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INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION

ICCA
PROJECTS

Research Group on
Arbitrator Immunity

INDIA

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SURVEY RESPONSES ON ARBITRATOR IMMUNITY – INDIA

April 2026

INDIA			
I. Definitions		Yes/No/NA	Comments, if any.
I.1.	<p>“Arbitrator”</p> <p>For the purpose of this survey, an “arbitrator” is a person appointed by the parties, on behalf of the parties, or by an institution to adjudicate a dispute under an arbitration agreement, either alone or as one member of an arbitral tribunal. When answering the questions in this survey, please include all regulations, standards, or duties that apply to or include arbitrators but not those that apply solely to mediators.</p>		
I.2.	<p>“Legislation”</p> <p>For the purpose of this survey, “legislation” includes laws in force and any draft bills or legislative initiatives that are currently at an advanced stage, including for example if the proposal is before a legislative body for vote or approval. It is helpful to signal the content and status of any such legislative initiatives in this survey, so that readers can also be aware of changes that may be forthcoming.</p>		The Indian Arbitration and Conciliation Act, 1996 is referred as the Arbitration Act .

II. General		Yes/No/NA	Comments, if any.
II.1.	<p>What standards or duties (including ethical standards or duties) apply to arbitrators in your jurisdiction? Please briefly describe these standards or duties and cite to their legislative, regulatory, jurisprudential, or other basis.</p> <p>[Examples of such standards or duties may include:</p> <ul style="list-style-type: none"> - Duty to disclose potential conflicts of interest. - Duty of impartiality. - Duty of care/competence. - Duty to respect and maintain the confidentiality of the arbitration. 		<p>Section 12 of the Arbitration Act sets out the requirements for disclosure and grounds for challenging an arbitrator.</p> <p>Briefly put, an arbitrator is required to disclose all circumstances which are likely to give rise to any justifiable doubts as to her independence or impartiality; as also those that are likely to affect her ability to devote sufficient time to the arbitration.</p> <p>The Fifth Schedule of the Arbitration Act acts as a guide in determining whether circumstances exist to give rise to justifiable doubts as to the independence or impartiality of an arbitrator. The arbitrator is required to make declarations of independence and impartiality in the format set out at the Sixth Schedule to the Arbitration Act.</p> <p>Importantly, Section 12(5) read with the Seventh Schedule of the Arbitration Act sets out circumstances for an arbitrator’s ineligibility to be appointed as an arbitrator. The only exception is if the parties expressly waive in writing the applicability of this provision <i>after</i> disputes have arisen between them.</p> <p>Section 12 and the Fifth to Seventh Schedules are largely based on the IBA Guidelines on Conflict of Interest in International Arbitration.¹</p>

¹ See, Law Commission Report No. 246- Amendments to the Arbitration and Conciliation Act, 1996

“59. The Commission has proposed the requirement of having specific disclosures by the arbitrator, at the stage of his possible appointment, regarding existence of any relationship or interest of any kind which is likely to give rise to justifiable doubts. The Commission has proposed the incorporation of the Fourth Schedule, which has drawn from the Red and Orange lists of the IBA Guidelines on Conflicts of Interest in International Arbitration, and which would be treated as a “guide” to determine whether circumstances exist which give rise to such justifiable doubts. On the other hand, in terms of the proposed section 12 (5) of the Act and the Fifth Schedule which incorporates the categories from the Red list of the IBA Guidelines (as above), the person proposed to be appointed as an arbitrator shall be ineligible to be so appointed, notwithstanding any prior agreement to the contrary. In the event such an ineligible person is purported to be appointed as an arbitrator, he shall be de jure deemed to be unable to perform his functions, in terms of the proposed explanation to section 14. Therefore, while the disclosure is required with respect to a broader list of categories (as set out in the Fourth Schedule, and as based on the Red and Orange lists of the IBA Guidelines), the ineligibility to be appointed as an arbitrator (and the consequent de jure inability to so act) follows from a smaller and more serious sub-set of situations (as set out in the Fifth Schedule, and as based on the Red list of the IBA Guidelines).

60. The Commission, however, feels that real and genuine party autonomy must be respected, and, in certain situations, parties should be allowed to waive even the categories of ineligibility as set in the proposed Fifth Schedule. This could be in situations of family arbitrations or other arbitrations where a person commands the blind faith and trust of the parties to the dispute, despite the existence of objective “justifiable doubts” regarding his independence and impartiality. To deal with such situations, the Commission has proposed the proviso to section 12 (5), where parties may, subsequent to disputes having arisen between them, waive the applicability of the proposed section 12 (5) by an express agreement in writing. In all other cases, the general rule in the

	<p>– Duty to conduct the proceeding in an appropriate/fair/judicious manner.</p>		<p>Section 18 of the Arbitration Act requires arbitrators to treat parties with equality, and that each party be given a full opportunity to present his case. This provision has been referred to as the “due process clause of arbitration.”²</p> <p>Additionally, Section 42A of the Arbitration Act requires the arbitrator (among others) to maintain confidentiality of the arbitral proceedings.³</p>
II.2.	<p>In cases of potential arbitrator misconduct of a civil (as opposed to criminal) nature, what remedies or disciplinary measures are available in your jurisdiction <i>vis-à-vis</i> the arbitrator?</p> <p>Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>		<p>Section 42B of the Arbitration Act⁴ provides that “[n]o suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder”</p> <p>It is unlikely that an arbitrator will be held personally liable for misconduct unless a party is able to demonstrate bad faith on the arbitrator’s part.</p> <p>If the arbitrator is marred by any justifiable doubts as to her independence or impartiality, a party may challenge her appointment.⁵</p>

proposed section 12 (5) must be followed. In the event the High Court is approached in connection with appointment of an arbitrator, the Commission has proposed seeking the disclosure in terms of section 12 (1) and in which context the High Court or the designate is to have “due regard” to the contents of such disclosure in appointing the arbitrator.”

See also, Central Organisation for Railway Electrification v M/S ECI SPIC SMO MCML (JV), 2024 INSC 857 [**CORE v ECI**]

2 See CORE v ECI, para 52

3 Section 42A, Arbitration Act

Confidentiality of information. – Notwithstanding anything contained by any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

4 Inserted by the Arbitration and Conciliation (Amendment) Act, 2019, Section 9 (w.e.f. 30-8-2019).

5 Section 13 of the Arbitration Act,

13. Challenge procedure. – (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is

			<p>An arbitrator’s mandate may also be terminated if she becomes <i>de facto</i> or <i>de jure</i> unable to perform her functions or if she otherwise fails to act without undue delay.⁶</p> <p>In case of misconduct on the arbitrator’s part, the award passed by such arbitrator may be set aside or refused enforcement.⁷</p> <p>To the best of our understanding, Indian law does not provide for separate remedies or disciplinary proceedings against arbitrators for misconduct.</p> <p>If an arbitrator is found to have acted in bad faith, depending on the facts involved, she may be exposed to civil or criminal liability.</p>
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entitled to any fees.

6 See Section 14 of the Arbitration Act, Failure or impossibility to act. –

(1) 2[The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if] –

(a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

7 See e.g., Section 34 of the Arbitration Act

(2) An arbitral award may be set aside by the Court only if –

(a) the party making the application furnishes proof that –

[...]

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

[...]

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part;

(b) the Court finds that

(ii) the arbitral award is in conflict with the public policy of India.

1 [Explanation 1. –

For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, –

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2. – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

II.3.	Is there anything in the <u>legislation</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?		As discussed above, the principle of arbitrator liability (and immunity) is enshrined in Section 42B of the Arbitration Act. Briefly put, an arbitrator cannot be held liable for anything done in good faith under the Arbitration Act or rules made under it. Section 42B of the Arbitration Act is based on Section 29 of the UK Arbitration Act 1996. ⁸
II.4.	Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction recognizing a general principle of arbitrator liability and/or a principle that could provide a basis for an arbitrator to be subject to suit or found liable personally for breaches of any of the duties/standards described above?	N/A	
II.5.	Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction that could provide a basis for an arbitrator generally to be subject to suit or found liable personally for acts or omissions in relation to an arbitration?	N/A	

8 See, Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India, 30 July 2017, page 70

12. Immunity to arbitrators

[...]

“Recommendation

The following provision, based on section 29 of the AA (UK), may be inserted in the ACA to provide for immunity of arbitrators: “An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of his functions as arbitrator unless the act or omission is shown to have been in bad faith.”

II.6.	If your answer to question II.3, II.4 or II.5 is yes, is there a corresponding statute of limitations or similar time-limit in your jurisdiction for the initiation of a claim against an arbitrator?		<p>Civil claims against an arbitrator, to the extent they can be made, should be subject to a limitation period of three years from the date of the cause of action.⁹</p> <p>Challenge to the arbitrator. Parties can agree to a procedure for challenging an arbitrator¹⁰, which would include any challenge mechanism contained in the arbitration rules agreed by the parties. Failing such agreement, a party who intends to challenge an arbitrator must file a written challenge before the arbitral tribunal within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in Section 12(3) of the Arbitration Act.¹¹</p>
II.7.	If your answer to question II.3, II.4 or II.5 is yes, is there anything in the <u>legislation or jurisprudence/other secondary sources of law</u> of your jurisdiction that addresses the possibility of joint liability among the members of the tribunal, either <i>vis-à-vis</i> the parties or among themselves?	No	<p>That said, in <i>Rajesh Batra v Ranbir Singh Ahlawat</i>¹², since the arbitrator proceeded with his unilateral appointment by the respondent even though the parties' contract clearly provided for an appointment by mutual consent,¹³ the Delhi High Court imposed costs of INR 20,000 to be equally borne by the respondent and the arbitrator.</p> <p>This decision precedes the inclusion of Section 42B in the Arbitration Act.</p>

9 See Article 137 of the Limitation Act 1963. Claims against arbitrators are not specifically covered in the Limitation Act. Pursuant to Article 137, the limitation period for any application for which no period of limitation is provided elsewhere in the Limitation Act is three years from when the right to apply accrues.

10 Section 13(1) of the Arbitration Act

11 Section 13(2) of the Arbitration Act

12 *Rajesh Batra v Ranbir Singh Ahlawat*, 2011 SCC OnLine Del 3308 : (2011) 4 Arb LR 371

13 Ibid at para 10

10. Despite being put to notice that his appointment itself is without authority and jurisdiction, the arbitrator brazenly proceeded to conduct the proceedings and passed the impugned award. If such conduct is condoned, it will give encouragement to adoption of such sharp practices and fraudulent conduct. If the respondents stand were to be accepted, one or the other party can play havoc by nominating an arbitrator unilaterally in breach of the agreement, and obtain an award from the arbitrator, who may not command the confidence of both the parties. Accordingly, the impugned award is patently illegal and has been made by the arbitrator without jurisdiction and the same is accordingly set aside.

III. Limitations of Liability		Yes/No/NA	Comments, if any.
III.1.	<p>Is there a general principle of arbitrator immunity (<i>i.e.</i>, whereby an arbitrator is immune from civil liability for his or her activities undertaken as arbitrator) in your jurisdiction? If yes, is this immunity less than, equivalent to, or greater than the immunity, if any, afforded to judges or members of the judiciary?</p> <p>Please provide citations to any relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	Yes	<p>Arbitrator immunity is set out at Section 42B of the Arbitration Act. This immunity is narrower than that available to judges in India.</p> <p>Section 3 of the Judges (Protection) Act 1985 provides as follows:</p> <p><i>Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.</i></p> <p><i>(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.</i></p> <p>Article 121 of the Indian Constitution also provides that “[n]o discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.”</p> <p>Further, Article 211 provides that “[n]o discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.”</p>
III.2.	Is there anything in the <u>legislation</u> of your jurisdiction that otherwise limits an arbitrator’s personal civil liability?		Please see Section 42B of the Arbitration Act, discussed above.
III.3.	Is there anything in the <u>jurisprudence/ other secondary sources of law</u> of your jurisdiction that otherwise limits an arbitrator’s personal civil liability?	No	

<p>III.4.</p>	<p>If your answer to question III.1, III.2, or III.3 is yes, are there any exceptions to that immunity or limitation of liability?</p> <p>For example, is there any exception to an arbitrator’s immunity from suit or limitation of liability where the arbitrator’s alleged misconduct involves fraud, bad faith, negligence, or intentional wrongdoing (to the extent these concepts are recognized in your jurisdiction’s legal framework)?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>Yes</p>	<p>Please see Section 42B of the Arbitration Act, discussed above.</p>
<p>III.5.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of limitation of liability clauses found in arbitral institution rules?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. 	<p>No</p>	<p>We have not come across such jurisprudence or secondary sources.</p> <p>That said, the Arbitration Act provides for the parties’ chosen arbitration rules (if any) to be treated as part of the parties’ agreement.¹⁴</p> <p>As such, limitation of liability clauses in the parties’ agreed rules of arbitration are likely to be upheld by Indian courts – unless such clauses/rules are contrary to the Arbitration Act or Indian law otherwise.</p>

14 See Section 2(8), Arbitration Act

(8) Where this [Part I of the Arbitration Act] – (a) refers to the fact that the parties have agreed or that they may agree, or (b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

	<ul style="list-style-type: none"> – The relevant limitation of liability language and its source (<i>i.e.</i>, UNCITRAL Arbitration Rules 2010, American Arbitration Association Commercial Arbitration Rules, etc.). – A summary of the court’s findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator’s liability. 		
III.6.	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of limitation of liability clauses or indemnity clauses (<i>i.e.</i>, clauses by which the parties to the arbitration agree to cover any losses or damages suffered by the arbitrators in a potential suit, or to otherwise hold the arbitrators harmless) found in an arbitration’s procedural materials – <i>i.e.</i>, Terms of Reference, Terms of Appointment, Procedural Order No. 1, etc.?</p>	No	<p>That said, Section 19¹⁵ of the Arbitration Act provides for the parties to agree on the procedure to be followed in the arbitration. If parties have not agreed to such a procedure, the arbitral tribunal can, subject to mandatory provisions of the Arbitration Act, conduct the proceedings in a manner it considers appropriate.</p> <p>Therefore, unless the relevant provision for limitation of liability in the parties’ terms of reference or tribunal’s procedural order exceeds the Arbitration Act (including Section 42B) or mandatory requirements of Indian law, Indian courts are likely to uphold such limitation of liability. For instance, Indian courts may not uphold any term in the procedural order or terms of reference that excludes liability for fraud or bad faith on part of the arbitrator or arbitral institution.</p> <p>Notably, Rule 45.1 of the Mumbai Centre for International Arbitration (MCIA)¹⁶ Rules contains an express exclusion and waiver of liability.¹⁷</p>

15 Section 19, Arbitration Act, Determination of rules of procedure. –

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

16 Mumbai Centre for International Arbitration

17 Rule 45.1 Exclusion and Waiver of Liability, MCIA Rules 2025

The MCIA, including the Chairperson, members of its Council, directors, officers, employees, and any arbitrator, shall not be liable to any person for any negligence, act or omission in connection with any arbitration governed by these Rules, save where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party.

	<p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. – The limitation of liability or indemnity language found in the relevant procedural material (if available). – A summary of the court’s findings as to the effectiveness of the limitation of liability or indemnity clause in limiting or excluding an arbitrator’s liability. 		<p>Rule 34 of the Delhi International Arbitration Centre (DIAC)¹⁸ Rules 2023 contain a similar provision.¹⁹</p>
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45.2 The MCIA, including the Chairperson, members of its Council, directors, officers, employees, and any arbitrator, shall not be under any obligation to make any statement in connection with any arbitration governed by these Rules. No party shall seek to make the Chairperson, any member of the Council, director, officer, employee or arbitrator act as a witness in any legal proceedings in connection with any arbitration governed by these Rules.

45.3 A party who knows or ought reasonably to know of a failure to comply with any provision of, or requirement arising under, these Rules, or of any other rules applicable to the proceedings, any direction given by the Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Tribunal or the conduct of the proceedings and yet proceeds with the arbitration without promptly stating its objection shall be deemed to have waived its right to object.

45.4 Any party acting in contravention of Rules 45.1 to 45.3 shall indemnify the MCIA, including the Chairperson, members of its Council, directors, officers, employees or any arbitrator against all liabilities arising out of or in connection with any such action.

¹⁸ Delhi International Arbitration Centre

¹⁹ Rule 34, DIAC Rules 2023

34. Exclusion and Waiver of Liability

The DIAC, including the Chairperson, members of the Arbitration Committee, Coordinator, officers, employees or any Committee or Sub-Committee, shall not be liable to any person for anything which is done in good faith, done or intended to be done under these Rules.

<p>III.7.</p>	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the effectiveness of a clause limiting the arbitrators' liability found in the parties' arbitration agreement?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. – The relevant limitation of liability language in the parties' arbitration agreement. – A summary of the court's findings as to the effectiveness of the limitation of liability clause in limiting or excluding an arbitrator's liability. 	<p>No</p>	<p>We have not come across such jurisprudence or secondary sources of law.</p>
<p>III.8.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the <i>source</i> of the limitation of liability or indemnity language (<i>i.e.</i>, institutional rules v. procedural order v. terms of reference v. arbitration agreement) was relevant to the court's finding?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>N/A</p>	

<p>III.9.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the particular language used in the relevant limitation of liability or indemnity clause was relevant to the court's finding?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>N/A</p>	
<p>III.10.</p>	<p>If your answer to question III.5, III.6, or III.7 is yes, does any of this <u>jurisprudence/secondary sources of law</u> comment on whether the moment in the arbitration when the relevant limitation of liability or indemnity clause was agreed to was relevant to the court's finding, <i>i.e.</i>, whether it was agreed to <i>ex ante</i> (in advance of the relevant arbitration proceeding having been initiated) or after the arbitration was commenced?</p> <p>If yes, please provide a brief description of the court's or secondary source's reasoning on the issue, limited to one paragraph per case/secondary source.</p>	<p>N/A</p>	

<p>III.11.</p>	<p>To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction (<i>i.e.</i>, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability apply in proceedings in which a party is requesting interim relief (interim injunction, conservatory or similar temporary measures), as distinct from final relief (including damages), from an arbitrator?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>Yes</p>	<p>Arbitrator immunity is governed by Section 42B of the Arbitration Act. As explained above, it extends to acts which are in good faith done or intended to be done under the Arbitration Act – which should include acts done at the stage of granting interim reliefs.</p>
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<p>III.12.</p>	<p>To the extent there is any principle of arbitrator immunity or limitation of liability recognized in your jurisdiction, (<i>i.e.</i>, if your answer to question III.1, III.2, or III.3 is yes), does that immunity or limitation of liability permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority (for example, in enforcement proceedings)?</p> <p>Please provide citations to the relevant legislation, regulations, jurisprudence, or other secondary sources of law.</p>	<p>No</p>	<p>While arbitrator liability is excluded to the extent set out in Section 42B, arbitrators have no express right to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority.</p> <p>That said, the Indian Supreme Court has previously observed that the power to summon an arbitrator must be exercised deliberately, carefully, and sparingly.²⁰ The Supreme Court also clarified that, “...if a party has a case of <i>mala fides</i> and makes out <i>prima facie</i> that it is not a frivolous charge or has other reasonably relevant matters to be brought out the Court may, in given circumstances, exercise its power to summon even an arbitrator, because nobody is beyond the reach of truth or trial by Court.”²¹</p> <p>For instance, in <i>State Of Orissa vs D.C. Routray</i>, the Orissa High Court directed an arbitrator to appear before a judge to provide evidence.²²</p> <p>In <i>Smt. Sushila M. Maru And Anr. vs Chittaranjan M. Maru</i>²³, the Jharkhand High Court held that: “... in the instant case the Arbitrators did not enter into reference for more than six years. By an agreement the parties referred their disputes to Arbitration in 1989 and the Arbitrators give their award in 1999. Even in 1997 the Arbitrators admittedly did not enter into reference. Not only that the Arbitrators even did not maintain records and the minutes of the proceedings and there is no cogent evidence to show that the parties were given opportunity of hearing by the Arbitrators publishing the award. <i>I am, therefore, of the view that the petitioners have made out a case justifying the examination of the Arbitrators as witness.</i>” (<i>emphasis added</i>)</p>
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20 Union of India v M/s Orient Engg. & Commercial Co. Ltd. & Anr. (1978) 1 SCC 10

3...If arbitrators are summoned mindlessly whenever applications for setting aside the award are enquired into, there will be few to undertake the job. The same principle holds good even if the prayer is for modification or for remission of the award. The short point is that the Court must realise that its process should be used sparingly and after careful deliberation, if the arbitrator should be brought into the witness box. In no case can he be summoned merely to show how he arrived at the conclusions he did. In the present case, we have been told that the arbitrator had gone wrong in his calculation and this had to be extracted from his mouth by being examined or cross-examined.

21 Ibid, para 4.

22 State of Orissa v. D.C. Routray, AIR 1983 Orissa 163

9. In my opinion, by the refusal the petitioner has been prevented from reaching at the truth and a valuable right has been denied to it. I, therefore, vacate the impugned order passed by the learned Subordinate Judge in each of the cases and allow both the revisions. The learned Subordinate Judge is directed to summon the arbitrator to appear before him as a witness for the purpose of examination. The examination should, however, be kept within the bounds of law stated above.

This decision was approved by the Indian Supreme Court in *State Of Orissa vs Niranjana Swain* (1989) 4 SCC 269

23 2003 SCC OnLine Jhar 1287

			While the foregoing decisions predate the inclusion of Section 42B in the Arbitration Act, Indian courts are likely to consider them while deciding an arbitrator's request for exclusion of liability to provide evidence.
III.13.	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether a limitation of liability clause found in arbitral institution rules, procedural materials, or the parties' arbitration agreement operates to permit an arbitrator to refuse to serve as a witness or provide documents when subpoenaed, or otherwise compelled, by a judicial authority?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source.</p>	No	We have not come across such legislation or jurisprudence/secondary sources.
III.14.	To the extent an arbitrator is permitted to be called upon to act as a witness in your jurisdiction but is otherwise bound by confidentiality obligations related to the underlying arbitration, is there any guidance (found in jurisprudence or elsewhere) as to how the arbitrator should proceed?	No	
IV. Effectiveness of Professional Indemnity Insurance		Yes/No/NA	Comments, if any.
IV.1.	Does the legal framework in your jurisdiction mandate professional indemnity insurance coverage for arbitrators?	No	

IV.2.	<p>Is there any <u>legislation or jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether acting as an arbitrator counts as an act constituting the practice of law?</p>	<p>No</p>	<p>We have not come across such legislation or jurisprudence/secondary sources.</p> <p>Notably, the Indian Advocates Act 1961 defines a ‘legal practitioner’ to mean means an advocate or vakil of any High Court, a pleader, mukhtar or revenue agent.²⁴ It does not include an arbitrator.</p>
IV.3.	<p>Is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister’s chambers covers activities undertaken by a member of that firm/chambers as arbitrator where the arbitrator has been appointed in an individual capacity (<i>i.e.</i>, rather than as a representative of the firm/chambers)?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. – The relevant language of the professional indemnity insurance policy of the arbitrator’s law firm or barrister’s chambers (if available). – A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the arbitrator’s activities as an arbitrator. 	<p>No</p>	<p>We have not come across such jurisprudence/secondary sources.</p>

24 Section 2(1)(i), Advocates Act 1961.

<p>IV.4.</p>	<p>If your answer to question IV.3 is no, is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether the professional indemnity insurance policy of a law firm or barrister's chambers covers activities undertaken by an employee or partner of that firm/chambers as a board member of an external organization (<i>i.e.</i>, a corporation, charity, etc.)?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The type of misconduct alleged. – The relevant language of the professional indemnity insurance policy of the member's law firm or barrister's chambers (if available). – A summary of the court's finding as to the scope of that policy's coverage <i>vis-à-vis</i> the member's activities as a board member. 	<p>No</p>	<p>We have not come across such jurisprudence/secondary sources.</p>
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<p>IV.5.</p>	<p>Assuming that there is coverage of the types envisioned in questions IV.3 and IV.4, is there any <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers whether that coverage extends to breaches of cybersecurity and data privacy laws?</p> <p>If yes, please provide a brief description of the case(s) or secondary source(s), limited to one paragraph per case/secondary source, including, if applicable:</p> <ul style="list-style-type: none"> – The nature of the alleged cybersecurity/privacy breach. – The relevant language of the professional indemnity insurance policy (if available). – A summary of the court’s finding as to the scope of that policy’s coverage <i>vis-à-vis</i> the alleged cybersecurity/privacy breach. 	<p>N/A</p>	
<p>IV.6.</p>	<p>Assuming that there is coverage of the type envisioned in question IV.3, please provide sample language from commonly used insurance policies that were found by those courts or secondary sources to cover work undertaken independently as an arbitrator.</p>	<p>N/A</p>	

IV.7.	Are there any other issues that, in your view, a prospective arbitrator should be aware of in ensuring that their work as an arbitrator in your jurisdiction is covered by their law firm's or chamber's professional indemnity insurance policy?	Yes	To the extent the arbitrator is not protected or covered by Section 42B of the Arbitration Act, any and all liability arising from claims made in relation to the arbitrator's performance of her function as an arbitrator should be expressly included in the indemnity insurance policy.
V. Involvement of Arbitral Institutions		Yes/No/NA	Comments, if any.
V.1.	Is there any <u>jurisprudence</u> in your jurisdiction where an arbitral institution has been sued alongside an arbitrator?	No	We have not come across such jurisprudence.
V.2.	Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator has been sued and then an arbitral institution subsequently intervened in the proceeding?	No	We have not come across such jurisprudence.
V.3.	<p>If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the arbitrator and arbitral institution defend the suit jointly, or did the arbitrator defend the suit on his/her own behalf, separate from any defense mounted by the institution?</p> <p>If the suit(s) was/were defended jointly, in your experience or, to the extent this information is publicly available, did the institution pay for the arbitrator's counsel fees?</p>	N/A	
V.4.	If your answer to question V.1 or V.2 is yes, in your experience, or to the extent this information is publicly available, did the suit result in a settlement?	N/A	

VI. Procedural Issues			
VI.1.	<p>Is there any <u>jurisprudence</u> in your jurisdiction where an arbitrator and/or arbitral institution was sued by a party, and the arbitrator or arbitral institution objected on the grounds of improper forum or venue?</p> <p>If yes, please provide a brief description of case(s), limited to one paragraph per case, including:</p> <ul style="list-style-type: none"> – The parties. – The type of misconduct alleged. – The nature and basis of the arbitrator’s or arbitral institution’s objection to venue. – The outcome of the objection (<i>i.e.</i>, whether the case proceeded to be heard or was dismissed for improper forum or venue) and the court’s reasoning for the same. 	No	We have not come across such jurisprudence
VI.2.	<p>Is there any <u>legislation</u> or <u>jurisprudence/other secondary sources of law</u> in your jurisdiction which considers the potential consequences if a suit against an arbitrator is unsuccessful?</p> <p>For example, if a suit against an arbitrator is unsuccessful, what remedies would be available to the arbitrator? Moreover, would any sanctions be applicable to the unsuccessful party who brought the suit if it is found that the suit was frivolous?</p>	No	We have not come across such legislation or jurisprudence/secondary sources.

VI.3.	While this survey generally focuses on the civil liability of arbitrators, if there is any relevant information from your jurisdiction related to claims for criminal liability brought against arbitrators, please include such information.	No	That said, the immunity at Section 42B is unlikely to extend to liability for criminal offences.
VI.4.	Is there any other information about your jurisdiction not already provided in your responses to the questions in this survey that is relevant to understanding and explaining arbitrator liability in your jurisdiction?	No	

ICCA RESEARCH GROUP ON ARBITRATOR IMMUNITY

Goals

The primary goal of the Arbitrator Immunity Research Group is to study questions of arbitrator liability and immunity, and to raise practitioners' and arbitrators' awareness of the current legal landscape. The project's goals include investigating the limits of arbitrator immunity, evaluating the effectiveness of language limiting arbitrator liability in procedural orders and institutional rules, and examining the impact and limitations of professional indemnity insurance.

Methodology

To understand the current global landscape of arbitrator immunity, the Research Group designed a detailed survey and selected sample jurisdictions for inclusion. The Research Group compiled a list of survey respondents for each jurisdiction by seeking recommendations for responsive, high-quality contributors who had previously participated in ICCA research projects, as well as recommendations from arbitral institutions and colleagues in the international arbitration community. After receiving the completed surveys, the research team collaborated with the respondents in two rounds of edits to improve clarity, understanding, and formatting.

Citations to this Research

Researchers and authors using this data should use the following citations to refer to this research:

- General citation to the project website: 'ICCA Research Group on Arbitrator Immunity' (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), <https://www.arbitration-icca.org/research-group-arbitrator-immunity>
- Citation to the individual survey response: 'Survey Responses on Arbitrator Immunity for India', in ICCA Research Group on Arbitrator Immunity (Kate Brown de Vejar, Victoria Shannon Sahani, and Damien Nyer, eds., 2026), <https://www.arbitration-icca.org/research-group-arbitrator-immunity>

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Disclaimers

- **Viewpoints Disclaimer:** The survey responses do not represent the viewpoints, opinions, or research of ICCA, its Governing Board or members, or the Research Group in general, or its individual members. The Research Group's editing process focused solely on enhancing clarity, comprehension, and formatting.
- **General Legal Disclaimer:** The information on this website and within the survey responses is for informational purposes only, and this information does not constitute legal advice. Because legal landscapes in these jurisdictions constantly evolve, the website might contain incorrect or out-of-date information. Readers must not act or refrain from acting based on this raw data. Readers should always seek independent, local legal advice regarding these topics.