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AI AS ARBITRATOR: TESTING THE BOUNDARIES OF SECTION 11 UNDER INDIAN ARBITRATION LAW

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Introduction:

In Today's Time, AI has taken up space in almost every industry. Also, in places where one wrong move by AI can cost running blood to the involved parties. Likewise, AI has been also adapted in the Indian Legal Industries, specifically in Arbitration. Many parties to it prefer now ODR which is Online Dispute Resolution after post NITI Ayog in 2021. The question arises as to the fast-growing pace of AI in Legal world is whether can an AI Arbitrate under the 1996 Act?

Whether an AI can be considered as a "person" under section 11 of The General Clauses Act? The Supreme Court of India in its Judgement of "Perkins Eastman Architects DPC v. HSCC (India) Ltd", established the scope of "Person" in arbitration.

Facts of the Case:

HSSC (India) Ltd. Is a government entity under the Ministry of Health. They hired Perkins Eastman- an international architectural firm, for construction project. The contract between them had an Arbitration clause which says, "The MD of HSSC will appoint an Arbitrator".

Dispute arose between the parties. HSSC's MD appoints an arbitrator as mentioned in the arbitration clause. Perkins challenged this clause saying, MD cannot appoint an arbitrator as he is the party to the dispute and he has direct interest to it. Therefore, the arbitrator appointment by him was compromised from the start.

The Core Legal Issue:

Can a person who has an interest to the dispute or who is the nominee/officer of a party to the dispute- appoint the sole arbitrator?

More specifically, if that person is themselves ineligible to be an arbitrator under the Fifth Schedule of the Arbitration Act, can they delegate their appointment power to someone else through a contract clause?

What the Court Held:

No. Unequivocally. The Court held that the person ineligible cannot decide the appointment of the "Sole Arbitrator", referring to the Case 'TRF Ltd. V. Energo Engineering Projects Ltd'. HSCC is a disqualified party u/s 12(5) of the Arbitration and Conciliation Act, 1996, which says "Notwithstanding any prior agreement to the contrary, and person whose relationship with the parties or counsel or the subject-matter of the dispute falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator" and hence could not unilaterally elect an arbitrator.

Also, the Court held that the CMD being the direct party and interest being involved, cannot appoint the arbitrator. The Perkins Eastman which was unincorporated consortium was managed outside India, brought the matter within section 2(1)(f)(iii) of the Act, making it an International Commercial Arbitration.

Critical Analysis:-

The Court's reasoning- that a person ineligible to 'serve' as arbitrator under Sec 12(5) is also ineligible to 'appoint' one- is not explicitly stated

anywhere in the seventh schedule. This is purposive extension, not a literal one. A Fair criticism is that the court legislated the new disqualification category through Judicial interpretation, rather than leaving that choice to the parliament.

Another question raised was party autonomy problem. The court prioritized the 'appearance' of neutrality over the parties' contractually agreed appointment mechanism. Since neutral seeming arbitrators carry unconscious biases, reputational incentives and repeat appointment relationships with the law firms or PSUs that never surface on paper.

Where AI enters the analysis- This is precisely gapping an AI Arbitrator could, in theory, close. An AI system has no financial stake in the outcome, no career incentives to please relationship with either party's counsel.

Aftermath: –

Perkins Eastman's neutrality principle was quickly complicated by CORE v. ECI-SPIC-SMO-MCML (2019), decided weeks later, which upheld a unilateral appointment clause where the arbitrator was chosen from a broad panel – creating inconsistency between when unilateral appointment is disqualifying versus when it survives.

Courts since have applied both lines selectively, leaving the law unsettled.

In practice, PSUs and large corporates responded by shifting toward panel-based or institutional appointment mechanisms (ICC, MCIA, SIAC) instead of single-officer discretion, aligning with India's push to be seen as arbitration-friendly.

Notably for your AI angle: despite this, the Arbitration and Conciliation Act's Seventh Schedule remain unchanged – still built entirely around human relationships and financial interest. No Indian legislative or judicial development since 2019 has addressed algorithmic bias or AI decision-makers in arbitration, even as global bodies like the ICC have begun issuing guidance on AI tools in

arbitration (not AI as decision-maker). This legislative silence is the gap your paper steps into.

Conclusion: –

Perkins Eastman v. HSCC remains a landmark judgment for entrenching a strict, almost prophylactic standard of arbitrator neutrality – disqualifying not just biased appointments, but the very possibility of interest-based bias at the appointment stage itself. Yet its aftermath, particularly the inconsistency with CORE, shows that even this strict standard remains unevenly applied within Indian arbitration law.

Read through the lens of AI arbitration, Perkins Eastman offers a paradox: an AI arbitrator, structurally free of financial interest or personal relationships, would satisfy the Court's own neutrality test more completely than most human arbitrators could. Yet the statutory framework the Court relied on – Section 12(5) and the Seventh Schedule – was never built to address the risks unique to algorithmic decision-making: data bias, lack of transparency, and unequal access to the technology itself. This reveals a genuine regulatory gap rather than a simple extension of existing law.

As AI tools become increasingly embedded in legal and dispute resolution practice, Indian arbitration law will eventually need to confront this question directly, rather than by analogy to human-arbitrator jurisprudence. Perkins Eastman gives us the principle – that neutrality must be protected even at the risk of overriding party autonomy – but not yet the framework to apply that principle to a non-human decision-maker. Until the legislature or courts address this gap, AI's role in arbitration will remain confined to assisting human arbitrators, rather than replacing them.



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