

SPECIAL ADDRESS BY

HON'BLE JUSTICE TARA VITASTA GANJU (JUDGE, HIGH COURT OF
KARNATAKA)

ALISHA: It is now time to invite a distinguished guest of honour for a special address. May I now request Ms. Maneesha Kongovi, Partner of CMS INDUSLAW, to kindly come up on stage and introduce Honourable Justice Tara Vitasta Ganju of the High Court of Karnataka.

MANEESHA KONGOVI: Good evening everyone, it's been an exciting discussion. And I'm sure everybody is looking forward to the next sessions. And I must congratulate MCIA on putting together this lovely event. I have the pleasure and privilege of introducing our Guest of Honor, Honourable Ms. Justice Tara Vitasta Ganju. Honourable Justice Ganju, a first generation lawyer, was born in New Delhi where she did her schooling and under graduation. Her impressive array of academic achievements has left me at least feeling slightly inadequate, let me list them out.

A student of Political Science at Lady Shri Ram College, University of Delhi. She moved to the Faculty of Law, University of Delhi to obtain her law degree. She was enrolled as an advocate with the Bar Council of Delhi in 1995. Justice Ganju is a Chevening Scholar, having been awarded the British Chevening Scholarship from the British High Commission in 1999. She completed a course in English in EC Commercial Law and Practice from the College of Law at York. Justice Ganju has a Diploma in International Acquisitions and Mergers at College of Law UK in 2005. Justice Ganju has been certified as a mediator at Samadhan Delhi High Court Mediation and Conciliation Centre and was also appointed as an executive member of the Women in Law and Litigation Association in 2019. Before her elevation to the bench, Justice Ganju practised primarily before the Delhi High Court while also appearing before the honourable Supreme Court and other courts in Delhi.

Her practice encompassed matters, arbitration company law, contractual matters, civil and intellectual property litigation amongst other areas. Her judicial work has reflected a sustained engagement with arbitration and with the balance between arbitral autonomy and judicial supervision. In *Ministry of Health and Family Welfare versus Hosmac Project Division of Hosmac India Private Limited*, she examined questions concerning limitation and service of an Arbitral Award. In *Noble Chartering Inc. versus Priminds Shipping Private Limited* sitting as part of a Division Bench, Justice Ganju reaffirmed the importance of respecting the arbitral Tribunal's domain in interpreting the underlying contract and the narrow parameters within which a court may interfere under Section 34.

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More recently in *M/s. Abhiram Infraprojects Private Limited versus Commissioner, Karnataka Shum Development Board*, Justice Ganju addressed the limits of judicial intervention at the Post-award and execution stages. The judgment reinforces the finality of arbitral awards and the limits of judicial intervention at the enforcement stage. Justice Ganju's work has brought together commercial adjudication, arbitration, mediation and broader administration of justice concerning and the legal profession. It is a privilege to have with us today a judge whose expertise spans the bar, the mediation centres, the arbitration and the bench. Ladies and gentlemen, please join me in welcoming Honourable Mr. Justice Tara Vitasta Ganju.

JUSTICE TARA VITASTA GANJU: Distinguished guests, jurists, ladies and gentlemen, good afternoon. At the outset, I extend my congratulations to the MCIA on their 10th anniversary and commend them for their decade long contribution to the advancement of institutional arbitration and dispute resolution. Let me begin with a simple proposition. After nearly three decades, India's arbitration framework requires reconsideration. The Draft Arbitration and Conciliation Amendment Bill of 2024 proposed significant changes to institutional arbitration. It introduced Emergency Relief, Post-award review, appellate remedies and statutory timelines. It also attracted considerable criticism and is hence, now under reconsideration. I do not propose to examine the draft provision-by-provision. Instead, I wish to dwell on the broader question, what should the next generation of Indian arbitration law seek to achieve? The 1996 Act was basically a substantially based on the UNCITRAL Model Law. Its object was to reduce unnecessary judicial intervention while preserving party autonomy. Since then, arbitration in India has evolved through judicial decisions, institutional practice and commercial experience. Disputes have become more complex. Institutional arbitration has assumed greater importance and the credibility of the process now depends on effective interim relief, fair Tribunal Constitution, enforceability, appellate restraint and procedural efficiency.

Delay remains one of Arbitration's principal criticisms, but timelines by themselves cannot deliver efficiency. They must be supported by effective institutions, disciplined tribunals. Courts that intervene only within statutory bounds. The real test is not merely whether India can reduce court intervention, it is whether we can build an arbitration system that commands confidence in its seat, institutions, tribunals, remedies, appellate processes and enforcement. The central proposition, I would thus suggest is this, if delay is a structural problem, reform must also be structural. It must come not only through judicial interpretation or institutional practice but also through careful statutory design. That inquiry begins with the foundation of any arbitration system, "the seat". A credible 'seat' means more than just the physical location

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of the hearings. It gives Parties confidence about the law governing the arbitration, the courts that will supervise it and the legal consequences that follow from that choice. Indian jurisprudence has substantially moved in this direction. In the **BGS-SGS-SOMA Joint Venture case**, the Supreme Court clarified that the designation of the seat carries with it a supervisory jurisdiction. **Mankastu Impex Private Limited** further showed that where the contract is governed by Indian law, the arbitral seat may lie elsewhere if the arbitration clause clearly points in that direction. The larger difficulty is in an international arbitration. However, which may involve three different laws the law governing the contract, the law governing the Arbitration Agreement and the law of the curial arbitration. If the contract says Indian law applies for the seat but the arbitration is seated in Singapore, that alone would not answer the law governing the Arbitration Agreement. That is why statutory clarity matters.

The 2024 draft recognised this concern by replacing the word 'place to seat' and proposing jurisdictional rules linked to seat and seeking to distinguish more clearly between the seat and the venue of hearings. The United Kingdom has recently addressed a similar issue through an amendment to their Arbitration Act in the year 2025 by inserting a new Section 6(a). It provides that where the parties have expressed not expressly chosen the law governing the Arbitration Agreement, the law of the arbitral seat will apply. The lesson for India is straightforward clearer drafting supported by clearer statutory rules can prevent jurisdictional disputes even before they begin. If seat determines where arbitration is supervised, institutions determine how effectively. It is administered. Institutional arbitration cannot impose a single timetable on every dispute, its real value lies in structured flexibility, a framework that is disciplined but also, proportionate to the nature, value and complexity of the dispute. \$1 billion infrastructure dispute, for instance, cannot ostensibly be treated as like a straightforward payment claim. The strength of institutional arbitration is lies in its appointment mechanisms, emergency relief, case management award scrutiny and procedural discipline.

Together, all of these features give Parties confidence that the process will move not only quickly but fairly and efficiently. I see international practices supports this approach. The UNCITRAL expedited arbitration rules, the ICC's expedited procedures recognise that different disputes may require different procedural timelines. While preserving party autonomy and appropriate procedural safeguards routine procedural matters should therefore, be managed institutionally, leaving courts to decide only those questions that genuinely require judicial intervention.

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That brings us to an important question: Interim relief at the pre-tribunal stage. Section 9 gives us access, gives parties access to the courts for interim measures Section 17 confers corresponding powers on the Tribunal once it is constituted. If the tribunal is in place, the legislative preference under Section 9(3) is clear courts should ordinarily step back unless the remedy is not efficacious. The harder question, however, arises before the Tribunal is constituted in an *ad-hoc* arbitration, there may be a genuine gap in protection and court intervention may be necessary. But where Parties have chosen an institution with an effective emergency mechanism, emergency arbitration mechanism the case for first approaching the mechanism becomes stronger. Modern institution rules illustrate this position SIAC, ICC, LCIA, all provide for interim urgent interim protection before a Tribunal is constituted. Indian law recognised this in the ***Amazon Future Retail*** case where the Supreme Court accepted the enforceability of an Emergency Arbitrator Award under the SIAC Rules through a Section 17 framework.

However, if Emergency Arbitration is to perform that role in India, it requires clear statutory recognition the 2024 Draft Bill sought to provide precisely such a mechanism through proposed Section 9(a). That was a welcome example of statutory reform, responding to a development. That had already emerged through institutional practice and judicial recognition, but recognition alone is not enough. The statute must also make clear what happens next, how quickly it happens and what remedy is available if the emergency order itself is challenged. These questions should be resolved with procedural certainty. And I may add that they were not there in the original draft and hence, the reconsideration that is happening. Clear rules at the pre-tribunal stage can prevent a dispute about interim protection from becoming the first major dispute in the arbitration itself. This leads us directly to the next principle which is party autonomy. I mean, I know all of you sitting here would have heard this time and time again, but let me just touch briefly on it and I'll tell you why.

The Constitution Bench decision of the Supreme Court in the ***Central Organisation for Railway Electrification*** provides an important answer. The court held that unilateral appointment mechanisms are inconsistent with the requirements of independence, impartiality, equal participation and in the arbitral process. The significance of the judgment is not confined to particular appointment clauses before the court. It requires us to reconsider the relationship between party autonomy and party equality. Party autonomy is the foundation of arbitration. Parties choose arbitration, they choose the institution they choose the seat they may choose the number of arbitrators and the applicable procedural rules. But autonomy does not operate in a vacuum. It operates within a mandatory requirements of independence,

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impartiality and procedural equality. That is why where one party has the unilateral power to determine the adjudicator. The question is not simply whether the arbitrator is actually biased. The deeper question is whether the appointment mechanism itself creates a reasonable doubt about independence and equal participation. At some time, party autonomy must meet a boundary. There must be a minimum core for arbitration consent. An independent, impartial tribunal. Equality of treatment, a meaningful opportunity to present one's case and an adjudicatory decision and the minimum judicial supervision necessary to preserve the integrity of the process.

This would bring us to the role of courts. If you want courts to intervene less, we must also ensure that when they do intervene, they do so with speed, consistency and specialized expertise. The commercial courts already recognise this principle Section 10 channels arbitration related applications and appeals from a commercial division of a specified value or commercial courts depending on the nature of the arbitration and the forum in which the matter is filed.

So, do we then look at a specialist arbitration division? A specialist division does not mean creating an entirely new court. It could operate within the existing High Court and commercial court structure with designate judges regularly hearing for arbitration matters including Section 9 applications, Section 11 matters. 34 and 37 challenges enforcement proceedings and arbitration related applications. Comparative experience also supports such judicial specialisation. For instance, the Singapore International Commercial Court is a division of the General Division of the High Court and also, forms part of the Supreme Court of Singapore. It is designed to deal with transactional commercial disputes and is supported by specialist commercial judges, including international judges.

There is also a domestic precedence for this form of specialisation. The Delhi High Court's Intellectual Property Division shows how a High Court can create a dedicated forum for technically complex matters within its existing institutional structure. A similar model for arbitration would mean specialisation rather than expansion. Courts would remain available where judicial authority is truly required. But arbitration matters would be handled by judges with sustained exposure to arbitral law and practice. The objective should be better, faster and more restrained judicial intervention where the statute requires it.

This brings me to the final stage of judicial scrutiny and the relationship between Section 34 and 37. I know a lot of debate is going on about that, but the question that I would like to address here is not whether judicial review is necessary. It is the real question is whether

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appellate review should become a second opportunity to contest the award on merits. While it process must not be allowed to become litigation by another name. The Supreme Court has repeatedly recognised that Appellate review under 37, is narrower than and then the discipline that governs review under Section 34. The Appellate court cannot reassess evidence, reinterpret contractual clauses merely because another view is possible or convert limited supervisory review into a merits appeal. A routine remand must also be avoided. The principle is therefore clear the appellate court is not concerned itself with whether an award is perfect. It concerns itself with whether the award or the order under Section 34 suffers from a defect of the kind for which the statute prevents intervention or permits intervention, I beg your pardon.

This also would come would bring us to another issue which is highlighted regularly, which is the problem of delay. The discipline at the Appellant stage is of larger concern. Arbitration cannot be efficient if delay is merely shifting from the Tribunal to the court or from the court back to the Tribunal. This, the law must therefore address as a system-wide problem the this issue and not as a problem of arbitral timelines alone.

The Section 29(a) was an important amendment introduced in 2015 by the Arbitration Act to impose a statutory discipline on completion of proceedings, arbitral proceedings. The proposed draft sought to carry that discipline beyond the tribunal and into judicial stages. For instance, as the draft first appeared, there was 60 days period specified for applications under Section 8 and Section 11. 30 days for a determination under Section 16, and 60 days for specified appeals under Section 37. The significance of this change or any such change which may arise lies not merely in the numbers, but it's in the broader idea that arbitration requires a coherent timetable from commencement to finality. The delay cannot only be addressed inside the arbitral Tribunal if the surrounding court processes remain open ended. If delay is not... if one stage has a statutory deadline but the next stage does not delay, is not removed, it's merely displaced. The statute should to therefore, identify an outer limit for each principal procedural gateway permit extensions only for defined and recorded reasons and place responsibility for compliance on the actor controlling that stage that is the Tribunal, the institution or the court.

Once the procedural discipline is achieved, arbitration can deliver what it promises; a final award capable of recognition and enforcement. The issue of enforcement is also required to be considered because that is the final test as to whether an award can be enforced with predictability, restraint and speed. Sections 48 and 49, as you all know, are embodied in enforcement friendly framework. But the grounds for resisting enforcement of a foreign award

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are limited. And once the award the award is found enforceable, it is deemed to be a decree of the court. The Supreme Court's decision in *Avitel Post Studioz*, as you all may know, are limited reinforces the same principle enforcement cannot become a disguised appeal on the merits of a case. The confidence which is created by statutory clarity, institutional competence, judicial restraint and procedural finality also includes reliable enforcement.

Just also like to touch upon artificial intelligence in in arbitration briefly, a final development that will increasingly test the assumptions underlying arbitration is AI. AI is no longer hypothetical. Institutions and professional bodies are already addressing its use through concerns of procedural fairness, confidentiality, integrity, enforceability and accountability. The significant use of AI in arbitration may not initially be in deciding complex, high value disputes. It may be making in making low value, high volume disputes capable of being arbitrated efficiently. For instance, AI can assist with repetitive tasks, organizing documents, identifying issues, preparing chronologies, classifying claims, identifying missing material and supporting routine case administration. That may reduce administrative costs of arbitration and make the institutional processes more proportionate to the value of the dispute. But there must be a clear boundary. AI may assist with the work surrounding adjudication but should not assume the responsibility for the adjudication itself.

So let me end where I began, Indian arbitration stands at a decisive stage statutory reform is necessary but the legitimacy of arbitration cannot rest on speed alone, nor can it rest on party autonomy. It must rest on stable legal architecture, certainty about the seat, credible institutions, equality in Tribunal constitution, proportionate timelines, disciplined appellate review, principled judicial restraint, responsible use of technology and effective enforcement, to name a few. The themes that I have touched upon today are therefore not separate concerns. The 'seat' determines the legal home of arbitration. Institutions give the process structure and credibility. Emergency relief protects the subject matter of the dispute before the Tribunal is in place. Fair appointment mechanisms preserve equality. Specialized courts ensure that judicial intervention is both expert and restraint. Disciplined appellate review protects finality. Timelines prevent delay from migrating from one stage to another. Enforcement gives the arbitral practical value. And technology, if used responsibly, can make the process more accessible without compromising adjudicatory responsibility.

If India is to be preferred as a seat of arbitration, parties must be able to proceed on a clear insurance that the law will hold them to their bargain. Courts will intervene only where necessary and within defined statutory limits. That procedure will move within predictable timelines. Equality, neutrality will not be sacrificed in the name of consent and that in an

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award once made, will have real and practical value when enforcement is sought. That is why the next phase of reform of the Act should focus less on adding isolated provisions and more on designing arbitration as a coherent statutory system. The statute must address the precise points at which arbitration loses time and legitimacy. Jurisdiction appointments, interim protection, procedural objections, extensions, appeals and so on. Ultimately, the choice before us is not between speed and fairness or between party autonomy versus judicial supervision. The real task is to design a system in which each reinforces the other. The arbitration will command confidence only when it's fair, neutral, efficient and enforceable not in form alone but in practical effect as well. That should be the next that should be the measure of the next generation of Indian arbitration law. Thank you.

ALISHA SHARMA: Thank you, Honourable Justice Tara Ganju for your thought provoking remarks and highlighting the importance of institutional arbitration in India. We agree that the seat is very important in India and we are prioritizing and we are giving our best to work on it. We at MCIA and other arbitral institutions across India are working hard and we will continue to promote India through across the globe. We assure you that at MCIA we administer arbitration with strict timelines and cost efficiency. I again, thank you so much for your remarks. We would wait for the next session and we will begin shortly. Thank you so much.

**AI, ALGORITHMS AND ACCESS: TECHNOLOGY'S IMPACT ON DIVERSITY IN
DISPUTE RESOLUTION**

MODERATOR

PROBIR ROY CHOWDHURY

PARTNER, JSA ADVOCATES & SOLICITORS

SPEAKERS

C. K. NANDAKUMAR, SENIOR ADVOCATE, KARNATAKA HIGH COURT

PARAS LALWANI, PARTNER, RAJAH & TANN

POOJA YEDUKUMAR

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PROBIR ROY CHOWDHURY: Good evening, everyone and I know this is the graveyard shift. It's almost the last session for the day, but thank you for your time and attention. I'll quickly introduce my panellists. Pooja, she's a Vice-President, Legal and the DPO at Glance InMobi Group. She's an experienced legal Counsel with a demonstrated history of working in the AdTech and online Media Industry. Then, I of course, have Nandakumar C.K. He's a Senior Advocate at the Karnataka High Court and he has been practicing law for 25 years. Yeah. And then I have Paras Lalwani, who is a Partner at Rajah & Tann, Singapore. He has extensive experience in handling high value and complex commercial litigation and arbitration matters. Pooja and I are the only sort of non-litigation lawyers on this panel, we are very stressed because we are in a room full of litigators and we have a very interesting topic that we have for today evening's discussion.

My name is Prabir, I'm a Partner at JSA. I am the Co-Chair of the corporate practice at JSA. I've been with the firm for 23 years and I do a lot of work in the TMT space. So, yeah. I'm going to set the context for the discussion. When we talk about AI and diversity in Dispute Resolution. I think there's a temptation to start with the assumption that technology is either the solution or the problem and from a corporate perspective, because you know, I work with a lot of tech clients and of course, work with Glance inMobi as well. I don't think it's either I believe AI is essentially an amplifier and it has the potential to amplify access and efficiency. And there is a very real access to justice opportunity with AI that we are seeing, again from our perspective and we will of course get their perspective. A significant cost of disputes that we have noticed is associated with document review, legal research, translation, analysing large data sets and preparing a case.

If AI can substantially reduce these costs, it could allow smaller businesses and parties with fewer resources to pursue or defend claims that might otherwise be abandoned. But we should distinguish efficiency from equality of access. If one party has access to sophisticated models, proprietary data sets and specialist AI expertise while the other does not, we may simply be replacing the traditional question of who has the bigger legal team with, who has the better technology. So, the question is whether AI actually levels the playing field or simply creates a new playing field. And I think in light of the recent Supreme Court's draft regulations for use of AI in courts 2026, which came out for public consultation, it sort of sets the context even more for this panel. And I've just got a few pointers from the drafts. The draft expressly puts fairness and non-discrimination, transparency and explainability, accountability, auditability, data protection, inclusivity and accessibility among the governing principles. It also says AI models should not undermine due process, equality before law or access to justice. So, for this

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panel, the question is the AI deployed in courts would it promote inclusivity and expand equitable access to justice or will it actually be a dampener? On that note, I am going to throw my first lobby at Nand.

C.K. NANDAKUMAR: Thanks, Probir. I saw him rifle through a lot of notes and it actually made the two of us nervous.

PROBIR ROY CHOWDHURY: Because okay, but sorry, I'll just frame a question.

C.K. NANDAKUMAR: Yeah, sure.

PROBIR ROY CHOWDHURY: Yeah, we hear that AI will democratize dispute resolution by making legal services faster and cheaper, but does reducing the cost of a process necessarily make it more accessible could AI actually create a new divide between parties who have access to sophisticated AI tools and data and those who don't?

C.K. NANDAKUMAR: I'm going to try and be slightly contrarian in my response. I think you must look at this slightly differently because I don't know if the question is addressing the problem. The first thing I think you must understand and probably accept is that arbitration is not necessarily about access to justice, arbitration is about dispute resolution. They aren't necessarily the same. It could be the same and I'm not for a minute saying arbitration is not just but it's not traditionally the justice delivery mechanism that the courts are tasked with doing. It does solve a certain problem and that problem is typically a contractual dispute between two parties. It is not necessarily there to do equity to be fair, what about, you know, the bleeding heart and so on and so forth. That has an extraordinarily important place in society, but is that the role of an arbitral panel? Possibly not. That's the first remark I wanted to make only because I think very often we end up confusing issues over here.

But having said that, be it in India or in Singapore or anywhere across the world, in most parts of the world, at any rate, your arbitration laws, the local arbitration laws like the Arbitration Conciliation Act in India or the one in the UK or in Singapore would typically tell you that there has to be equal treatment of parties. This is where AI can be a real disruptor because it can make the playing field unequal. How do you address that? And that's possibly a slightly better frame to the question. I'm not for a minute taking away from what Probir put, but I'm just saying that this is a very nuanced point and it's important to get to the bottom of it. I think the question is, is AI aiding or not aiding equal treatment of parties? Because it's to do less with justice, it's got more to do with equal treatment. Answer to that in my view is very simply this I think certainly AI can aid equal treatment because it gives everybody a shot at it and I

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can tell you from personal experience, Paras will bear out any number of examples. Traditionally Indian lawyers or Indian litigants in SIAC arbitration or in an ICC or any other arbitration in Singapore used to or London used to struggle with the sophistication that was brought in by the foreign law firms and the and the QC's and so on and so forth because they had a huge amount of manpower to be able to throw at a problem. Because their conception is very simple whatever is spent, translates into costs and that's recoverable at the end of the day, if they succeed. The paperwork and the bookkeeping and the paper keeping of the Indian parties was traditionally very poor. I think, AI equalizes this to a large extent. I think, it levels the playing field here without any shadow of doubt.

If your question is a little more on the lines of who has the better technology, that's a slightly different point and possibly we can we can debate that a little later, but I think in terms of access to be able to let's take a typical construction dispute, you know, having 600 documents, having possibly even 6000 documents is not unheard of. How does somebody actually sift through all this? That is certainly something that you can take the aid of technology that's available and the Supreme Court regulations, since you mentioned them are a very useful pointer because interestingly, they apply not just to courts but also to all tribunals. Now does that include an arbitral tribunal, which is a creature of contract? Probably yes, because at the end of the day for your enforcement you got to come back to court therefore, I think in some way the Supreme Court is also trying to make a distinction between very importantly administrative functions and judicial or sort of where you have a discretionary issue. That distinction something to bear in mind. So really, again, from the point of view of the tribunal to be able to use AI tools, certainly I mean, I think it should be permissible on at least on the guidelines that the Supreme Court has indicated for now, which are of course, still at the draft stage but the important question is that I think we are addressing different questions, and that's something that we must bear in mind. To sum up, I would certainly say that being able to access technology gives a lot of people, I mean it could be a smaller company in a Laos or a Vietnam, which gives them an opportunity to be able to take on a large corporate base in Singapore because really you don't need the same man-hours working on it.

PROBIR ROY CHOWDHURY: Okay, Interesting let's hear Paras's view from Singapore.

PARAS LALWANI: I hold a slightly contrarian view, but I largely agree with you, Nanda. I think, probably when you asked the question, I think your question was, you know, we often hear that AI would democratize dispute resolution by making things, legal services faster and cheaper. And it's true it does make legal services faster and cheaper, but a democracy only works if everyone gets an equal vote. That's not the case with AI. Not everyone will have the

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same AI tools, not everyone will have access to the same AI tools reduce costs is helpful but access is not only about costs it depends on things like which AI tool you use, your digital literacy, the infrastructure that you have in your company, amongst other things. So, AI can in effect and we do find this in many arbitrations. It does end up exacerbating the divide between the big party and a small party. Because not everyone has access to enterprise grade tools. I came from an arbitration where one party used Google Translator to translate certain key contractual terms and Google Translator got it completely wrong. And so, we spent a large part of the arbitration arguing about which translation is correct. The cheaper tools may actually increase risks of hallucinations, inaccurate output, confidentiality breaches, so on and so forth. And what also ends up happening sometimes is that the larger party uses. Its advanced AI tools to generate output that the other side just can't challenge, there's no capacity.

The way I look at it is this. Yes, AI gets, it's like this. It's both parties are given a car, but one has given a Ferrari and one has given an ordinary sedan, now nine times out of ten, if you use the car, right, the Ferrari will always get there first. So, you know my... I think it does exacerbate the device. The way I look at it and this is to your point, AI helps the smaller parties enter the competition, but it helps the larger party dominate it and that's what I found.

C.K. NANDAKUMAR: If Tom cruise is to be believed, it's the driver, not the car. But jokes aside I think, Paras makes a very important and valid point. Maybe I'll reframe what I was trying to say in this fashion. I think earlier the smaller party, I mean I'm using smaller party it might have been an Indian large corporate but still the less sophisticated party, the smaller party, whichever way you want to look at it, earlier was not even in the contest. Now you are in the contest but yeah, you need to be smart about what car to pick. That's a separate point and a very important point, but I think you are in the running, you are you're not out of the race that's to me a big start.

PROBIR ROY CHOWDHURY: Since you gave me a segue since you mentioned about corporates we do talk but...

C.K. NANDAKUMAR: I know.

PROBIR ROY CHOWDHURY: I wish we had him here, but since you mentioned corporates and we do have you know Pooja from inMobi. So, I think Pooja, I wanted to ask you that you know and of course you guys use a lot of AI right it's sort of part of one of the core business verticals for you guys. From your perspective, where do you think we as in judges, courts, litigators, arbitrators should draw the line between AI assisting the dispute resolution process and AI influencing the outcome? Is there a meaningful difference between using AI to

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prepare a chronology and using AI to predict the credibility of the witness or the likely outcome of a dispute?

POOJA YEDUKUMAR: See, I believe that there is definitely a line the line should be at what point does it influence the outcome it should be accessible tool making things accessible versus the tool requiring verification of what it is making accessible, right? So, that's probably where you need to draw the line. For example, procedurally, it helps make everything efficient. Administratively, it makes everything efficient. So, I would and ought to be able to rely on a tool that that can do just that, you know, which doesn't probably need as much as human in the loop, but then it comes to certain say medium, you know, kind of risk areas like I may have done the first draft of a, you know, application via the tool, but say the second draft probably needs someone to verify it, say, you know, research probably needs someone to verify it because at the end of the day, you don't want to end up with your... what you've put down in your dispute to defend your dispute to be contested, right. And that's where I would probably, you know, come from. Thirdly, it's like what I think where it really draws the line, especially today when you know, we're probably still not ready with as much sophistication as we require with the AI tools, probably is what we would, you know, usually come and ask you so is, you know, what do you think would be the settlement value or what do you think would you know, can you predict an outcome for me, right? In my very specific case scenario in, you know, in the context of what the what works for my organization, that's where I think, I mean, I can totally imagine wanting to use and, you know, use an AI tool and ask these questions and get an answer. But I don't think it is sophisticated enough yet or probably to pass this point, it depends on the kind of tool you're using, and JSA may end up building a tool which probably has years of data, fantastic data, and a very sophisticated version of probably what I probably would have access to, say a smaller organization or so.

It's just that I think definitely there is a line. Where to draw the line today is probably, where you do require a human where you probably don't require a human, that's where you have to draw the line today and hopefully we'll get to a point where things become better. But absolutely agree that accessibility should be given, you know, to everyone you need to start that groundwork from to get from 0 to 100, right? You need to start that in place for the systems to pay.

PROBIR ROY CHOWDHURY: It's interesting because one of the prohibitions in the Supreme Court guidelines actually say that adjudication, an absolute prohibition is actually judicial outcome prediction.

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2 **POOJA YEDUKUMAR:** Yes.3 **PROBIR ROY CHOWDHURY:** It's like something that's been called out and said, you
4 know, they should not use AI for that. So, I think very much on point, would you like to
5 supplement?6 **PARAS LALWANI:** Sorry, I just to give the Singapore experience. So, Singapore as you as
7 you may know, the Singapore courts regularly use AI in all their disputes they've had pilot
8 programs or they have various initiatives. But in Singapore, what the courts use as a
9 touchstone, they use a traffic light system which is quite similar to what Pooja described.
10 Between acceptable and non-acceptable use of AI. So, green light is low risk applications that
11 support administrative efficiency or empower users. So, you have document classifications,
12 scheduling tools, translation apps, transcriptions, things like that that equalize the playing
13 field, particularly in the small claims Tribunal you have where the parties are unrepresented.
14 Then you have the orange one which Pooja you correctly pointed out, were things that require
15 some level of human in the loop and oversight. So those are things like tools that provide legal
16 information case summaries. We've got law net 4.0 which summarizes the cases for us, we
17 have GPT legal where you can ask questions of the computer and they'll tell you roughly which
18 cases may be relevant and then you have red which is not allowed and the concerns are
19 institutional accountability, transparency and bias. And that is where you have direct judicial
20 decision making or even witness evaluation. You have predictive analysis, sentencing, that is
21 not the ground for AI. And on... I should tell you, on my way to the hotel two days ago and I
22 came across a poster that is quite appropriate here and it said machine learning does nothing
23 for the human mind. And the arbitrators and decision makers must ensure that they don't
24 delegate what they have been put on the panel for their decision making ability, their ability
25 to evaluate the evidence, you can't delegate that to a machine.26 **C.K. NANDAKUMAR:** Can I just? I have just have a couple of quotes.27 **PROBIR ROY CHOWDHURY:** Yeah.28 **C.K. NANDAKUMAR:** Add a couple of months I mean, I think very, very sort of favourite
29 phrase of mine, which is somebody asks you to predict since she mentioned it. My classic
30 response is, look, I'm an advocate, not an astrologer. But I think AI is beating us to the game
31 because it's actually offering close to astrology. I had a very interesting matter related to
32 Singapore. It was actually a SIAC Arbitration, but we were in a Section 9 before the High Court
33 here it was on ironically in astrology and I actually told the judge that, you know, really one
34 would know if the app is good enough or not if it can tell you if I'm going to win this case or

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not win the case. But jokes aside, I think the three... the light signal, the traffic light signal that Paras has mentioned is a very interesting way of looking at it. I think the Supreme Court draft guidelines are largely on the same lines, except they haven't colour coded them. But I think it's a very useful tool and I certainly think that that should be the way forward. One excellent example I can think of is actually, two is given the strain and stress on the Indian judicial system and everybody is clamouring about pendency and what have you look at motor vehicles cases and cheque dishonour cases which in terms of volume are massive, right? But there's really no reason why they should be pending for months or years when ultimately, it's a question of, say for example, computation. I mean, if there's a disputed question of some fact or some, you know, on liability, I mean is the insurer liable or the driver liable or whatever, that's fine. I mean that's sort of an adjudication is all right. But actually, on the computation there is really no reason why a matter like that should detain a High Court for an inordinate period of time. And possibly these are cases where you can use AI and you nudge the parties in the direction of even a mediation and say, look, these are the predicted outcomes, you don't even need to involve the judge, you sort of send it to a mediation camp and say, look, these are the predicted outcomes, what do you want to do, do you really want to fight it out, do you really want to spend more money, why don't you just agree at the 75% mark and get on with your lives is probably a great outcome for everybody.

PROBIR ROY CHOWDHURY: You know, both of you actually have naturally led me to my next question, which is basically arbitrator selection, as an example. You know, if an AI system recommends arbitrators based on historical appointment data, are we comfortable assuming that the recommendation is neutral? Because the historical appointments themselves could reflect unconscious or structural biases, right? Could the algorithm actually perpetuate those biases because it's possible? Okay, you.

C.K. NANDAKUMAR: Happy to go first. There is a there is a problem in India with arbitrator appointment and AI. It's not so much in Singapore. Largely because most arbitration in India is still *ad-hoc*. Unless you have challenges to those awards and you have enough judgments from the commercial courts or the High Courts or the Supreme Court making a remark about the award, you just don't know who the arbitrators are, right? I mean, I might have written a rubbish award and I might escape with it or I might have written a great award and not get credit for it. So, you don't actually have a database or a publicly available database of what arbitrators doing, how well or how badly. It's all word of mouth and you know, I think for example, you know, it could be you or Maneesha or X or Y is a great arbitrator and/or is available, is not too busy or you know, I just... I'm just saying that these are this is

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typically how it unfortunately or fortunately works here. So, AI may not make the cut for the simple reason that you don't have a sufficient data set. But that's probably not entirely true in the case of CSAI which has a panel, a published list. So, who the arbitrators are and then you have a way of at least ascertaining what their about positions are and so on and so forth. So, I don't know if Paras has a different view on this, but I'm not too sure without a public database and especially given the amount of *ad-hoc* arbitration we have in India, if AI is going to help me enormously in my arbitrator's selection, it's still word of mouth. I mean, I might call X, X might call me and say, you know, I do know you had an arbitration before, you know, say Paras, was he nice to you? Was he you know, whatever do you think he's, you know... or it could be an area expertise, right? I mean X or Y is a lawyer with a lot of expertise in construction disputes or in or in securities disputes. That's another factor that can come in, but unfortunately the lack of this database is going to be debilitating for AI to function because ultimately you must remember AI is only as good as the data that you feed it in that you feed into it. So you're not going to necessarily get a great outcome unless you have the sufficient data set, which I'm not sure there is.

PROBIR ROY CHOWDHURY: Before Paras sort of comments just I mean it's not my field as I keep on saying, but one of the permissible use cases in the Supreme Court actually says case management, which are very different from arbitration, but yes, very curious to see that they have listed case management as permissible uses. Actually, it's I think concept can be used for judges and it's see...

C.K. NANDAKUMAR: Yes. So, case management probably slightly different from Arbitrator's selection. Case management is an extraordinarily useful tool. We have found it even in the commercial court in Bangalore for example, making a huge difference to how to plan your cases. People used to traditionally and this is joke which for those of you who know Vyapak, he made the joke and I promised to buy him a drink every time I repeated this joke, why do cases in India take so long? It's because we believe in reincarnation. That used to be the story. But happily it's no longer so. Commercial courts today and I can tell you any number of lawyers here who practice in Bangalore will affirm this. You file an any proceeding in the commercial court today you are looking at a your evidentiary hearings starting in 4 to 6 months, max and the final arguments in about a year or year-and-a-half and that's very impressive for most systems of adjudication across the world. In the US, if you actually go to trial, you don't typically get a hearing date for three years. So, we're actually doing better than even the US on some of these factors.

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2 Case management is enormously helpful to be able to plan and decide what you need to do,
3 what the disputed documents are, what aren't, to what extent you need to let in oral evidence
4 and to what extent there is a need for cross-examination? Delhi High Court actually, innovated
5 not I mean took the lead on this, I don't want to say innovated because it's obviously been
6 available across the world. Even earlier than the commercial court brought in the amendment
7 necessitating it. So, credit be given where it's due. It ironically can be true that you have a
8 faster adjudication through the commercial court system in say, Bangalore or in Delhi than
9 you might in an arbitration. And it's up to all of us to make sure that arbitration stays relevant
10 and has this sort of healthy competition. I'll actually give you another analogy. When these
11 cheap, when the low-cost flights started first, I remember the pioneer of that Captain Gopi
12 making a remark saying his competition is not the other airlines but actually, the railway
13 system. And it's a bit like that. The competition for arbitration today is very likely from the
14 commercial court system and that's really how you can use case management really well. And
15 arbitration is something that has shown us the way on how to do it well, and certainly that's
16 something that commercial courts are picked up and are doing fairly well.

17 **PROBIR ROY CHOWDHURY:** Thanks, Paras.

18 **PARAS LALWANI:** Okay.

19 **POOJA YEDUKUMAR:** Sure. No, I only have like my two cents would also be that to
20 Nanda's point that yes, the database is of course very important. The second leg would also be
21 when we want to select an arbitrator you know using the database, it comes down to what are
22 the prompts that we're going to put in, right? How are we going to prompt the system to give
23 us what we want because typically what would happen you put X filters say Singapore, English
24 law, you know SIAC or something and you're going to get, this is the person who's probably
25 been on the most number of panels or something like that, right? At the end of the day, suppose
26 you want something more out of the box, something more unique to your specific case
27 scenario, I think that's where probably prompting would, you know, become important then,
28 you know, you've got to like at the grassroots teach, I mean, typically as you were saying,
29 arbitration is more sophisticated parties, more commercial disputes, I hear you there, but still
30 somewhere you've got to get their education also in as to how important these things are, like,
31 you know, prompting to select your arbitrators, etc. So, of course, database one and my ...
32 would have also been, you know, just how you really going to get what you want out of that
33 system, yeah, yeah.

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PARAS LALWANI: From an International Commercial Arbitration perspective, I think Probir to your point, if there is already inherent bias or structural or otherwise or certain preferences, AI is just going to exacerbate those preferences because AI how a large language models work is they just use the past to predict the future or give you a recommendation. They are not going to root for the entrant who is up and coming and doing really well. They're not going to root for diversity. They're going to root for the same 10-20 people who have been arbitrating these kinds of disputes for years and years, and you're just going to entrench the *status quo*. So, the result and this is a problem that a lot of the institutions are trying to combat, is that the overwhelming number of arbitrators in the major commercial cases are what has been described as pale, male and stale, which is a fond way of referring to someone who's a senior, who's a male, who's Weston and a common law arbitrator and that tends to be the case. And it's always the same guys who will be appearing in the major cases.

AI is not the way to change that. The way to change that is to actually look at the young ones, see who's up and coming to actually cast your net wider, to have different options or to go to the institutions themselves to say, look, I'm looking for someone who is different from the *status quo*, who do you have, give me a list and then we'll go from there. Just to give you an example, I was at an MCIA event, a round table in Singapore two weeks ago where Justice Manmohan lamented how few Indian arbitrators had been appointed in international arbitrations. Now if you use AI to select your arbitrator, you will never ever see Indian arbitrators, it will carry on. So...

C.K. NANDAKUMAR: Or women arbitrators.

PARAS LALWANI: Correct, or women arbitrators. So, if the past is bias a an algorithm will recommend that bias at scale and you see that happening, not just in arbitration, you see it happening in other areas of AI. You all may be familiar with the COMPAS decisions in the US where compass was a sentencing algorithm that was used by the courts to predict a person's risk of reoffending and the judges would sentence based on what COMPAS recommended. Now, it so turned out that COMPAS was heavily skewed against African-Americans whilst disproportionately absolving white Americans. So, you would see white Americans get much lesser sentences because the judge, the algorithm would say, okay, this guy has a lesser risk of reoffending just because of the fact that he's white. It was scrapped, needless to say after some public outrage.

Similarly, Amazon scrapped in an AI tool when it became clear that the tool was learning from historical series which were inherently biased and which favoured male candidates. So again,

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you know the input is just as important or more important than the output. And if you want to change the way the system has been working with respect to the selection of arbitrators, you need a new approach. You can't use AI. It's just not it's not because AI is biased, it's just how it works.

C.K. NANDAKUMAR: Yeah, sorry, just wanted to add something because I think extremely important point and something that we should all certainly bear in mind, and this just typically highlights the risk that you have with AI. And this is exactly where you need to be smart about how you use it. Even without AI. I mean, the possibility of inherent bias in any kind of decision making is something you need to be guarded against. Excellent book on this is called 'Noise', which I think is co-authored by Daniel Kahneman, famously the first non-economist to run the economics Nobel Prize, where he makes the point about pretty much like what he said about the COMPAS case about inherently if you visualize who the accused is versus you don't visualize who it is. The difference in sentencing was quite skewed. That's the risk you run and equally this is probably a place where you must really democratize arbitration, if you want it not to be, love the phrase that he used 'pale, male and stale.' So you really want, you know, to see that happening and I must read it organizations like MCIA in doing it. They are actually walking the talk in appointing young women arbitrators and so on. And I think it's great for the system. The Karnataka Arbitration Centre is now opened up to lawyers and earlier, it used to be just the bastion of retired judges. So, you actually have young women lawyers working in law firms who are sitting as arbitrators in disputes referred by the Karnataka High Court to an institution that is run by the Karnataka High Court. And I think credit where it's due, that's an excellent development. So, that's certainly not AI driven and it's very unlikely to be AI driven and that's the question we must all take very seriously.

PROBIR ROY CHOWDHURY: So all three of you have again you know it's like it's flowing naturally, I love it. So, Pooja, should I then be asking how the model was trained because you talked about you know, what was fed, right? So, what data it relied on whether the data was representative to Nand's point, whether the result is explainable and whether the other side has any ability to challenge it?

POOJA YEDUKUMAR: Absolutely, yes. I mean that's kind of like the basic premise of building any AI tool, right? So, what the output that you are going to get is based on what your input is and if it's to your point, if it's already biased inputs, you are going to just exacerbate that. But I think we need to kind of also flip it into see what do you want to optimize for, right? So, are we our reliance on the tool needs to be what we want to optimize it for, so do we want to optimize it for efficiency, do you want to optimize it for unbiased judgments? So, who's the

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2 user of the tool, right? Is it someone who wants to be able to get access to the arbitration system
3 or is it someone like the judges, the clerks, the court, the court... I mean, the arbitrators
4 themselves who want to help them finalize their judgments, etc. or is it just for basic research?
5 I think we need to kind of optimize or rely on the tool bases what you want to optimize it for.
6 And it all stages you have to question whether this was tested, what has been the margin of
7 error, what is if has it been contested bases, okay, the entire fact pattern, it has been contested
8 has been retrained bases that you know, contest, etc. And at some point or rather at all points
9 and this is an ongoing process, it cannot stop. It has to keep it has to be a continuing process
10 and always it has to be explained. It's like that. I was just thinking about this the other day,
11 that old adage that justice needs to be seen to be done, not just done, right. So, you have to be
12 able to explain how you arrived at that particular evaluation so that you're also seen to be doing
13 justice at the end of the day. So yeah, that it's a continuous process and all what you said has
14 to be done on an ongoing basis and it will take time, I think, to build the tool free of bias. But
15 it has to start from somewhere.

16 **C.K. NANDAKUMAR:** Could I just add another dimension to this which is actually probably
17 increasingly relevant and certainly in India. With the arbitration, you have confidentiality
18 restrictions, right? Now, it's statutory. The statute recognizes confidentiality as being a given.
19 You also have especially with digital data, data protection, norms now which again complicate
20 matters somewhat. So, again, when you're using AI, I mean to just be sort of broad brush use
21 of AI, you need to be mindful of this because honestly, some of the manners in which AI is
22 used today won't make the cut. You could actually have inadmissible evidence at the end of the
23 day as something to be careful about. The other thing to sort of be mindful about is the fact
24 that when you think back and it actually goes back to the point that Paras was making initially,
25 you have again, different capacities of tools, you have the Ferraris to the lesser known cars and
26 the organic branding point therefore is that you have law firms, the really large law firms. I
27 don't know if I was already doing that, but I know Linklaters is probably one of the first ones
28 to do it. They were developing their own in-house tool. It was originally only for corporate
29 transactional work, but I think they were also looking at something over disputes Now, you
30 have a law firm which has the ability and the wherewithal to be able to develop its own AI
31 tools. It's never going to I mean, somebody's using Google Translator is not going to hold a
32 candle to them. This is again a very important point. I think disclosures can be one way to do
33 it where you where you kind of point out what your data set is or at least what tools you're
34 using and that at least gives everybody a chance to sort of do what they need to do.

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The second thing, which goes back to the point I was making about the Supreme Court draft guidelines, is I think to some extent, it brings about a level playing field in saying, look, you can use it for A, B, C tasks, but you can't use it for X, Y, Z tasks. So, really if it is preparing a chronology of events, if it's preparing a your bundle of documents sifting through letters. I think, it's fine. I mean you have a better tool, good luck You don't, just put three more junior lawyers on the job. That's still something that you can manage but I think the to be able to start using it for more adjudicatory functions is where the risk gets bigger and I think far more pronounced in.

PROBIR ROY CHOWDHURY: Paras?

PARAS LALWANI: Yeah, I fully agree with both Pooja and Nanda. I think asking a Tribunal to accept the output generated from an AI model without explaining clearly what the input was, which AI model was used, all of that. It's like having an expert come to the Tribunal and saying trust me, this is the answer. No need, you don't need to cross-examine me, you don't need to question me. No one in their right mind would agree to this. An opaque model undermines procedural fairness and it's a basic principle of fairness that the other party must have a meaningful opportunity to challenge it. I'll... This is evident in the cyber check challenges in the US where actually this happened across several US states where cyber check was a tool that was used to help investigators charge and convict suspects accused of serious crimes like murder, etc. Now the developer, however, refused to explain how the code worked. It refused to explain what data it used, refused to explain anything at all. The defence lawyers obviously succeeded in urging the courts to reject this tool and yeah, this is the black box problem that we face and yeah, if you don't challenge it, you can't expect people to just accept it without any meaningful way of being able to contradict it. So, yeah.

C.K. NANDAKUMAR: I just to add to that, I mean, I think they were initially some convictions and it's only in appeal that these convictions were overturned. So, it's actually a pretty serious consequence to somebody. And another point just to sort of reinforce what we've been saying is, was it Claude, who said that they're going to put out that every product of their or every output of theirs will say that it's generated by Claude. So, there's no sort of passing off as human output what really is an AI output. So, I think that's really you have sort of AI platforms which are telling you to be careful . So, that's I think where we are all at.

PROBIR ROY CHOWDHURY: Okay, great. We are very close to our time. So, I'm going to open up the panel for questions from the audience. If you do have questions, could you just

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2 raise your hand and would you like them addressed to. We do have someone at the back. Could
3 you also introduce yourself before you...

4 **C.K. NANDAKUMAR:** The conflict around the world, we can fix AI but never fix the
5 microphones.

6 **SAHIL:** Hi, good evening, this is Sahil. I'm from Dentons Link Legal. My question to the panel
7 is obviously now because firms obviously are developing their own AI platforms or you know,
8 they are taking external help. Recently, I came across. In fact, it's our firm in Canada and
9 certain other firms abroad, they are actually putting an AI surcharge on the invoice because
10 obviously, now today you have limited amount of fee earners and the hours are also restricted
11 in terms of the output that the human output in fact on a draft or on a matter. So I mean,
12 what's your take on this I mean, is it I mean, it's widely happening because there's a way to I
13 mean, it's something that needs to be tackled because ultimately, you see a lot of less hiring
14 happening because obviously, you are developing AI internally. So, I see this trend picking up
15 abroad at least what's your take on, you know, this sort of ideology, at least in in India?

16 **POOJA YEDUKUMAR:** It's just capitalism with that.

17 **C.K. NANDAKUMAR:** Question, I think Paras should go first.

18 **PARAS LALWANI:** He did say in India.

19 **PROBIR ROY CHOWDHURY:** Yeah, but he also said international firms

20 **PARAS LALWANI:** okay yeah I mean whatever. So, I think, you know, this is a question that
21 every law firm is struggling with I think we are looking you know, my firm included, we are
22 looking at ways in which we can fairly charge the client I think the hourly model may not work
23 anymore. So there are there are these concerns about do we have an AI surcharge, do we
24 charge? How do we measure how much of an AI surcharge to charge, you know, because you'll
25 still have the fairness that we'll need to take time to review the output that the AI has put in so
26 how do we charge, how do we be fair to both clients and to the firm itself? These are questions
27 that I don't have a ready answer for you. But I can tell you that I think that the model by which
28 firms are charging will change. How it will change I can't predict. I don't have the crystal ball.

29 **C.K. NANDAKUMAR:** I mean, I don't know if Probir has a view on this because I think from
30 the corporate point of view he might and be happy to hear yeah,

31 **PROBIR ROY CHOWDHURY:** Sure. So, JSA for example, we use Harvey. We've partnered
32 up with Harvey with an enterprise solution and we have deployed that across the firm and it's

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available for attorneys to use. We are not charging our clients for the cost because it's a per-user cost, but we are not charging it. I think to Paras's point because the output still needs to be reviewed, you know, it's being used across all our practice area. Our disputes practice also uses it a lot. But again, for data management and the corporate team uses it for diligences. We haven't yet reached a stage of charging the clients, but interestingly clients have, on the other hand asked us to not use, associates AOA1. And that we don't want to see time, time keeper entries by AOA1. And they want us to in fact describe in our sort of not invoices but just presentations, how are we using AI to save costs? It's the other way around. We are being asked to demonstrate that please tell us how we're using AI to save costs. So, it's the other way around. We haven't reached for charging.

POOJA YEDUKUMAR: Yeah, as a client, in fact, I would think that the surcharge maybe would be a little more appeal, you know, palatable to us if you can see the reduction in the number of, you know, lawyer hours or the ID hours accordingly. So it... yeah, it's just about how to balance the two, I guess.

C.K. NANDAKUMAR: Yeah. I mean, I think as far as India is concerned, I mean, you have to accept that there are different sort of the cross section of lawyers who are in say dispute resolution is very, very vast, right? You have the large law firms, you have the top seniors in Delhi who I mean AI, no AI; they'll charge you what they charge you. But I think equally importantly what this is now doing is to demand a lot more accountability from lawyers. And I think to that extent it's certainly welcome. I think, gone are the days when you just are able to send an invoice and sort of try and power through and say, look, it needs to be paid. I think you are looking at a lot more accountability of not just, you know, AI versus non AI, A1, AO, whatever was pointing. But also, I do know that there have been instances of across the world, I mean it's not just in India where you've had instances of say slightly padded invoices and what have you and those are things almost certainly which are things of the past. Because especially with the with the slightly smaller to medium-sized firms which are invariably in the pressure point of billing for want of a better description, you will see that I suspect that they will be more happy to say that, look, I'm very transparent with my billing and that in turn, I suspect will put more pressure on the larger firms. Because traditionally, the larger firms have been the go-to for the larger corporates, but there is no reason why that should continue if billing is not transparent. And I think that's certainly something that one has to sort of internalize to say that gone are the days of sort of unmitigated billing as it were and that accountability and sort of integrity of the accounting and billing process is today at a premium. And I think, it's a very important portion that I would sort of take back for all of us.

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PARAS LALWANI: Yeah, just to add to something that both Pooja and Probir both said that clients now don't want to be charged for junior time now. That's another question that keeps us in the in the firms awake at night because if the juniors are not going to learn the way we did, what kind of lawyers are you going to have in ten years? Are you going to have lawyers who truly understand the law? Or are you just going to have people who are used to having a machine generate summaries and just accepting it as fact, you know. So we worry for the impact AI will have on the training of our juniors and the sustainability of the firms. And this is a conversation that's happening across pretty much every...

C.K. NANDAKUMAR: Across the world I mean, I wholeheartedly agree with what Paras said and I and I think your... I mean, I'm just going to echo what he said and sort of dish out unsolicited advice to the younger lawyers. You're in an era where well, Probir spelled it out, A1, AO, Clients are putting pressure to say don't bill at all, you still need to sustain, you still need to push through those two, three, four years before you are you're really able to add value to a client. I mean, I, of course, might have a different view as a sole practitioner, but that's not true in a firm. You have those realities that you have. You can use AI, please use it I mean, it's a fact of life, please use it, but that's not at the cost of your hard work, your running those long miles, you just have to do it. You can't not read a document and say, all right, AI is going to read it for me, you can't do that. You absolutely have to apply your mind and that's the only way you will stand out. You will, if you don't do that, you'll simply become irrelevant. I mean, if not in in the next year or two in in maybe five, ten years, if you don't make it a habit of reading, of applying your mind of challenging yourself, of challenging someone else, you will simply become irrelevant. I mean, you can't delegate document reading to AI, you can't delegate drafting altogether to AI, you have to do it, you have to learn how to do it and still use AI to be able to do it. And that's really something that you must sort of learn to figure the balance out.

PROBIR ROY CHOWDHURY: Any more questions? Okay, we do have one here.

ARVIND: Hi, I'm Arvind. I'm from same as his firm. We spoke earlier about the gap that AI will create or will sort of or the democratization that could happen because of AI. My questions are a little bit of a Meta question, which is that stripping away AI for a moment. We see these *David versus Goliath* situations play out in disputes all the time, big law firm versus a sole practitioner. And I don't I wouldn't say we don't care, but I don't think we much care about the gap that exists there. So, is it that we care about that question in the context of AI because it's going to really exacerbate that gap to the point where it's really not really going to be a

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justice anymore, or is there any other reason we are looking at this question now because of the advent of AI?

C.K. NANDAKUMAR: Interesting point. I've been a Sole Practitioner for the most part of my life and I have been in that place many a times. I still am a Sole Practitioner, but point being, I don't think it's a new debate, I don't think it's a new question, but I think it's a new nuance to an old question and it's an important nuance. And it's important because the rate of change and the rate of the ability to create the disparity is much higher. And it's higher in a way that you haven't seen before. Also possibly I mean, I think you may take some context also, from the fact that traditionally in, let's say commercial disputes you had, you know, if you had one client go to a law firm, the other would as well. If one engaged a senior, the other would as well and so on and so forth, but that's obviously not true always. So, you certainly have this situation. Having said that, I think it's to me the present nuance and the present fact that you have the ability to cause like you rightly said, the scale of variance can be much higher than has been before. And that to me is a factor to keep in mind. You're talking about a geometric sort of progression of difference, which was actually not the case earlier.

PARAS LALWANI: So, I fully agree, I think it's not... I don't think we're saying that David would never win Goliath. I think there will be instances where David would win. But they would need to do a lot more because Goliath has all the tools now at its disposal. Imagine, you know, you have a corporation that is able to use its AI tools to summarize 20,000 volumes of documents. Now one side has AI, the other side has anxiety. But you can still win it, you know, it's just that that it does exacerbate the gap and I think that's the reality we need to be mindful of. That's it.

POOJA YEDUKUMAR: Yeah, I don't think we're any of us are challenging the fact that we shouldn't use it because it may increase that gap, but there are certain uncomfortable truths we're sitting with about the readiness, the bias, the transparency, etc., and it's about how do we overcome that. But the big advantage that I see and you can so you cannot not, you know, not use AI is just simple cost reduction get, you know, get access to grassroots levels, etc. right? So, it's there's a huge advantage. But then yeah, it's about we are sitting with problems that we have to solve and that's the uncomfortable truth.

PROBIR ROY CHOWDHURY: Oh, we have time for one last question, the gentleman at the back. Thank you.

ADITYA: Hi, I'm Aditya I'm a junior in Nanda sir's Chamber. So, there was a there's actually a lovely comparison.

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C.K. NANDAKUMAR: This is exactly what bias is.

ADITYA: It's a lovely comparison that Nanda Sir actually put across about the driver and the car where these are the two factors that you're considering. I'm actually worried about a third factor which is the fuel right because right now I mean it's a running gag where you're people put very inane queries into AI and they say, did you really waste 40L of water for this query. So, how will this technology become more and more will it become more and more exclusive because right now it is a fairly pervasive technology, but in the next five years, ten years, will it really be that pervasive considering the cost behind it? Yeah, sure, I mean a lot of AI data centres are coming up, but we are also facing a natural resource exhaustion at some level. And this is a technology that is very cost heavy in those terms. So, will it become a technology in the next few years which is only accessible for a select few and for a select few instances also?

C.K. NANDAKUMAR: I think the only parallel that I am able to sort of look at is say software services. They were extremely exclusive, elusive even when because when I was growing up, probably some of us, I think we saw computers and started meaningfully using them only in my later years of college. And once I started working. A few years later, you had it much more easily accessible. But I think also the cost of more exclusive and more advanced technologies will incrementally become much higher. And I think that's what it will be. Having said that, the economics of it is be balanced with the environmental impact, certainly a factor, which is why if you want to find out which is the best place to serve you say *bhelpuri* or whatever and in this locality try not to use AI, use Google search, it's less detrimental to the environment. But that jokes aside, I think you have to start looking at this as a premium subscription tool. It's because I think the free facility, my sense, I don't know, I mean, we probably need a technologist to tell us is that it's going to get lesser and less attractive. The more attractive one is going to be the one that you want and that is going to come at a premium. I don't know if somebody from the in-house has a different perspective, but I certainly think that's what's going to happen.

POOJA YEDUKUMAR: No, I agree with you there that, the larger corporations are going to have the means and methods and as well as the access to a huge database to create better tools, right? And to come up with something that's more sophisticated. But on the other side, I was just thinking that maybe at some point maybe, you know, there would be a more federated system of, you know, tools out there.

C.K. NANDAKUMAR: The access to data, that's I think at the heart of it that's going to be...

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POOJA YEDUKUMAR: Somewhere it's a good thing in the sense to create the database, it's a good thing that you have these, you know, bigger players who are going to build it. But at some point I think you have to start giving access to people who do not today. So, I don't know how that's going to play out, but maybe the government is going to aid in some way maybe, you know, they're going to, you know, ask the bigger corporations to kind of facilitate some more access. I don't know how it's going to play out, but you can't... yeah, I mean, I think you do need the corporations to start building that because that's how the database is going to get out there in the first place.

PROBIR ROY CHOWDHURY: Okay, our time is up. Thank you, Pooja, Paras and Nand they all available for questions outside so but thank you so much and thank you. That's the free session.

ALISHA SHARMA: Ladies and gentlemen, let us just thank JSA Advocates & Solicitors and Rajah & Tann Asia for this insightful session that challenged us to think about technology, not just as a tool but as a force for inclusion or exclusion in dispute resolution. Thank you so much. I would now request the panel to get a group picture. Thank you so much.

**THIS HOUSE BELIEVES THAT REPEAT APPOINTMENTS ARE MORE A
THREAT THAN A BADGE OF EXCELLENCE**

JUDGE

DR. HARISH NARASAPPA

SENIOR ADVOCATE

KARNATAKA HIGH COURT

MODERATOR

ANKIT GOYAL, PARTNER, RPC

SPEAKERS

(For the Motion)

DHYAN CHINNAPPA, SENIOR ADVOCATE, KARNATAKA HIGH COURT

BHAVYA MOHAN, PARTNER, ARGUS PARTNERS

(Against the Motion)

MEENA VENUGOPAL, PARTNER, KOCHHAR & CO

**POORNIMA HATTI, COUNSEL, ARBITRATOR AND MEDIATOR, CHAMBERS
OF POORNIMA HATTI**

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2 **ALISHA SHARMA:** We would now like to begin with a very interactive IAW Bangalore
 3 Debate organized by MCIA on the motion that this House believes that that repeat
 4 appointments are more a threat than a badge of excellence. The debate will be moderated by
 5 Mr. Ankit Goyal. Presiding over today's debate are our distinguished judge, Doctor Harish
 6 Narasappa. Speaking for the motion are Ms. Bhavya Mohan and Dr. Dhyan Chinnappa.
 7 Speaking against the motion are, Ms. Meena Venugopal and Ms. Poornima Hatti. I request
 8 you to please join us in welcoming judge, the moderator and the speaker for this much awaited
 9 debate. I would now request the panel to come on the stage. And may I please request everyone
 10 to kindly take their seats.

11 **ANKIT GOYAL:** We are just allowing for more people to just come back after an intense
 12 discussion that's happened before us on AI algorithms and diversity and inclusion. Can I
 13 request, you know, for people to sort of come in.

14 **ALISHA SHARMA:** I request everyone to please get their coffees inside and enjoy the
 15 insightful debate. Just give us five minutes.

16 **ANKIT GOYAL:** As we are getting people to come in, I understand Poornima has a little
 17 announcement to make. Poornima, I should say that it should be nothing about influencing
 18 the judge who's sitting on my left.

19 **POORNIMA HATTI:** Thank you. I just thought it would be inappropriate if we started this
 20 evening without a word of, memory and about Senior Advocate D. L. N. Rao. He was a dear
 21 friend for many of us in the audience today and a stalwart of the Karnataka bar and he passed
 22 away, this morning. Despite that I know many dear friends of Mr. Rao are still in the audience
 23 today. So, may I request you to please observe a moment of silence in his memory and then
 24 we'll start the debate. Thank you.

25 **ANKIT GOYAL:** Thank you. Good evening, everyone. We are conscious that this is slightly
 26 later in the day, although start-off what is promising to be a very exciting week, the India ADR
 27 Week. And I think we've got a deliberately provocative topic today. The topic is that 'This
 28 House believes that repeat appointments are a threat instead of a badge of excellence.' And
 29 honestly my role is very limited other than of course, just introduce the topic for all of you. You
 30 are all familiar with the speakers and the judges. But let me just quickly say a few words in
 31 terms of how this operates.

32 Now, this topic is not really only just trying to talk about arbitrator independence. I think,
 33 what it does is it talks a little bit about how the arbitration market operates. There is a bit of a

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tension between the need for arbitrators who are specialized, competent and are solid on process and therefore, deserve to be appointed again and again. But at the same time, when we talk about arbitrator independence, we actually are not talking about actual bias, we're talking about perception of bias. So, the key question that the debaters today have to answer is when does repeated trust become problematic dependence? That's that sort of friction and competition that you have to look at. I was also intrigued a little bit by the comments that were made in the previous session on artificial intelligence. There was a little talk about what the data set that's available to artificial intelligence, it's going to perpetuate the same arbitrators being appointed. I think I would also look to the debaters, you know, throwing a last minute change of syllabus, talk a little bit about the role the arbitral institutions play and they play a very, very important role. Of course, we've heard about MCIA's role in trying to break that inertia of appointing the same arbitrators 'pale, male, stale,' to appoint new arbitrators in the context of arbitration. But is there something to be said about the role that arbitral institutions play in trying to actually have the right arbitrators with the right sort of competence, but also bring in new fresh blood. So, there are fair amount of competing issues at play over here. And we're looking forward to an engaging debate.

I have with me on my left, Mr. Narasappa, who's going to be the judge. He has been a cornered by the two sides outside, so I'm hoping he's still maintaining his independence, which he will. This is not a repeat appointment. For the motion, we have Mr. Dhyan Chinnappa and Bhavya Mohan who are going to be progressing the arguments to say that they generally do believe that repeat appointments are in fact, a threat. And against the motion we've got Poornima Hatti and Meena Venugopal who are going to be saying actually no, this is very much a badge of excellence and certainly not a threat. Before we go ahead, and I just want to quickly get a sense from the audience where we all sort of stand. So, I'm going to ask a question and I would be grateful if you can just raise your hand as an indication. So, the question is who all in the audience believe that repeat appointments are in fact a threat and not a badge of excellence? Who all think that repeat appointments are a threat? Can you please raise your hand up? I'm not going to count, just getting a broad number. So, repeat appointments are a threat, okay. Hands down. Thank you so much. Can I now check who all believe that repeat appointments actually are a badge of excellence and are not a threat. Okay, I think that leaves a fair amount of people who have not raised their hand. So, therefore those are your target audience but you know, I'm guessing you'll be also....

POORNIMA HATTI: You have to keep towards your right, I think we already have the motion.

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ANKIT GOYAL: You'll be able to change, you know, the opinion of the people as well, okay. With that sort of long opening, I'm going to, I think the division of time has been agreed between the parties. I will give this give this now to the 'for the motion' to start off and then we will go one by one. Thank you.

DHYAN CHINNAPPA: Honourable judge, distinguished speakers, my fellow opponents, ladies and gentlemen. Many years ago, many, many years ago, actually, a client came to me and told me that he's going to give me all his book, all his litigation was mine. I was overjoyed, I mean, a young lawyer getting all the work, a lot of money. He was a crook that was a different thing, I fought long and hard. I won many cases, I lost a few. But every time I lost I realized that I felt terrible for him. I felt I should have won because I was dependent on him so much and I believed that I should possibly have been the judge because then I could have swung the case in his favour. But then, ladies and gentlemen, don't blame me after I'm after all human, I'm not an arbitrator. You know, there are many law firms, all across the country, where if you know that the law firm is appearing in that arbitration, you know who the arbitrator is going to be. Well, badge of excellence. Of course, let's take it at face value for now, but then they choose them only for arbitrations, not for the small one. So, then you have a huge array of arbitrators. But the big ones only have the same arbitrators. Given the high stature of these individuals is very difficult to challenge them.

Then there are friendly arbitrators. I'll give you another example of this. Friendly arbitrators are those who are friends with other arbitrators. If I'm appointed as the arbitrator, I'll choose my friend as the Chairman or the Presiding Arbitrator and if he's the arbitrator, he'll choose me as the Presiding Arbitrator. It's a mutual symbiotic relationship which you will see across the board in our country. Then you have the empanelment. Of course, that's the common example whether it's a formal list, informal list, the arbitrator knows that he has a fair chance of being appointed as an arbitrator every time that PSU or entity has a dispute with a third-party.

In all these scenarios, the question that has to be asked is are you repeatedly appointed because you are independent and excellent or are you excellent at being appointed repeatedly? Let's look at some fundamentals like Ankit said, law should not only be impartial but should seem to be impartial. Justice, like Caesar's wife should be above suspicion, right? This is of course not look at the Parties and what they say, but to look at it from the point of view of an innocent or an ordinary bystander who then looks at it and says, well, in this scenario, given the fact that this arbitrator has always been appointed by this party. Is it likely that the outcome will be just or fair? And in arbitration, we speak of this in such an easy way that the arbitrator is

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related or connected to someone else. But please look at it from the point of view of a judge in a court. A judge in a court, you look at things very differently, the slightest amount of conflict is raised. I know for a fact a judge once said I can't hear the case of a particular bank. Why? Because I have an account in that bank. I mean, that's the level to which a judge goes to say I shouldn't be looked at in any form or manner as being partial to one party. Having a bank account I don't know, it's bizarre.

Second, repeat appointments create an economic incentive. You must not forget that arbitration is not a monastery. Arbitration has a hell of a lot of money and we all know that when a particular arbitrator is preferred as an arbitrator repeatedly by the same party, the incentive of money acts as a significant factor in his own mind. An arbitrator may ask himself, am I biased? The answer may be I'm not biased at all. But if it comes to a scenario where I have to swing the unconscious bias which is writ large in every individual will work in his mind when he has to make a decision. And that decision is where you are worried. That case which could possibly be swung not because of the merits of the case but because an arbitrator feels he must support the party who has nominated him, not once but repeatedly. Then it concentrates power in the hands of a few. It prevents new entrants from coming in. You have this arbitration club, as you normally call it, of a select number of arbitrators who are always found deciding or being part of panels which means good arbitrators, new arbitrators have that threshold difficulty in getting in. Of course, they say you need experience to get a job but you need the job to get experience.

Now the IBA Rules say repeat appointments require scrutiny and disclosure in **Halliburton versus Chubb** that gives an important illustration multiple appointments involving overlapping subject matters the UK courts hold may create an appearance of bias and can trigger a duty of disclosure. So this is not an Indian eccentricity but you know it's a global concern. But India has an additional problem most of Indian arbitrations are *ad-hoc* and not institutional. Questions that arise are who appointed the arbitrators, how many times by whom, in what kind of disputes, how frequently by the same party or Counsel without that information, the party who wants to challenge an arbitrator is fighting with his hands tied at the back. And that is why the solution cannot simply be trust or trust the arbitrator. System must be designed so that trust is deserved and demonstrable. Well, let's not get it wrong. I'm not saying that repeat appointments should be prohibited, it's impossible. If, as Ankit says, an arbitrator is good, obviously he'll be appointed repeatedly. But the question is, if arbitrator is repeatedly repetitively appointed, is concentrated and is dependent on the same party, counsel or institutional ecosystem, that is the problem. So, let me say this where institutions like Ankit

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said come in is to prevent that problem which *ad hoc* arbitrations does is to prevent a problem of a same party appointing a similar arbitrator because you play a role in ultimately deciding whether that arbitrator should be the arbitrator in that arbitration.

So, let me end with this. Experience is a virtue, reputation is a virtue, expertise is a virtue, but repeated dependence on the same appointing ecosystem is not a virtue. The legitimacy of arbitration rests on one precious commodity and that is trust. And ultimately, you must ask yourself if a losing party is asked about his experience in arbitration. He will of course say, it's a terrible award. Every winning party says it's a great award, the losing party says it's a terrible award, but he should say I lost. But I still believe the arbitrator was not very good but he still was impartial. If repeat appointments begin to make that sentence harder to say, then they are no longer a badge of excellence but of incoming misery. Thank you.

POORNIMA HATTI: Thank you. I just want to point out that Dhyan, Harish and I were on the same panel last year and maybe the year before. Clearly, repeatedly on the same stage, in the same room. Many of you are also repeatedly attending the India ADR Week. Why? Because you're learning something, it's a good experience for learning and maybe there is some excellence that is being taught here today. We are the opposition, we believe that repeat appointments are a badge of excellence, not a threat. I'm not sure who the threat it would be to? The proposition did not explain what that threat was. May I also say that the first speaker for the proposition has almost conceded the debate. They said that yes, repeat appointments are going to happen. They are going to happen, why? Because of experience. They're going to happen, why? Because you believe in that arbitrator.

We're not talking today to say that there should be no disclosure, we're not talking to say that we want partial arbitrators, we're not talking to say that we don't want arbitrators who are not independent. What are we saying? We're saying that if somebody is good, I should be able to appoint them once, twice, five times. I will disclose that does not mean that that arbitrator is necessarily dependent in any manner either for financial gain or otherwise from this appointment.

Now let's start with this. Would you rather have brain surgery by a surgeon who's operated, let's say 500 times or with a novice because you want to expand the pool of surgeons and make sure that some new surgeon gets a chance to operate. I'm sorry, I'm quite clear if anybody in my family is getting operated, it's by an experienced surgeon. Would you go back to that same restaurant that you love so much every weekend because you like the food or would you go and

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try somebody well, not so new, may not have that Michelin star because you want to give them a chance.

There are three arguments that I'm going to make today. One, clearly, there is a case that the proposition doesn't have. There is a causal link that doesn't exist. Repeat appointments are not caused by bias. Repeat appointments are caused because of excellence. And an excellent arbitrator will ensure that they disclose and this is not only in India but everywhere in the world. And repeat appointments do not mean that the issues under consideration in each of those arbitrations are different. So, I'm not sure what the tension the moderators tore here and I'm quite clear that this is all the way in favour of the opposition.

Now let's talk about actual evidence. The only thing that is in the public domain are the challenges. And let me tell you, between 2010 and 2020, there were ten public exit disqualification decisions that came out, solely on this point repeat appointments. Can any of you guess how many were disqualified? Any hands? Zero, none. That means every repeat appointment was held up because they were good arbitrators who knew what they were doing. One of the sort of the poster boy cases for the proposition would be the case of ***Raiffeisen Bank versus Croatia***, where an arbitrator was appointed more than ten times and the Chairman said there's no problem with that because there was no proof of bias. There was no issue of independent. ICSID data shows that for the past ten years, 75% of their arbitrators are repeat appointments.

Now here's another argument I want you to consider. If repeat appointments were such a big issue the folks that know most about this the arbitration institutions, the MCIA here, DIAC, the ICC, the SIAC, the name it LCIA, none of them are saying that repeat appointments are bad. They're asking for disclosure, they're asking for discussion none of them, not even one is saying that repeat appointments are bad. Let's also talk about UNCITRAL. In 2023. For the first time UNCITRAL folks got together and you know how UNCITRAL works consultation, working groups, submissions from states, practitioners, civil society everybody sat together and brought out a new code of conduct specifically on this issue and what do you think they said, no problem with repeat appointments disclose and disclose over a five-year period.

So here, while my opponents are talking about concentration of power with a small elite arbitration clubs. And let me tell them, suppose, I want to be appointed on arbitration. I've never had that chance yet. Let's expand the pool I'm not pale, male, or stale yet, but I want to be there. But that's not the problem of the arbitration users if they want a good arbitrator, they're not going to point some girl from South India just because they want to expand the

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pool. That's the market problem and that's the institutions who are doing a good idea about that. So, the system Mr. Chinnappa talked about who's designing the system? The legislation clearly and Ms. Venugopal will address that in the Indian context, the institutions I've already told you. So clearly this motion is in favour of the opposition and I request you if you haven't changed your mind by now, by the end of the debate you will with me. Thank you.

ANKIT GOYAL: Those are some vociferous opening salvo both from Dhyan and Poornima. Are you up?

BHAVYA MOHAN: Hi, good evening everyone. Thanks for that, Poornima. I completely agree, we are judging excellence. Who is judging excellence here in repeat appointments? People judging the excellence are the parties that have made the appointment and presumably succeeded in the arbitration. So you have a customer who is judging excellence here is this a badge of honour. Is this a customer loyalty program, I wonder? Having this, having parties appoint the same arbitrator repeatedly having counsel or law firms appoint and I say this with the disclosure that please... please everybody in the audience when you have an opportunity, please do reappoint us as many times as you want. We are happy to disclose etc., etc. Disclosure is a diagnosis. Poornima is completely right, how many times has an appointment been set aside because it was a repeat appointment? The answer is, not very frequently. There have been instances. There was a Mr. Bingham in the UK who was deriving his income as an arbitrator, 25% of his income was coming from the same party. He was called an in-house arbitrator, not an impartial one. But the point is that, does disclosure suffice? The point is that even if disclosures are made and there is a challenge made, all of us know when that challenge is going to happen. Once you have a Section 34 challenge, once you have a Section 40 challenge are we really... is it really efficient for the sake of having somebody who has experience and who has supposed excellence to go through the entire process and then be so inefficient as to look at and examine whether we want to overturn that on that basis and how many judges, how many courts are really going to do it? And we have to be alive to the fact that who is making those decisions? Whether we like it or not, it is a pool that is quite co-dependent like Dhyan said, friendly arbitrators are often friends. So, we have to be mindful of that because the process ultimately, unlike people speaking in this lovely event or attending this lovely event, is a process of adjudication, is a process where rights are being decided. And fundamentally, I think there are three reasons why this room should decide for the motion.

Number one, is selection. The selection of a repeat arbitrator is done by who? It is done by the party, it is done by the law firm and it is generally the law firm or the party that succeeds. I do

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not see a losing party no matter how honourable and how wonderful they think an arbitrator is, in my experience, I have not seen them reappoint that very arbitrator.

The second issue is anchoring and the argument for excellence or the argument for expertise in a field is that that particular arbitrator is familiar. He knows contracts of that type, he knows the sector. And sure that is a very, that is a credible argument in fact, there is an exception to disclosures for that very purpose for a narrow and limited industry expertise. But the point is that that also comes with some amount of anchoring and some amount of bias. If you have an arbitrator who has decided the same kind of contracts time and again, you kind of know because it's human tendency, you kind of know how that's going to go, right, because we have a tendency to confirm what we think is right.

And the third issue according to me is asymmetry. The party that is appointing the arbitrator again or the law firm that is appointing the arbitrator again has had the benefit of seeing how the mind of that arbitrator works. Do we really want to for the sake of supposed and the expectation of excellence, want to take chances on that? And I leave you with a question of are we really in... when we are looking at repeat appointments, are we really rewarding excellence or are we rewarding the chance of brilliance or the chance of an arbitrator being brilliant, basis experience. And I think we have to systemically not reinforce the risk that it is the latter. Thank you.

MEENA VENUGOPAL: Good evening, everyone. I think they've all said so much that I don't have to say much, I think that's the benefit of coming in the last. We are the opposition and my colleague Ms. Hatti has already set the tone of our opposition. As she rightly pointed out, we want the best. We want the best doctors, we want the best engineers, we want the best of everything then why not the best of arbitrators? Why is there a differentiation when it comes to appointing arbitrators? So, they said that repeat arbitrations are a threat. I think it's a presumption that repeat arbitrations, repeat appointments are a threat.

On the contrary, when an arbitrator gets appointed time and again, it means that they are best in their field. And they have sufficient expertise to deliver a fair and an impartial verdict in a time bound manner. So, I think the opposition is not challenging the repeat appointments by itself, but the perceived loss of impartiality or integrity in repeat appointments. Already in India we have a dearth of very good arbitrators, and I mean to say good arbitrators, I mean good in the sense of capable of understanding and ruling on the subject matter. So, arbitration as an Alternate Dispute Resolution is still not the chosen path in India, at least in India. So, in domestic disputes, you see most of them want to go to the courts and predominantly, when

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they go to the courts, of course, they have the entire system at their disposal. So, at some point in time, they wanted to channelize arbitrations properly. And then the Indian legislature introduced the concept of disclosures.

The first one to come out with the disclosures concept was the IBA, which Poornima already pointed out. IBA came out with a whole list of disclosures; red list, orange list and I think one more green list and waivable red list, non-waivable red list. So, India very readily accepted and amended the Act. It brought in sweeping changes which none of the opposition wants to talk about. So, the amendment brought into the Arbitration Act, at least as far as India is concerned because that's what I want to concentrate on, they contemplated provisions where the arbitrator has to disclose not only the circumstances which would affect his ability to be independent and impartial, but also, able to devote sufficient time to complete the arbitration in a time-bound manner. So, India introduced the 5th Schedule and it perceived, it only perceived situations which prescribe situations, which could be perceived as conflicting or impeding the arbitrator's independence or impartiality. It set out some of the circumstances, please note, not all, it set out some of the circumstances which would need to be disclosed to ward off any presumptions or aspirations that may be cast on their independence. So, they also set out a form in form in Schedule 6, and they also put out the list of perceived conflicts in Schedule 5.

Now, presume that an arbitrator has given a disclosure. A party, that's opposing party always has a right to challenge the same. They can seek for termination and substitution of an arbitrator. So at least in India, the Indian Arbitration Act has built in sufficient safeguards to ensure that repeated appointments, if made, do not affect the independence or impartiality of the arbitrators. I think that most of the audience will agree with me also on that because I can see some of the heads being shaking. It's a perception by the opposition that repeated arbitrations will lead to favourable awards, in favour of the nominating party, but I don't think so. They have the statistics to prove that. So, arbitrators are not laymen. If you see the arbitrators, they are all very well educated, they are best in their field. They know and they also know that incorrect disclosures and non-disclosures could entail appointment being set aside and being substitute or being substituted. So, they know the repercussions. And I think, they would not want to do that at the cost of their reputation, right? So, the real issue here is not repeated appointments but the resume bias which comes along with such appointment. So, I would don't want to repeat it again that Arbitration Act now holds light on any possibility of bias or impartiality.

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2 **ANKIT GOYAL:** Ms. Venugopal, I have to say you'll be eating into your time for surrebuttal.
3 So maybe you want to conclude.

4 **MEENA VENUGOPAL:** So I want to talk about *Halliburton case*, just for two minutes
5 yeah.

6 **ANKIT GOYAL:** Okay that's going to take away from your time for surrebuttal, I can give
7 you 30 seconds at best.

8 **MEENA VENUGOPAL:** Okay, I want to end this conversation by saying in Kannada,
9 [KANNADA]. So, when a child my mother left a child with the mongoose, she came back and
10 saw that the mongoose was full of blood, she killed the mongoose then she realized that the
11 mongoose was safeguarding the child from a snake. So, don't kill the mongoose, kill the snake.
12 That's what I would like to close my arguments with. Thank you. Thank you for listening to
13 me.

14 **ANKIT GOYAL:** Thank you. Dhyan, are you going up? Okay. I think it would be fair to say
15 that a minute and a half, perhaps for both sides, maybe I'll give you two minutes in a minute
16 and a half for you guys.

17 **POORNIMA HATTI:** Two minutes.

18 **DHYAN CHINNAPPA:** Two minutes, we didn't finish our...

19 **ANKIT GOYAL:** Okay, go ahead. Clearly, I'm not getting any repeat appointments.

20 **DHYAN CHINNAPPA:** Repeated panellists. She says, but repeated panellists by whom? We
21 spoke on different subjects at different fora and appointed by different institutions. The panel
22 is not only in the India Arbitration Week. We were by SIAC, by MCIA and various other
23 institutions therefore what we are different. Then of course brain surgery. Do you have a
24 surgeon who is operated on 500 brains to operate? Of course, but would you have one surgeon
25 who operated on the same brain over and over again to operate on you? Answer, I think is no.
26 And that answers the question. Really it's just one brain. And if the same brain is appointing
27 you repeatedly, it shows that he knows what the outcome is going to be. Restaurants, Michelin
28 star of course you go to a Michelin star restaurant if you have all the money and you are, you
29 expect a certain quality, but that doesn't mean that there aren't others who will give you the
30 same quality. So, you go to someone and you ensure that you appoint people who will then
31 decide impartially, just like you go to a restaurant and then make a choice. Well, MTR may be
32 sometimes better than Michelin star restaurant, the 'M' is common.

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See interestingly, she says, institutions, they don't repeat the appointments. Meena says, and I think this is a complete answer to what we are saying that Arbitration Act has built in sufficient safeguards. The IBA has different lists. All of this do what? It ensures that arbitrators are not repeatedly appointed for the same subject matter, for the same parties, and why do they do that? Because quite obviously, there is that fear that repeat appointments of arbitrators for either the same subject matter or for the same parties will give rise to an apprehension of bias. And that is the real answer, in this case. When you say and the motion is whether repeat appointments are a threat or a badge of excellence. Well, some may think it's a badge of excellence, but you must never forget that what is unconscious is the bias that operates in the mind of a person because let us not forget, we are all human. And when you are appointed repeatedly, you know where your loyalty lies and that is a threat to arbitration itself. Therefore, I don't think you really have the option. You must vote in favour of the motion. Thank you.

ANKIT GOYAL: All right, I'll be generous. 10 seconds go ahead, take a minute and a Half if you've got things to say since Dhyan was so tough on me.

POORNIMA HATTI: Moderator, seeing the light is giving us more time therefore. Have you noticed that the surrebuttal focused primarily on restaurants and brain surgeons and not so much on arbitration, I wonder what that is telling us about the nature of the surrebuttal itself, right? No, let's look at that debate proposition again. This House believes that repeat appointments are more a threat than a badge of excellence. I don't see independence, impartiality, bias disclosure, then. Why then are we focused again and again on those issues? A badge of excellence and a threat aren't actually opposites. Excellence is what makes you a repeat pick and every institution that I studied this with real data and real stakes draws the same line. And I'm saying the same thing tonight. Transparency and not suspicion.

As I've said earlier, there has been maybe one or two arbitral appointments that have been set aside. Because it's very, very difficult to prove this suspicions. And if you read the case of *Raiffeisen versus Croatia*, the Chairperson clearly says, 'it is difficult to prove what was wrong with this repeat appointment.' May I also reply on the point that look, I know how this arbitrator thinks. Parties spend enormous amount of time and money understanding how an arbitrator thinks prior to any appointment, repeat or otherwise. Now, if you know how a party is going to look or an arbitrator is going to look at indemnity or look at an issue of construction, I know that before I have appointed them. And if I've appointed them and I know how they're thinking. And if the case suits them, why can't I appoint them again? There is absolutely no reason. And we're talking about excellent arbitrators, not arbitrators who are what do they call them friendly clubs or whatever else, we don't know of any such arbitrators. We know only

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about excellent appointments. Proposition wants you to be suspicious of experience, I want you to be suspicious of that logic. Vote for us.

ANKIT GOYAL: Thank you, Poornima. So, in this part, Dr. Narasappa, we'll will be grateful for you to share your thoughts on what you've heard from both sides on this proposition. But before you deliver your eventual verdict, we will probably go back to the audience to get an audience poll. I should say that you've made up your mind and you've locked and loaded what your decision is, but it will not be influenced by what the audience thinks. But I think we'll just sort of keep that structure.

DR. HARISH NARASAPPA: Okay, thank you. Thank you and the audience. So, full disclosure Poornima was my partner in, you know, in a firm that we had both a part of not neither, but we are not done... but I knew Dhyan before I knew Poornima. So, I think it balances out no bias here. See, I must compliment the organizers and picking a topic that is actually very balanced. Three points I want to make. One, about 100 years ago, Justice Cardozo speaking for the New York Court of Appeals, when he was dealing with the issue of fiduciary duties of directors said that people who are bound by fiduciary duties can't be treated on the same level as marketplace models. Fiduciary duty is a very, you know, it's a high duty and you know, we should not be worried about, you know, marketplace models to judge people who are bound by fiduciary duties. I think that's what we are dealing with. Are we assuming that people who are appointed as arbitrators are going to be paragons of virtue? Or are they susceptible to the ordinary temptations of the marketplace?

So, the second point that I wanted to mention was about four weeks ago, I was talking in a social occasion with a General Counsel from another city and he said, oh, who are the good arbitrators in Bangalore? And I happened to mention person A and I told him in my opinion, I think he's one of the best arbitrators India has ever produced. And then he immediately he was talking to his colleague and he said, oh, have we appointed him? Then the colleague said, no, no, that arbitrator, even if we appoint him, he will decide only according to the merits. So, we have not appointed him so far.

The third point and this I think the comparison between arbitrations where there's a high value in the dispute and there are institutions of reputation who are appointing the arbitrators. You also have arbitrations in disputes that are of extremely low value, say a 10 lakh dispute, a 2 lakh dispute, a 5 lakh dispute and in that world there are people who act as arbitrators in say, a thousand disputes for the same party. So I think that's a different world that we are talking about. So when you are voting do consider whether repeat appointments by itself is a challenge

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or is badge of honour a normal expectation because you are appointed multiple times and I'll leave it to you I mean as Ankit said I have decided but okay...

ANKIT GOYAL: Okay, I think maybe you can stay there. You can stay there, okay. And I'm very glad that your comments are slightly open ended and I put you in a tough spot by doing what I did, but I think this is the moment when we come back to you at the start of the session I asked this question, I have to say that the response that we got was 50-50. Let's see if...

POORNIMA HATTI: They were tending towards us towards... we didn't do an individual. Count properly.

ANKIT GOYAL: Let's see if that has changed from the time that we started. So now the question is, all those who believe that repeat appointments are a threat and not a badge of excellence, please raise your hand. Okay everybody, oh my god. Can you put your hand down? All those who believe that repeat appointments actually are a badge of excellence and not a threat, please raise your hand. Mr. Narasappa, you are now please free to give your decision knowing what you've known about the audience's views.

DR. HARISH NARASAPPA: I don't think repeat appointments are a threat by themselves, I'm qualifying.

POORNIMA HATTI: Thank you very much.

ANKIT GOYAL: All right, thank you everyone. Please, I thank the speakers and that's the end of the session. Thank you.

HOST: On behalf of the MCIA, I would like to thank our moderator and distinguished debaters for taking the time to be a part of this debate this evening. I do think that a successful debate is one where you need not have to turn opinions or views, but rather give individuals a more informed and enriched perspective and I think this debate that this evening. Thank you so much. If I may, please request all our speakers to take a photograph. Thank you everyone.
