen to point out that arbitration is a process that differs substantially from judicial adjudication, particularly from the perspective of what is expected from the arbitrator. The Court was keen to explain that, unlike judges, arbitrators can be appointed from their professional expertise, which is often associated with the subject matter of the dispute. Moreover, arbitrators can have other ongoing commitments in their professional field. The Court was keen to explain that, had the same standards as those applicable to judges been applied to arbitrators, this would have undermined the principle of party autonomy, which underlies arbitration. The Court was keen to explain that, having voluntarily agreed to have a particular arbitrator, parties would not be allowed to go back on their word merely because there was an apprehension of bias, unless there was a clear conflict of interest under the statutory provisions.[25]

Thus, the current position which is followed in India indicates that, though the issue of bias is recognized, the courts are rather more circumspect and give more significance to the finality of the arbitral awards.

C. Repeat Player Problem

The major issue with arbitration is the "repeat player problem." Large corporate entities, as well as governments, have the advantage of being repeat players. On the other hand,

[22] Voestalpine Schienen GmbH v. Delhi Metro Rail Corp. Ltd., (2017) 4 S.C.C. 665 (India).
[23] The Arbitration and Conciliation Act, No. 26 of 1996, § 13, INDIA CODE (1996).
[24] Juvraj Singh Bindra & Esha Goyal, "Reasonable Possibility" or "Real Danger": Exploring the Standards Used to Determine Arbitral Bias, SCC Online Blog (May 30, 2024), https://www.scconline.com/blog/post/2024/05/30/reasonable-possibility-real-danger-exploring-standardsused-determine-arbitral-bias/.
[25] Bias Fear No Ground to Quash Ruling in Arbitration Dispute, *Times of India* (Jan. 21, 2026), https://timesofindia.indiatimes.com/city/kolkata/bias-fear-no-ground-to-quash-ruling-in-arbitrationdispute/articleshow/128081791.cms.

individual parties, small businesses, and employees are one-time players. This creates a lopsided situation, which violates the principle of "equality" inherent in arbitration.[26]

1. Repeat Player Problem in different fields of Arbitration

a. Employment Arbitration

Arbitration in employment disputes offers some of the most compelling empirical evidence of the repeat player effect. Research by Lisa Bingham shows that employers, as repeat players, have significant advantages in terms of procedural familiarity, access to legal expertise, and influence in the selection of arbitrators. Alexander Colvin's analysis of AAA awards in employment disputes found that where employees are confronted by repeat players, they have much lower success rates, with the odds of employee success decreasing substantially in repeat player situations.[27]

b. Consumer Arbitration

In consumer arbitration, the repeat player effect is also empirically established, though the reason for it is still a matter of controversy. Chandrasekher and Horton, in their study of over 4,500 arbitration decisions, have found that companies that have a history of repeat participation in arbitration have a higher success rate than those that do not. Yet the study also reveals that the reason for the higher success rates of repeat players is not related to the arbitral process itself, but rather to the inherent characteristics of the companies. Moreover, repeat players feature in a majority of arbitration decisions, though they represent only a minority of the total players.[28]

c. Private Arbitration Systems

In the case of private arbitration, particularly those run through institutions or corporation-funded, there is a greater tendency towards repeat player effects. According to research conducted by Talesh and Alter, the design of the system and the training of arbitrators have a significant influence on the process. In the case of private arbitration, the arbitrators are

[26] Shubhang Gomasta & Sushmita Das, *Alternative Dispute Resolution in India and the Crisis of Justice Delivery: Institutional Design, Power Asymmetry, and the Limits of Consensual Justice*, 12 Int'l J. L. 12 (2026).
[27] William M. Howard, Arbitrating Claims of Employment Discrimination: What Really Does Happen? What Really Should Happen? DISP. RESOL. J., Oct.-Dec. 1995, at 40, 45.
[28] Andrea Chandrasekher & David Horton, Empirically Investigating the Source of the Repeat Player Effect in Consumer Arbitration, 71 Stan. L. Rev. 1609 (2019).

trained to a certain style that focuses particularly on the efficient use of the process, as well as the passive role that they take.[29]

d. State-Run Arbitration Systems

State-run arbitration systems show a lower level of repeat player effects. The comparative research conducted by Talesh and Alter emphasizes that "state-run arbitration systems, which have more active fact-finding, more diverse decision-makers, and less use of party driven processes, can more effectively mitigate structural advantages." For example, consumers succeeded more often in state-run arbitration forums as opposed to those run by parties, which indicates that "the design of the system can have a significant impact on the degree of imbalance."[30]

2. Addressing the issue in the Indian Context

In the launch of 'The Equilibrium', the first annual publication of the India International Arbitration Centre (IIAC), on 9 December 2025, Justice Pamidighantam Sri Narasimha, a Supreme Court Judge, made a thought-provoking remark when he asked the question, "Has arbitration been hijacked for commercial purposes?" This question raises the issue of the concentration of participation in the arbitration process.[31]

There is the issue of the 'repeat player problem' in Indian arbitration, which is not thoroughly or explicitly discussed or articulated. However, the concerns surrounding the issue of the 'repeat player problem' indicate the existence of structural imbalances. Nevertheless, the system is still trying to tackle the issue of bias through the principles of independence and impartiality.

The recent discourse in India has also highlighted similar aspects. In the India International Disputes Week 2026, Lakhvir Singh (Solicitor from the UK) noted that "repeaters develop a better understanding of how to manage the litigation" and can "manage risks and costs" effectively. This is because they have continued to be a part of the system. He also noted that repeat litigants have the advantage of "experience of procedural knowledge, strategic foresight, and understanding of the institutional working" of the system. This allows them to

[29] Chandrasekher, Andrea Cann, and David Horton. 2015. "After the Revolution: An Empirical Study of Consumer Arbitration." Georgetown Law Journal 104 (1)

[30] Choi, Stephen J., Jill E. Fisch, and A. C. Pritchard. 2014. "The Influence of Arbitrator Background and Representation on Arbitration Outcomes." Virginia Law & Business Review 9 (1): 43–88.

[31] Has Arbitration in India Been Hijacked?, BnB Legal (Dec. 9, 2025), https://bnblegal.com/article/hasarbitration-in-india-been-hijacked/.

anticipate the outcome of the dispute. In contrast, the one-time litigants do not have the advantage of this experience, which gives them a relative disadvantage.[32]

While these remarks have been noted in the context of civil litigation, they are immediately relevant to arbitration. In light of the emphasis placed upon autonomy, appointments, and familiarity, it is submitted that these advantages will be operative in arbitration perhaps less obviously, but perhaps more significantly.

D. Double-Hatting in Indian Arbitration

"Double-hatting" is the term used to refer to the situation where the same person acts in the capacities of arbitrator and counsel/expert in different proceedings, often involving the same issues. The issue has sparked debate over the impartiality of the arbitrator, especially in situations where the arbitrator's prior role may impact the approach to the adjudicatory process. The issue has been at the center of the debate in the context of international arbitration, especially in the context of investor-state disputes, where arbitrators often "double-hat" within the small pool of arbitrators.

The challenge to the appointment of arbitrators has increasingly been based on the argument that "there is an appearance of pre-judgment" on issues that may be involved in the dispute.[33]

In the context of Indian law, the legal framework does not specifically address the issue of "double-hatting" and the resulting impartiality. The Arbitration and Conciliation Act, 1996, adopts the proximity test[34]to address the issue of impartiality, specifically focusing on the direct relationships between the arbitrator and the parties. Sections 12(1), 12(3), and the Fifth and Seventh Schedules address the situations involving arbitrators having direct relationships, but the issue involving the same issues in different capacities is not specifically addressed.

This leads to a substantial gap. Even if the arbitrator has acted as counsel to a party in a comparable case, unless such an instance is immediately related to one of the present parties, it is outside the present framework. Judicial authorities have supported this view as well, with a high bar set for disqualification and the issue of double-hatting as a common feature of arbitration practice.

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[32] Chandigarh University Hosts Panel Discussion on Rise of the Powerful Repeat Player in Civil Litigation as Part of India International Disputes Week 2026, *Tribune India* (Mar. 17, 2026), https://www.tribuneindia.com/news/business/chandigarh-university-hosts-panel-discussion-on-rise-of-thepowerful-repeat-player-in-civil-litigation-as-part-of-india-international-disputes-week-2026/.

[33] RSE Holdings AG v. Republic of Latvia, PCA Case No. 2019-05 (Perm. Ct. Arb. 2020).

[34] Sandra Harding, Rethinking Standpoint Epistemology: What Is “Strong Objectivity”?, in *Feminist Epistemologies* 49 (Linda Alcoff & Elizabeth Potter eds., 1993).

What is lacking in the present framework is the narrow definition of bias. The present system deals with what can be described as "self-preservation bias," i.e., direct personal or pecuniary interest. However, the issue with double-hatting is the risk of pre-dispositional bias. This is the effect of subconscious bias, which is the result of past experiences, professional affiliations, or the sheer familiarity of working with the same legal issue repeatedly. The arbitrator may have argued a particular legal view as counsel to a party in the past but, without any conscious intention to do so, may be disposed to follow the same reasoning when sitting as an adjudicator.

This is not based on self-interest but on cognitive bias. As discussed in the literature, decision-makers tend to interpret new situations using mental frameworks constructed on the basis of past experience, making it hard to remain completely neutral in dispute situations. Despite these problems, it is not clear whether a complete prohibition on doublehatting is feasible. Arbitration is based on a small pool of specialized professionals, and many build their expertise through double-hatting.[35]

Thus, the issue of double-hatting in Indian arbitration reveals an important limitation of the current framework, which is not capable of dealing with indirect forms of bias. Although the current provisions deal with obvious forms of bias, they do not sufficiently account for more subtle forms of bias related to overlapping roles and frequent handling of similar disputes.

E. Evaluation of Institutional Reforms

The issues surrounding repeat participation, double hatting, and professional incentives have prompted institutional and academic interventions to rebalance arbitral protections. The recent literature increasingly acknowledges that conventional conflict of interest tests are not effective to address systemic bias.

One important change is the evolution of disclosure requirements. The IBA Guidelines on Conflicts of Interest in International Arbitration (2014)[36]take a broad approach, which requires arbitrators to disclose all circumstances that may give rise to doubts as to their impartiality, including repeat appointments. The same approach is followed by the UNCITRAL-ICSID Code of Conduct for Adjudicators in International Investment Disputes (2023),[37] which requires arbitrators to disclose their prior and concurrent involvement in disputes involving

[35] Yasaschandra Devarakonda, Restricting Double-hatting to Safeguard International Arbitrations, 22 Pepp. Disp. Resol. L.J. 65 (2022) Available at: https://digitalcommons.pepperdine.edu/drlj/vol22/iss1/3

[36] Int'l Bar Ass'n, *Guidelines on Conflicts of Interest in International Arbitration* (2014).

[37] UNCITRAL & ICSID, *Code of Conduct for Adjudicators in International Investment Disputes* (2023).

similar parties, facts, or legal issues. The latter requirement addresses the issue of repeat participation.

In respect of double hatting, the UNCITAL Draft Code proposes a prohibition on arbitrators serving as counsel or experts in the same or related subject matter, which limits their ability to serve as counsel or experts. The Draft Code acknowledges that this practice may give rise to actual or perceived bias, particularly in specialized areas, as issues frequently overlap.

Academic research has also emphasized the significance of institutional design in the context of the problem of repeat player advantages. For instance, Carrie Menkel-Meadow, drawing on the Galanter model, emphasizes the fact that the advantages of the repeat players arise from their familiarity with the system of dispute resolution and their strategic positioning across different systems of dispute resolution. Moreover, the empirical research conducted by Talesh and Alter shows that arbitration systems heavily relying on partydriven approaches to dispute resolution and passive oversight tend to perpetuate the problem of repeat player advantages, whereas systems with active oversight and diversified approaches to decision-making can effectively deal with the issue.

Furthermore, the academic research suggests the significance of the appointment mechanisms in the context of the problem of bias in arbitration. For instance, the excessive autonomy given to the parties to select the arbitrators is considered to lead to the concentration of the same set of practitioners, thereby perpetuating the problem of bias in the system of arbitration. The institutional oversight of the selection process, as reflected in the rules of the ICC or the LCIA, is considered to be the way to overcome the problem of bias.

Thus, the above developments reflect the trend towards the recognition of the problem of bias in the system of arbitration. The existing frameworks aim to overcome the problem of actual or perceived bias through the expansion of disclosure requirements, the regulation of overlapping roles, and the institutional design of the system of arbitration.

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F. Conclusion

"Justice should not only be done, but should manifestly and undoubtedly be seen to be done."
— *R v. Sussex Justices, ex parte McCarthy*[38]

In arbitration, where legitimacy is based on party confidence and not on any perception of authority, this maxim is of even greater importance. The issue of absence of bias and perception of absence of bias remains core to the credibility of the arbitral process.

[38] R v. Sussex Justices, ex parte McCarthy, [1924] 1 K.B. 256 (Eng. K.B.).

G. Findings

The research reveals that structural characteristics, particularly those of repeat participation, create inherent imbalances between parties. Repeat players enjoy the advantages of experience, strategy, and access to resources, which can ultimately influence arbitral awards. The practice of double-hatting, however, not only raises issues of conflict of interest but also other issues, such as those of pre-dispositional bias, wherein past roles and participation can subconsciously influence the decision-making process. The financial and professional incentives under the arbitral process, which provide for repeat participation and reputation, can indirectly influence the arbitral process, notwithstanding the lack of actual bias. The current legal regime, as embodied under the Arbitration and Conciliation Act, 1996, largely addresses actual conflicts. The regime, however, fails to account for structural bias, which arises from repeat participation and the practice of double-hatting. The institutional mechanisms, which provide a safeguard, are limited and largely rely on party initiative. The Indian approach is conservative, which requires a clear case for bias, thereby prioritizing finality and party autonomy, but ignores issues of structural imbalance.

H. Suggestions

Some suggestions to reduce judicial intervention are as follows:

1. Disclosure obligations may be extended to include substantive similarity disputes and repeated appointments to better assess possible bias.
2. Institutional engagement in the selection of arbitrators may be enhanced to eliminate concentrations within a small group of practitioners and to reduce the impact of advantages enjoyed by repeat players.
3. More guidelines may be established to deal with double-hatting, particularly with respect to substantive similarity.
4. More attention may be paid to dealing with perceived bias in addition to actual bias to sustain confidence in the arbitral process.

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III. REFERENCES

A. Primary Sources

1. Arbitration and Conciliation Act, 1996.
2. UNCITRAL Model Law on International Commercial Arbitration.
3. International Chamber of Commerce, ICC Arbitration Rules.
4. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.
5. Int'l Bar Ass'n, *Guidelines on Conflicts of Interest in International Arbitration* (2014).
6. UNCITRAL & ICSID, *Code of Conduct for Adjudicators in International Investment Disputes* (2023).
7. Voestalpine Schienen GmbH v. Delhi Metro Rail Corp. Ltd., (2017) 4 S.C.C. 665 (India).
8. RSE Holdings AG v. Republic of Latvia, PCA Case No. 2019-05 (Perm. Ct. Arb. 2020).
9. R v. Sussex Justices, ex parte McCarthy, [1924] 1 K.B. 256 (Eng. K.B.).

B. Secondary Sources Research Papers

1. Lisa B. Bingham, Employment Arbitration: The Repeat Player Effect, 1 Emp. Rts. & Emp. Pol'y J. 189 (1997).
2. Andrea Chandrasekher & David Horton, Empirically Investigating the Source of the Repeat Player Effect in Consumer Arbitration, 71 Stan. L. Rev. 1609 (2019).
3. Shauhin A. Talesh & Peter C. Alter, The Devil is in the Details: How Arbitration System Design and Training Facilitate and Inhibit Repeat-Player Advantages, 34 Law & Pol'y 1 (2020).
4. Pooja Chakrabarti & Adheesh Agarwal, *Law of Bias in Arbitrators: Certain Interesting Aspects* (Argus Partners, Feb. 25, 2019).
5. Sandra Harding, Rethinking Standpoint Epistemology: What Is "Strong Objectivity"?, in *Feminist Epistemologies* 49 (Linda Alcoff & Elizabeth Potter eds., 1993).

C. Articles

1. Siddhant Shinde, *Double-Hatting in Indian Arbitration: Addressing Pre-Dispositional Bias*, NLSBLR Blog (May 19, 2025), https://forum.nls.ac.in/nlsblr-blog-post/doublehatting-in-indian-arbitration-addressing-pre-dispositional-bias/.

IJLJ ISSN: 2583-2794

D. Websites

2. Juvraj Singh Bindra & Esha Goyal, "Reasonable Possibility" or "Real Danger": Exploring the Standards Used to Determine Arbitral Bias, SCC Online Blog (May 30, 2024), https://www.scconline.com/blog/post/2024/05/30/reasonable-possibility-realdanger-exploring-standards-used-determine-arbitral-bias/.

3. Bias Fear No Ground to Quash Ruling in Arbitration Dispute, *Times of India* (Jan. 21, 2026), https://timesofindia.indiatimes.com/city/kolkata/bias-fear-no-ground-to-quashruling-in-arbitration-dispute/articleshow/128081791.cms.

4. Has Arbitration in India Been Hijacked?, BnB Legal (Dec. 9, 2025), https://bnblegal.com/article/has-arbitration-in-india-been-hijacked/.

5. Chandigarh University Hosts Panel Discussion on Rise of the Powerful Repeat Player in Civil Litigation as Part of India International Disputes Week 2026, *Tribune India* (Mar. 17, 2026), https://www.tribuneindia.com/news/business/chandigarh-universityhosts-panel-discussion-on-rise-of-the-powerful-repeat-player-in-civil-litigation-aspart-of-india-international-disputes-week-2026/.

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