

EFFECT OF NON-DISCLOSURE BY ARBITRATOR UNDER SECTION 12 OF THE ARBITRATION AND CONCILIATION ACT, 1996

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ABSTRACT

Against the backdrop of accelerated economic growth and expanding spheres of commercial activity, arbitration has emerged as one of the most feasible alternatives to the conventional means of dispute resolution which is suited to the unique needs of the swiftly-moving society. The unencumbered operation of arbitral proceedings and the associated transactions, however, rest on the cornerstones of neutrality and impartiality. The 2015 amendment to the Arbitration and Conciliation Act, 1996, which constitutes the legislative backbone of arbitration in India, sought to firmly integrate these features within the Indian legal framework governing arbitration. It is the author's contention that these cornerstones now constitute an integral part of the Indian law governing arbitration. Through a careful scrutiny of the recent judicial precedents, the author establishes the significance accorded to arbitral neutrality within the Indian arbitral framework, highlighting the consequences of failure to ensure the same. The author has drawn upon foreign jurisdictions to conclusively analyse the credentials of the Indian judicial framework by making a comparative examination of such provisions in light of the legislative and judicial framework of the UK, USA, Singapore and France. The article has been concluded with an assessment of the adequacy of the aforementioned Act with respect to disclosure obligations, an exposition of the challenges that encumber the ability of the aggrieved parties to seek relief along with suggestions to alleviate their distress.

1. INTRODUCTION

With the advancement of global development, there arises a dire need to promote a flexible, cost-efficient and time-saving method of conflict settlement, as the traditional justice delivery system may prove to be rigorous, resource-intensive, and time-consuming. In response to the requirements of the new world, the Arbitration and Conciliation Act of 1996 (“Act”) was enacted in order to create a speedier and more effective process for resolving disputes and to promote arbitration as an alternative conflict resolution mechanism in India.¹ Arbitration is a legal process where a dispute is settled with the help of a selected professional (arbitrator) and the decision reached is legally binding on the parties.² In today’s time-constrained culture, arbitration stands as one of the most sought-after methods of resolving conflicts outside the courts, saving significant time and resources of the parties involved.

The nomination of the arbitrator is a crucial initial step in the arbitration procedure as they serve as the cornerstone of the entire arbitral proceeding. Freedom and neutrality are key to equitable and unbiased arbitration.³ In order to ensure efficient arbitration, it is imperative that the appointed arbitrator remains neutral and unbiased towards both parties. As the 1996 Act failed to provide a mechanism to assess neutrality, the Arbitration and Conciliation (Amendment) Act, 2015 came into effect on 23 October, 2015 with an objective to elevate the standards of commercial arbitration across the country.⁴

2. ARBITRATORS’ OBLIGATION TO MAINTAIN INDEPENDENCE AND TRANSPARENCY

With the 2015 amendment, fair assessment and impartiality of the arbitrators was encouraged. Section 12 of the Act primarily regulates the arbitrators’ impartiality. The 2015 amendment to Section 12(1) of the Act requires a prospective arbitrator to provide a written disclosure of certain circumstances that could cast doubt on their independence or impartiality. This provision prohibits an arbitrator from conducting an arbitration hearing if they have a bias against one or more of the parties involved. As per the 6th

1. The Arbitration and Conciliation Act 1996 (26 of 1996).

2. ‘What is Arbitration?’ (World Intellectual Property Organisation) <<https://www.wipo.int/amc/en/arbitration/what-is-arb.html>> accessed 9 January 2024.

3. Craig R Tractenberg, ‘Nuts and Bolts of International Arbitration’ (2019) 38(3) Franchise Law Journal 451, 468.

4. The Arbitration and Conciliation (Amendment) Act 2015 (3 of 2016).

Schedule, every arbitrator is obligated to disclose all material facts before the commencement of arbitral proceedings. This disclosure forms the basis for determining whether any such condition exists or whether the arbitrator falls within the scope of any of the grounds, as envisaged in the Schedules 5 and 6.

The arbitrator must assess whether a circumstance casts a doubt on their objectivity. Section 12(1)(a) requires the arbitrator to disclose any financial, business, professional, or other interests in the subject-matter of the dispute that would affect their neutrality, as well as any direct, indirect, past, or present affiliations with the parties.⁵

To achieve an acceptable and just resolution, it is crucially important for arbitrators to maintain objectivity throughout the proceedings. The arbitrator must disclose their relationship with the parties, counsels, or subject-matter of the dispute, if any, at the time of their appointment in order to demonstrate objectivity.

Section 12(5) of the Act further clarifies the grounds for challenging the appointment of an arbitrator and reads as follows:

12. Grounds for Challenge -

(5) "Notwithstanding any prior agreement to the contrary, any 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".⁶

If it is later discovered that the arbitrator has a connection to any of the parties listed in the Seventh Schedule of the Act, or if he has a personal stake in the outcome, he will be deemed ineligible, and the arbitration proceedings may be challenged under Section 12(5) of the Act.

A. Judicial precedents defining the Scope of Section 12 of the A & C Act and the obligations of the Arbitrator

1. HRD Corpn v GAIL (India) Ltd⁷

In this case, the Hon'ble Supreme Court held that if an arbitrator fell under the category of Schedule Seven, they would not be eligible to conduct

5. The Arbitration and Conciliation (Amendment) Act 2015 s 12(1)(a).

6. The Arbitration and Conciliation Act 1996 s 12(5).

7. *HRD Corpn v GAIL (India) Ltd* (2018) 12 SCC 471 : 2017 SCC OnLine SC 1024.

arbitration. Section 12(5), read with the Seventh Schedule, specifies that if an arbitrator falls under any of the rules and regulations referred to in the Seventh Schedule, they would be ineligible for selection as an arbitrator in that case. The arbitrator would have to be substituted by another arbitrator under Section 14(1) of the Act. Furthermore, if the disclosure falls under the Fifth Schedule, such an arbitrator can be questioned before the arbitral tribunal, in accordance with Section 13 of the Act.

2. *Ram Kumar v Shriram Transport Finance Co Ltd*⁸

In the *Ram Kumar*, the Hon'ble Delhi High Court crystallised the obligation of a proposed arbitrator to disclose circumstances that may give rise to justifiable doubts with regard to their independence and impartiality, as mentioned under Section 12(1) of the Act. The judgment mandated that the proposed arbitrator, before appointment, shall disclose circumstances that are likely to give rise to doubts in context to their independence and impartiality. These circumstances are to be determined as per Schedule V of the Act by the proposed arbitrator. If circumstances giving rise to justifiable doubts are found to exist, the proposed arbitrator shall make a disclosure as per Schedule VI of the Act. Failure to make the required disclosure under Section 12(1), despite the existence of such circumstances, may constitute grounds for setting aside the award under Section 34 of the Act.

3. *A K Builders v. Delhi State Industrial Infrastructure Development Corpn Ltd*⁹

The Delhi High Court, in this matter, held that any objection under Section 12(5) of the Act, addressing a person's ineligibility to serve as an arbitrator, could only be waived by an express, written agreement made after the disputes between parties had arisen. The Delhi High Court emphasised that a person who was disqualified to serve as an arbitrator would also be unable to name an arbitrator.

8. *Ram Kumar v Shriram Transport Finance Co Ltd* 2022 SCC OnLine Del 4268 : (2023) 298 DLT 515.

9. *A K Builders v Delhi State Industrial Infrastructure Development Corpn Ltd* 2022 SCC OnLine Del 627.

4. *C & C Constructions Ltd v Ircon International Ltd*¹⁰

In this case, the Presiding Arbitrator failed to disclose his relationship with the Respondent and his appointment as an Independent External Monitor (IEM) in the initial disclosure. This information surfaced after the Petitioner's hearing to contest the appointment of the Arbitral Tribunal, raising concerns about the Presiding Arbitrator's objectivity. The Court held that the Petitioner's nominee for an arbitrator lost the right to continue serving in that capacity, and their separate terms as the arbitrator and as the Presiding Arbitrator ended. The court ordered that prior to proceeding further with the reference, the arbitrator must make the disclosure required under Section 12 of the Act.

5. *Lanco-Rani (JV) v NHAI Ltd*¹¹

In this case, Mr. Basant Kumar was selected as an arbitrator by the National Highway Authority of India (NHAI) on March 30, 2005. Legal proceedings commenced on July 9, 2005, and the Award was announced on January 5, 2008, after 19 sittings. However, under Section 12 of the Act, it was not disclosed that Mr. Basant Kumar had become NHAI's technical advisor during this time, violating the law. The Court ruled that, as per Section 12(2), an arbitrator must promptly and in writing disclose circumstances mentioned in subsection (1) unless parties were already informed. As of October 23, 2015, Section 12(1) required disclosing circumstances likely to give rise to doubts about independence or impartiality. The Court held that the challenged Award dated January 5, 2008, could not be upheld in accordance with the law.

6. *JV Engineering Associate v General Manager*¹²

In this case, an employee of the respondent railways, covered by Clause 1 of the Seventh Schedule of the 1996 Act, served as the arbitrator. The person who selected the arbitrator was also protected by Section 12(5) in conjunction with the Seventh Schedule. However, the arbitrator violated Section 12(3) of the 1996 Act by failing to make the mandatory declaration. The contested award, which was given by an arbitrator ineligible to arbitrate, according to the Court, ought to have been revoked because there was no express written waiver as required by the proviso to Section 12(5).

10. *C & C Constructions Ltd v Ircon International Ltd* 2021 SCC OnLine Del 3148.

11. *Lanco-Rani (JV) v NHAI Ltd* 2016 SCC OnLine Del 6267.

12. *JV Engineering Associate v General Manager* 2020 SCC OnLine Mad 4829.

Analysis: The analysed judicial precedents collectively underscore the critical role of Section 12 in shaping the dynamics of arbitrator appointments and ensuring the fairness and transparency of the arbitration process. The consistent judicial emphasis on mandatory and timely disclosure requirements signifies a well-established legal landscape rather than a recent development. These decisions collectively underscore the importance of not only procedural compliance but also the substantive impact of non-disclosure on the legitimacy of arbitral awards. This evolving jurisprudence reflects a broader commitment to building trust in the arbitration process and upholding the validity of arbitral awards in India.

3. ARBITRATOR'S DUTY OF DISCLOSURE AND THE MECHANISM EMPLOYED BY FOREIGN JURISDICTIONS

According to international standards and practices, an arbitrator has a responsibility to disclose any fact or circumstance that, in the opinion of a reasonable third party, would give rise to reasonable doubts about their impartiality or independence. This disclosure is a crucial component in arbitration.¹³ If a rational third party thinks it is likely that the arbitrator will decide the case based on criteria other than the merits of the case, justified doubts arise. This obligation applies before the arbitrator accepts an appointment to serve as an arbitrator and persists if new information or circumstances arise throughout the course of the arbitration proceedings. The obligation to disclose is anchored in the arbitrator's paramount duty to maintain objectivity and independence from the parties throughout the arbitration. Analysts have repeatedly emphasised the connection between arbitrator disclosure and the arbitrator's obligation to uphold independence and impartiality towards the parties. Since the arbitrator has easier access to the majority of the material necessary to evaluate their objectivity or independence, the responsibility lies with them to disclose such material facts.

A. Mechanism Employed in Foreign Jurisdictions

The duty of an Arbitrator to disclose has been dealt with differently in different jurisdictions, in this scenario, the instance of United Kingdom, United States of America, Singapore and France have been expounded.

13. Hiarlouski Vitali, 'Arbitrator's Impartiality and Independence' (Jus Mundi, 12 May 2023) <<https://jusmundi.com/en/document/publication/en-arbitrators-impartiality-and-independence>> accessed 9 January 2024.

I. United Kingdom

The Arbitration Act of 1996 in the United Kingdom¹⁴ offers a regulatory framework for arbitration. Arbitrators have a responsibility to disclose any facts that can give rise to legitimate concerns about their independence or impartiality. References are frequently made to the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration.¹⁵ If a party feels that the duty of disclosure has been violated, they may dispute the arbitrators; this issue may be handled in court or by the arbitral institution.

Judicial Precedents

A. Fiona Trust and Holding Corpn v Privalov¹⁶

In this case, the Court of Appeal of England and Wales addressed the issue of an arbitrator's duty to disclose potential conflicts of interest. The court held that, the duty of arbitrators to disclose circumstances that might give rise to justifiable doubts about their impartiality was an essential aspect of the integrity of the arbitral process. The decision emphasised the importance of maintaining the independence and impartiality of arbitrators, even when they were appointed by the consent of the parties. The case set a precedent for a robust duty of disclosure in the English law, highlighting the significance of arbitrators' ethical conduct.

B. C v D¹⁷

In this case, the High Court of England and Wales considered a challenge to an arbitrator's impartiality based on alleged non-disclosure. The court held that the arbitrator had failed to disclose relevant information about his involvement in a previous arbitration involving one of the parties. The failure to make this disclosure amounted to a breach of the arbitrator's duty to provide full and frank disclosure. As a result, the court set aside the arbitral award, highlighting the seriousness with which English courts view an arbitrator's duty to disclose any potential conflicts of interest.

14. The Arbitration Act 1996.

15. IBA Guidelines on Conflicts of Interest in International Arbitration adopted by Resolution of the IBA Council (23 October 2014).

16. *Fiona Trust and Holding Corpn v Privalov* 2007 Bus LR 686 : 2007 EWCA Civ 20.

17. *C v D* (2007) EWHC 1541 (Comm).

C. **Halliburton Co v Chubb Bermuda Insurance Ltd**¹⁸

This recent case was a challenge to remove the chair of a Bermuda Form ad hoc arbitration tribunal for apparent bias as a result of his failure to disclose his subsequent appointment to the tribunal by one of the parties in a separate arbitration initiated by a third party. That same arbitration resulted from the same Deepwater Horizon event in the Gulf of Mexico in 2010 and dealt with comparable issues. Although the Supreme Court denied the appeal and declined to remove the arbitrator, it welcomed the confirmation of the test for apparent bias in international arbitration, holding that there is a legal need to disclose facts that could give rise to the appearance of prejudice.

Analysis: In the United Kingdom, the regulatory framework for arbitration is primarily governed by the Arbitration Act of 1996. The UK places significant emphasis on arbitrators' duty to disclose any facts that may raise legitimate concerns about their independence or impartiality. Judicial precedents, such as *Fiona Trust*¹⁹ and *C v D*,²⁰ have set a robust precedent for a duty of disclosure in the English law, highlighting the importance of maintaining the integrity of the arbitral process. The UK acknowledges the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration, further underlining the commitment to ethical conduct by arbitrators. In contrast, India, with its 2015 amendment to the Arbitration and Conciliation Act, has introduced explicit requirements for prospective arbitrators to provide written disclosure of circumstances that could cast doubt on their independence or impartiality.

Sections 12(1)(a) and 12(5) outline specific grounds for disclosure and challenge, respectively, emphasising financial, business, professional interests, and ineligibility based on relationships with parties or counsel. Judicial precedents in India, such as *HRD Corpn v GAIL (India) Ltd*²¹ and *Ram Kumar v Shriram Transport Finance Co Ltd*²², highlight the judiciary's commitment to upholding fairness and transparency in the arbitration process through stringent scrutiny of arbitrator disclosures. Both jurisdictions share a common commitment to maintaining the integrity of arbitration through robust disclosure requirements, reflecting a global trend

18. *Halliburton Co v Chubb Bermuda Insurance Ltd* (2020) 3 WLR 1474 : 2020 UKSC 48.

19. *Fiona Trust* (n 16).

20. *C v D* (n 17).

21. *HRD Corpn* (n 7).

22. *Ram Kumar* (n 8).

toward enhancing trust and accountability in alternative dispute resolution processes.

2. *United States of America*

In the United States, the duty of disclosure for arbitrators is typically governed by state and federal laws. The American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR) also have their own rules and guidelines.²³ Arbitrators are required to disclose any potential conflicts of interest, prior associations with the parties or their counsel, and other circumstances that could cast doubt on their impartiality or independence. Challenges to arbitrators based on a failure to disclose can be resolved in court or through the arbitration institution's procedures.

Judicial Precedents

A. *Hall Street Associates, L.L.C. v Mattel, Inc*²⁴

The issue in this case was whether the parties to an arbitration agreement might contractually expand the grounds for judicial review of an arbitral verdict beyond those permitted under the Federal Arbitration Act (FAA).²⁵ Although the case was not primarily about an arbitrator's obligation of disclosure, its consequences for the arbitration process were substantial. The United States Supreme Court ruled that the FAA's grounds for vacating an arbitral award were exclusive, and that parties could not contractually enlarge those grounds. While not directly linked to disclosure, this decision emphasised the importance of arbitration finality and how challenges related to an arbitrator's failure to disclose must be limited to the statutory reasons specified in the Federal Arbitration Act (FAA).

B. *Commonwealth Coatings Corp v Continental Casualty Co*²⁶

In this case, the U.S. Supreme Court addressed the issue of an arbitrator's duty to disclose potential conflicts of interest. The Court held that arbitrators had a "duty to disclose to the parties any dealings that might create an impression of possible bias." The decision emphasized the importance

23. International Disputes Resolution Procedures, 1 March 2021.

24. *Hall Street Associates, L.L.C. v Mattel, Inc* 2008 SCC OnLine US SC 20 : 552 US 576 (2008).

25. Federal Arbitration Act 1925.

26. *Commonwealth Coatings Corp v Continental Casualty Co* 1968 SCC OnLine US SC 215 : 21 L Ed 2d 301 : 393 US 145 (1968).

of an arbitrator's impartiality and the duty to avoid any relationships or circumstances that might lead to a perception of bias. This case has been cited as a foundational precedent in the United States for an arbitrator's duty of disclosure, underscoring the need for transparency and ethical conduct in arbitration.

Analysis: In comparing the arbitrator disclosure practices in the U.S. and India, both prioritise transparency and ethical conduct. The U.S. offers flexibility, allowing parties to shape their own rules within statutory bounds, as seen in key precedents like *Commonwealth Coatings Corp v Continental Casualty Co*²⁷ and *Hall Street Associates, L.L.C v Mattel, Inc.*²⁸ In India, under the Arbitration and Conciliation Act of 1996, a prescriptive approach mandates rigorous written disclosures by arbitrators, with specific challenge grounds outlined. Judicial decisions, like *HRD Corp v GAIL (India) Ltd*²⁹ and *Ram Kumar v Shriram Transport Finance Co Ltd*³⁰, underscore the judiciary's commitment to scrutiny. Despite differences, both jurisdictions prioritise maintaining trust and integrity in alternative dispute resolution, aligning with global trends in robust arbitrator disclosure regulations.

3. Singapore

Singapore has become a hub for international arbitration, and its legal framework is based on the International Arbitration Act. Arbitrators in Singapore are required to disclose any potential conflicts of interest and circumstances that may affect their impartiality or independence. The Singapore International Arbitration Centre (SIAC) has its own rules and guidelines.³¹ Challenges to arbitrators can be brought to the SIAC, and its Court of Arbitration has the authority to rule on such challenges.

27. *ibid.*

28. *Hall Street* (n 24).

29. *HRD Corp* (n 7).

30. *Ram Kumar* (n 8).

31. Arbitration Rules of the Singapore International Arbitration Centre 6th edn ('SIAC Rules') (1 August 2016).

Judicial Precedents

A. **PT Prima International Development v Kempinski Hotels SA**³²

In this case, the Singapore High Court considered a challenge to an arbitral award based on the alleged lack of impartiality of the tribunal. The challenge was related to the failure of the arbitrator to disclose a potential conflict of interest. The court ruled that the arbitrator's failure to disclose a prior relationship with one of the parties amounted to a breach of the arbitrator's duty to provide full and frank disclosure. As a result, the court set aside the arbitral award. This case underscored the importance of an arbitrator's duty to disclose potential conflicts in Singapore's arbitration jurisprudence.

B. **First Link Investments Corpn Ltd v GT Payment Pte Ltd**³³

This case involved a challenge to an arbitral award on the grounds of apparent bias due to a failure to disclose potential conflicts of interest. The Singapore High Court ruled that the arbitrator had not provided sufficient information about a prior relationship with a law firm involved in the arbitration, leading to an appearance of bias. The court set aside the arbitral award, emphasising the importance of a high standard of disclosure to maintain the integrity of the arbitration process in Singapore.

Analysis: In Singapore, a burgeoning hub for international arbitration, the legal framework, anchored by the International Arbitration Act, mandates arbitrators to disclose potential conflicts of interest and factors that might compromise their impartiality or independence. The Singapore International Arbitration Centre (SIAC), as a leading institution, has established its own rules and guidelines, with its Court of Arbitration possessing authority to address challenges to arbitrators. Judicial precedents, such as *PT Prima International Development v Kempinski Hotels SA*³⁴ and *First Link Investments v GT Payment*³⁵ underscore the critical importance of arbitrators' duty to disclose potential conflicts and maintain the integrity of the arbitration process in Singapore. In *PT*

32. *PT Prima International Development v Kempinski Hotels SA* (2012) 4 SLR 98 : 2012 SGCA 35.

33. *First Link Investments Corpn Ltd v GT Payment Pte Ltd* (2014) SGHCR 12, Suit No 915 of 2013.

34. *PT Prima* (n 32).

35. *First Link* (n 33).

Prima, the court set aside an arbitral award due to the arbitrator's failure to disclose a prior relationship, highlighting the significance of full and frank disclosure. Comparatively, India, through its Arbitration and Conciliation Act of 1996, amended in 2015, shares a commitment to robust arbitrator disclosure. However, Singapore's emphasis on maintaining its status as an international arbitration hub is reflected in the stringent standards set by SIAC, demonstrating the jurisdiction's proactive approach to upholding the highest ethical standards in the arbitration landscape.

4. *France*

In France, international arbitration is governed by the French Code of Civil Procedure. The Code provides that arbitrators must disclose any circumstances that could affect their independence or impartiality. The International Chamber of Commerce (ICC), headquartered in Paris, is a widely used arbitration institution. Challenges to arbitrators can be submitted to the French courts, and the court has the power to decide on recusal.

Judicial Precedents

A. *Samzun v De Wee*³⁶

In this French domestic arbitration case, the Cour de cassation, the highest court in the French judicial system, addressed the issue of an arbitrator's duty to disclose. The case involved an arbitrator's failure to disclose certain facts and relationships that could have given rise to doubts about his impartiality and independence. The Cour de cassation held that an arbitrator's duty of disclosure is a fundamental principle of French arbitration law and that the failure to disclose can lead to the annulment of the arbitral award. This decision underscored the importance of maintaining the integrity of the arbitration process in France by ensuring full transparency in arbitrator appointments.

Analysis: In France, international arbitration, governed by the French Code of Civil Procedure, mandates arbitrators to disclose potential biases, with non-compliance risking annulment of arbitral awards, as seen in the *Samzun v De Wee*.³⁷ The International Chamber of Commerce (ICC) in Paris fortifies France's global arbitration standing, and challenges to arbitrators

36. *Samzun v De Wee* Cour de cassation, France, Decision No. 07-44.124 (2 July 2008).

37. *ibid.*

are adjudicated in French courts. In India, the Arbitration and Conciliation Act of 1996, amended in 2015, aligns with France's transparency commitment, requiring explicit written disclosure by arbitrators. Judicial precedents, such as *HRD Corporation v. GAIL*,³⁸ illustrate the judiciary's meticulous scrutiny of arbitrator disclosures. While both nations prioritise transparency, France leans towards annulment consequences for non-disclosure, whereas India opts for a procedural challenge path under Section 12 of the Act, showcasing nuanced approaches within the shared commitment to integrity and trust in arbitration.

4. ASSESSMENT

As indicated in Section 12(1) of the Act, the preceding opinion of the Supreme Court and several High Courts compel the proposed arbitrator to reveal information that is likely to create reasonable suspicions about their independence and impartiality as an arbitrator before being appointed. By referring to Schedule 5 of the Act,³⁹ the prospective arbitrator must determine whether these conditions exist. If circumstances give rise to reasonable suspicions, the proposed arbitrator must disclose them in line with Schedule 6 in Section 12(1) of the Act.

If, despite the existence of circumstances giving rise to reasonable doubts, a disclosure as required by Section 12(1) of the Act is not made, this could constitute grounds for setting aside the award⁴⁰ under Section 34 of the Act. Parties and potential arbitrators must pay special attention to compliance of Section 12(1) from the commencement of arbitral proceedings, as failure to disclose invalidates both the arbitral processes and the eventual award.

The main challenge that an affected party encounters is that the legislature has not specifically stated that the failure to provide material disclosure needed by Section 12(1) of the Act will result in the arbitrator's mandate being automatically terminated. As a result, the affected party will have to wait for the award to be issued before challenging it under Section 34. Therefore, a clear mechanism must be established to be followed if the proposed arbitrator fails to fulfil the mandate as anticipated in Section 12(1) of the Act, 1996.

38. *HRD Corpn* (n 7).

39. The Arbitration and Conciliation Act 1996 sch 5.

40. The Arbitration and Conciliation Act 1996 s 34.