The Arbitration and Conciliation Act, 1996 was derived from the Arbitration Act, 1940 and was also inspired by the UNCITRAL Model on International Commercial Arbitration, 1985. The 1940 Act referred to a sole arbitrator, however, the 1985 Act talked of three arbitrators in case of absence of agreement between parties and thus, a need arose for a new act to revise the Composition of Arbitration tribunal as the prior Act did not match the model and also could not match up to global trading as it did not reduce Court intervention. However, the new Act just made a provision for greater freedom of parties, and the failure of exercise of such freedom led to the Tribunal appointing a sole arbitrator only and thus, it can be seen that the UNCITRAL model was not fully incorporated.

Section-10 of the Act, 1996 envisions prohibition of an even number of arbitrators in any proceedings, to reduce need for further litigation. This principle was also laid down in Sri Venkateshwara Construction Company v. Union of India[1]. However, despite this mandate by the statute, a three judge bench in Narayan Prasad Lohia v. Nikunj Kumar Lohia[2] held that this condition need not be fulfilled and if the parties agree to do so, they can appoint an even number of arbitrators as well, thereby rendering this Section as redundant. This judgment was challenged in the High Court where it was struck down as it violated a statutory provision, however the judgment of the High Court was overruled by the Supreme Court as they allowed an even number of arbitrators. This judgment however, was widely criticized as it amounted to rewriting the statute.[3]

Section 11 of the Act elaborates on the procedure for Appointment of Arbitrators. A person of any nationality has the ability to be appointed as arbitrator unless the parties have an agreement to the contrary. Not just the arbitrator himself, but the procedure for appointment of the arbitrators can also be decided by the parties themselves and thus, the statute gives freedom and flexibility to the parties.
However, failing such agreement, the parties are to follow the procedure mentioned in the statute that entails that each party shall appoint one arbitrator and the two appointed arbitrators would then choose the Presiding arbitrator. If the appointment by the parties or the appointed arbitrators does not take place within 30 days, the Chief Justice or any office designated by him would appoint an arbitrator.

The arbitration agreement entered into by the parties can provide for other means of securing the appointment, for example by delegating the appointing function to an institution The major difference between an international commercial arbitration with its 3 seat in India and a domestic arbitration is that, in an international commercial arbitration there exist provisions for expedited appointment of arbitrators by directly approaching the Supreme Court. The other difference is that unlike in a domestic arbitration, in an international commercial arbitration, the parties are

[1]AIR 2001 AP 284.
[2](2002) 3 SCC 572.
[3]*Appointment of arbitrators and composition of Arbitral Tribunal,* http://www.lex-warrier.in/2013/12/appointment-arbitrators-composition-arbitral-tribunal/#footnote_7_4717

free to choose the law applicable to the substance of the dispute for governing the arbitral proceedings. The decision of the Chief Justice on the issue of appointment in an international commercial arbitration is final and is not appealable.

The Supreme Court of India in Datar Switchgears Ltd v. Tata Finance Ltd[4] held that, under Section 11(6),if one of the party demands the opposite party to appointment an arbitrator and the opposite party does not make an appointment within 30 days of the demand,the right to appointment does not get automatically forfeited after expiry of 30 days . If the opposite party makes an appointment even after 30 days of the demand, but before the first party has moved the Court under Section 11 that would be sufficient. However, if the party moves to Court before that, the right stands forfeited.[5]

Also, in AdorSamia (P) Ltd VsPeekay Holding Ltd[6], the Apex Court decided that under Section 11, the Chief Justice is exercising administrative powers and does not exercise this power as a "Court". However, in SBP & Co Vs.Patel Engineering[7], this was reversed as a 7 judge bench said that the Chief Justice had to act in his judicial capacity and not in an 'administrative capacity' as he exercised the power to decide certain preliminary issues such as existence of a valid arbitration agreement, existence of a live claim, existence of conditions for the exercise of power and the qualifications of the arbitrator or arbitrators.

Section 12 and 13 elucidate the removal of arbitrators by specifying the grounds for challenge and the procedure for challenge. Section 12 states the grounds as either being a justiciable doubt on an arbitrator's impartiality or independence or there being a lack of the qualifications possessed by the arbitrator, provided it is necessary for the parties, as per the agreement.

An arbitrator ought to be an indifferent and impartial person between the disputants. When the parties entrust their facts into the hands of an arbitrator, it is essential that there must be abundant good faith. The arbitrator must be absolutely disinterested and impartial. An interested arbitrator is always disqualified on grounds of bias.
The test relevant is that of likeliness to bias and not that of actuality of bias.

A party may also, challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

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[4](2000) 8 SCC 151.
[5]http://kamkus.org/coursematerial/Unit%202%20ARBIT%20TRIBUNAL%20ARBI.pdf.
[6]AIR 1999 SC 3246.
[7]2010(1)AWC1053(SC).

An arbitrator is also required to disclose any reasons likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

In the case of ShivnathRaiHarnarain (India) Ltd. Vs.AbdulGhaffar Abdul Rehman (Dead)[8], the Supreme Court of India held that, having mutually agreed 11 to have the dispute referred to an arbitrator at Singapore, the applicant is not permitted to turn around and say that this Court be appointed an arbitrator.[9]

Section 13 explains the procedure for challenge by first, giving the option to the parties to select such procedure and then providing for the case of such absence of agreement. The procedure entails:
(1) a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of Section 12, send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the arbitrator challenged under sub-section(2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award. 5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34. Where an arbitral award is set aside on an application made under sub- section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.[10]

Section 14 further elucidates upon Failure or impossibility to act, under which it describes an arbitrator either in law or in fact becoming unable to perform his duties as an arbitrator or for some reasons where he cannot avoid undue delay. Other reasons for such failure or impossibility to act is his resignation from office or termination of mandate by the parties.

Section 15 provides for substitution of arbitrator in case of termination to be according to provisions for appointment, and also provides for repetition of hearings and also a validity of previous ruling except in exceptional circumstances.

Thus, we can conclude by saying that the Composition of Arbitration tribunals is strongly based on the will and discretion of the parties and gives them the flexibility to arrive at decisions by mutual agreement but also provides for detailed procedures and substantial provisions, in case of inability arrive at mutual decisions regarding the Composition.

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[8]AIR2008SC1906.
[9]*Supra* Note 5.
[10]*Supra*

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