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Applications For Arbitrator Appointment Decided  
By The Bombay High Court- Section 11  
(2019-2021) : An Empirical Study

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The authors are thankful for the contribution of Amishi and Ruchika Prabhu, both 3<sup>rd</sup> year students pursuing their B.A.LL.B from NALSAR University of Law, for their valuable assistance.

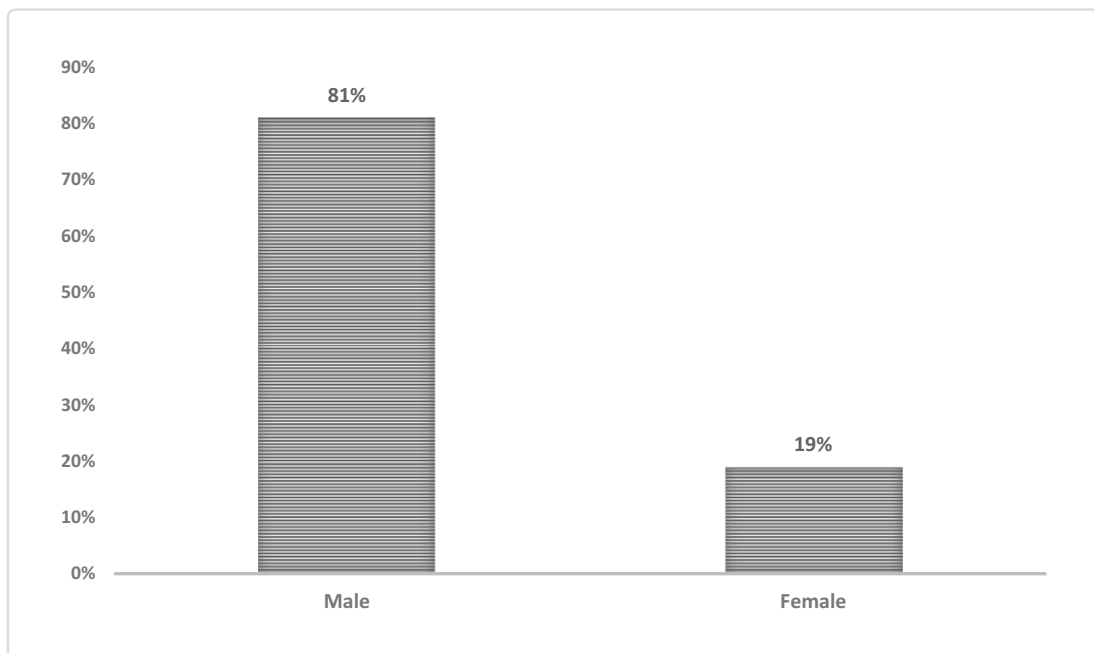
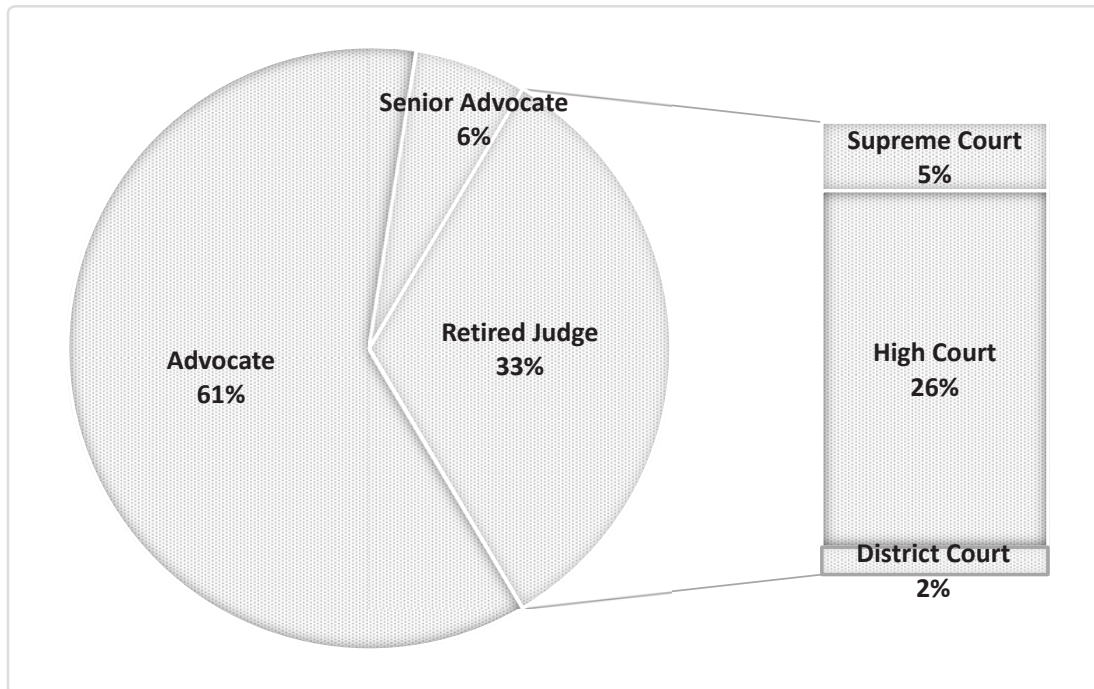
# Applications For Arbitrator Appointment Decided By The Bombay High Court- Section 11 (2019-2021) : An Empirical Study

## Introduction

This report presents statistics and data which is the outcome of an empirical study of applications filed under Section 11 (“Section 11 Applications”) of the Arbitration and Conciliation Act, 1996 (“the Act”) between June 2019 and May 2021 in the Bombay High Court. The aim of the study is to present *inter alia*, data on diversity of arbitrators appointed and average timelines for disposal of an application for appointment. The report also aims to present data on recurrent reasons for dismissal of Section 11 applications by the Bombay High Court.

Section 11 of the Act governs the appointment of arbitrators by national courts, on an application made by a party. As the Indian legislation is based on the UNCITRAL Model Law, Section 11 of the Act resembles Article 11 of the Model Law in its structure and operation. Section 11(1) of the Act matches Article 11(1) of the Model Law and allows a person of any nationality to be appointed as an arbitrator, subject to the parties’ agreement. Similarly, Section 11(2) of the Act flows from Article 11(2) of the Model Law and allows the parties to agree on the procedure for appointment of arbitrators.

## Demography of Arbitrator Appointments by the Bombay High Court

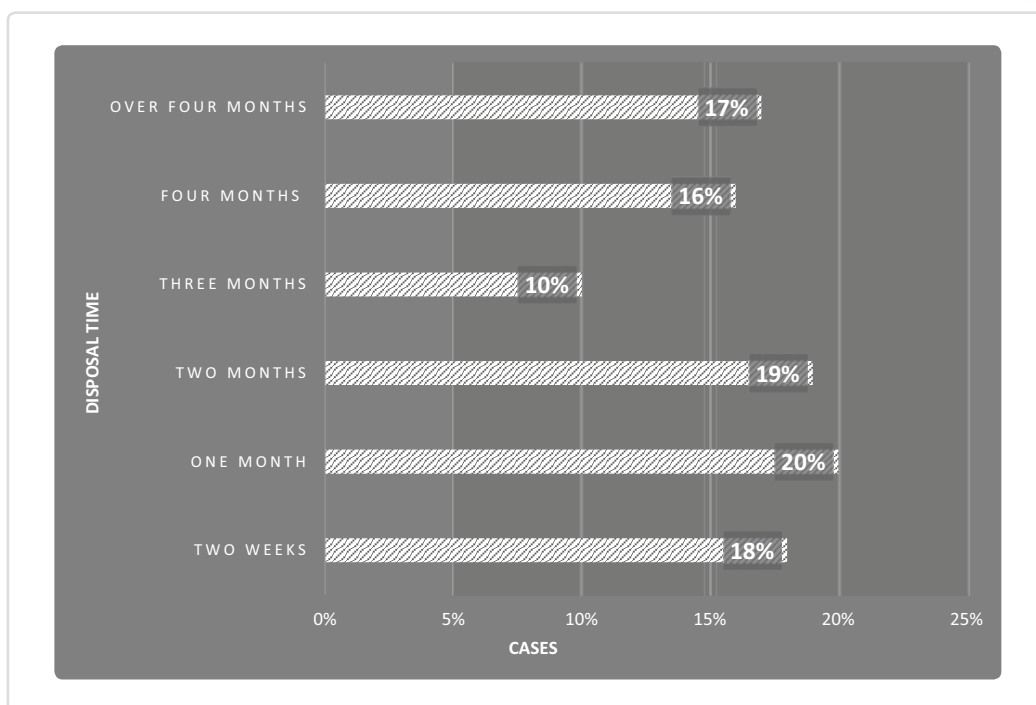


**NOTE:** Appointments were made in 100 out of 143 applications that had been finally disposed. Sole Arbitrators were appointed in 95 cases and a three-arbitrator tribunal was constituted in 5 cases where the identity of the third arbitrator was not stipulated in the Order of disposal of the application. As a result, this data pertains to the appointment of 105 arbitrators.

Overall, the number of women who were appointed by the Court (across all categories) is 20, constituting about 19% of the total appointments. It was found that the maximum number of appointments were Advocates/Counsel practising in High Courts admeasuring a total of 85 out of 105 or 81% of total appointments.

Instances of appointment of former/retired judges (of any level, both male and female) as arbitrators was found to be 35 out of 105, constituting 33.33% (or exactly 1/3<sup>rd</sup>) of the total appointments. Amongst former/retired Judges appointments, 26 were male and 9 of were female.

## Number of Days for disposal of Application for Appointment of Arbitrator/Arbitrators -Section 11 of the Act



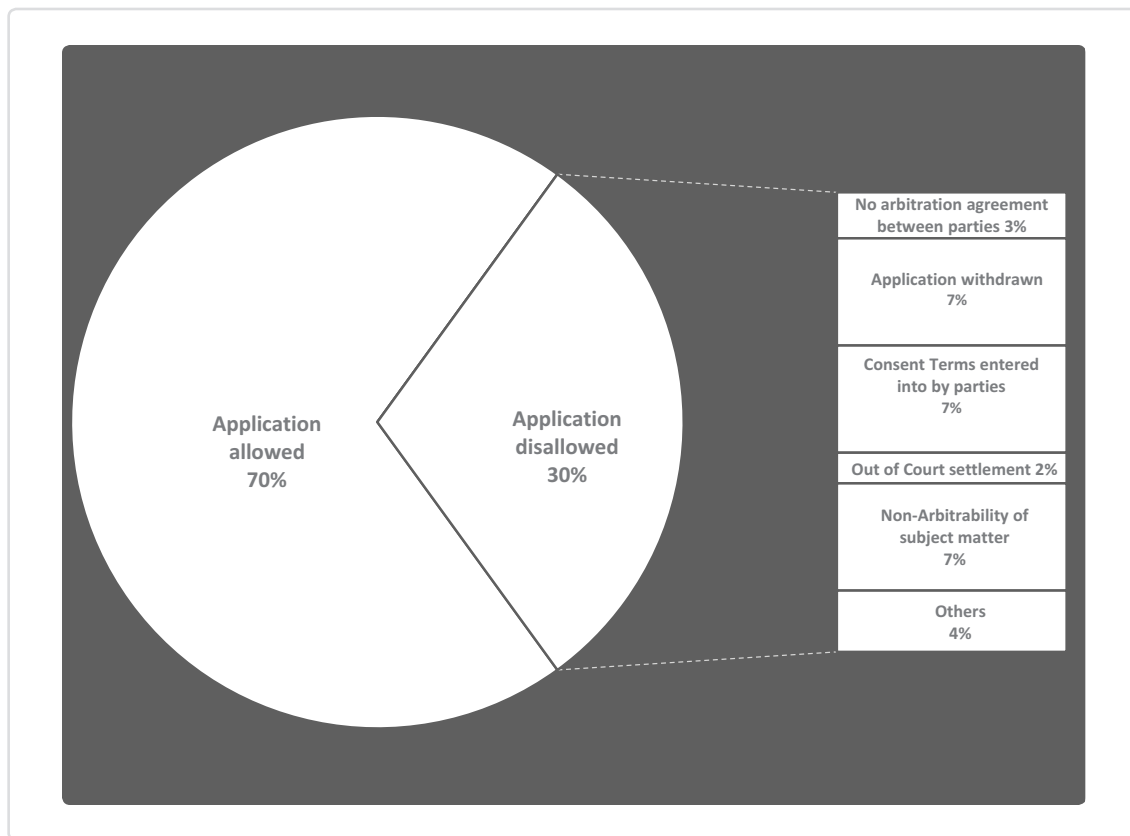
**NOTE:** The number of days referred to in the bar chart above indicates calendar days and does not account for court holidays and other non-working days.

The data demonstrates that a majority of the Section 11 applications (57%) filed were disposed of by the Bombay High Court within two months from the date on which

they were filed. Importantly, 38% of applications were disposed of within one month from the date of filing of the application. In 18% of the applications final disposal was achieved even earlier i.e. within two weeks of filing.

On calculating the mean of the results obtained in the graph above, it is found that on average, a Section 11 application filed before the Bombay High Court takes 82 calendar days to be finally disposed of.

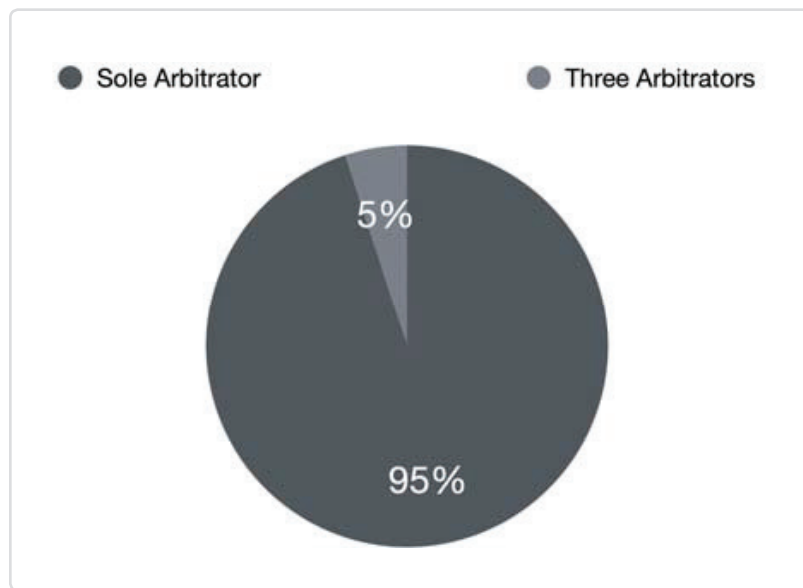
## Probability of Appointment of an Arbitrator



Of the 143 Section 11 Applications disposed of by the Bombay High Court, arbitrators were appointed in 70% of the applications. Of the remaining 30% in which arbitrators were not appointed and the application was disallowed, 9% constituted instances wherein the matter was either settled out of court by the parties or consent terms were entered into between the parties. In 3% of the cases the Court reached the conclusion that there was no arbitration agreement between the parties and in 7% of the cases the Court opined that the subject matter of the dispute was non-arbitrable.

This data reveals the general trend of the Bombay High Court in dealing with Section 11 Applications. It is only in a minority of cases that the Court has disallowed Section 11 Applications, and the two most common grounds on the basis of which the Court dismissed the Section 11 applications were observed to be instances where it was found that there was no arbitration agreement between the parties or that the subject matter of the dispute was not arbitrable under the laws of India.

## No. of Arbitrators Appointed

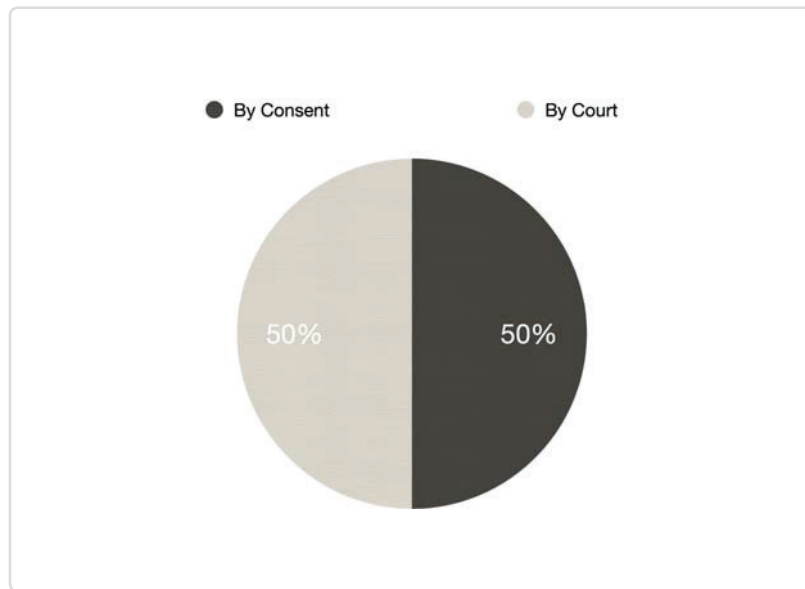


It was observed that the Section 11 Applications heard by the Bombay High Court majorly (95%) resulted in the appointment of a Sole Arbitrator. A meagre 5% of cases resulted in the appointment of a tribunal consisting of three arbitrators. There was one outlier, in which the arbitration clause in the contract contemplated for more than 3 arbitrators, but the same is not reflected in this study since it was a sole exception due to the peculiar facts of that case.<sup>1</sup>

<sup>1</sup> In the said case, the contract was a multi-party one, and the contract provided each party the right to appoint one arbitrator to the tribunal, resulting in a tribunal larger than 3 arbitrators.

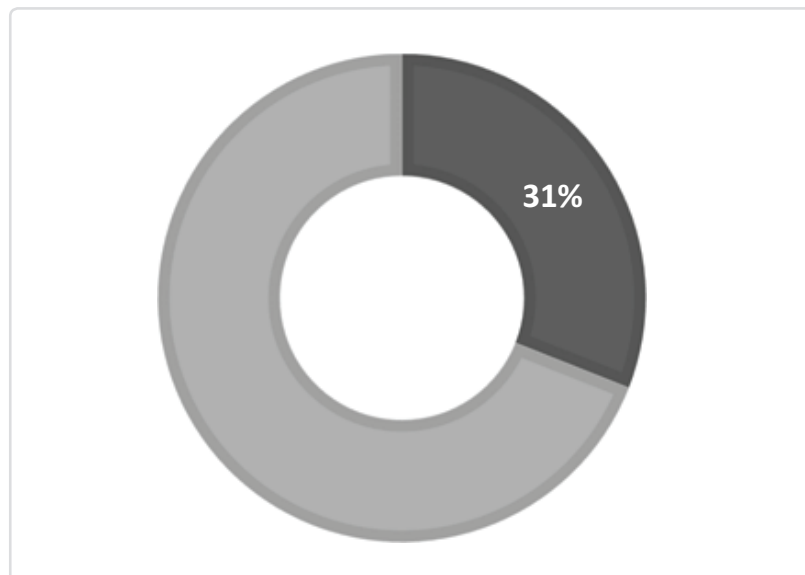


## Nature of Appointment

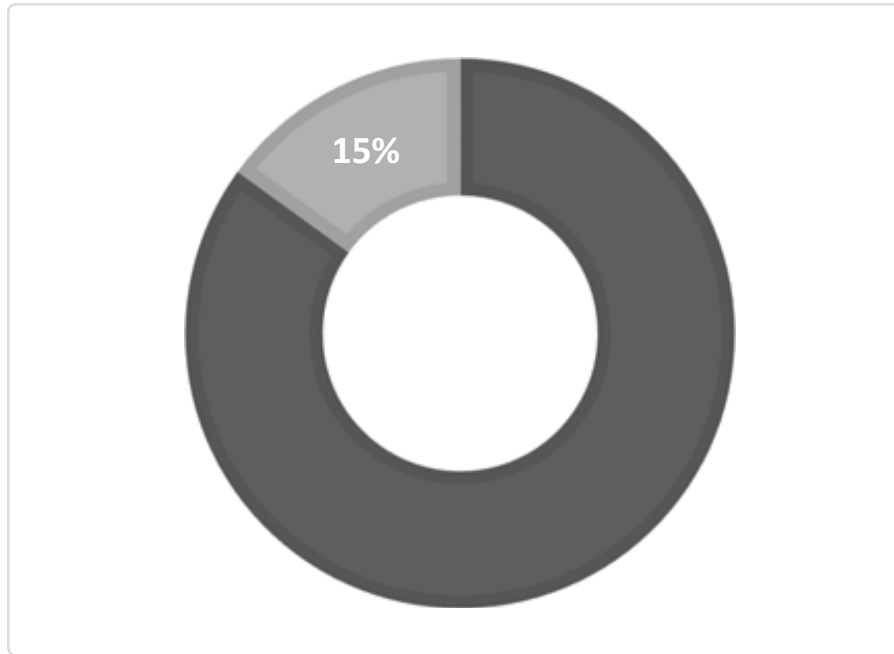


This pie chart shows the equal division between the number of cases wherein Court appointed an arbitrator based on the consent on the parties, and the number of cases in which the Court *suo moto* appointed the tribunal on account of *inter alia* parties not being able to agree on an individual.

## Section 11 applications in Multi-Party disputes



## Section 11 applications in Multi-Contract disputes



The above data was collected as part of this study to shed light on the complexity of *ad hoc* arbitration disputes supervised by the Bombay High Court. The study revealed that multi-party disputes accounted for 31% of the total Section 11 applications filed in the Court while multi-contract disputes accounted for 15% of total applications filed.

The growing preference for arbitration as a preferred mode of dispute resolution even in disputes involving more than two parties and the possibility of appointment of a single tribunal to adjudicate disputes arising out of multiple contracts/agreements depicts decreasing preference for the Court mechanism.

## Methodology

The study has analysed 212 applications filed under Section 11 of the Act between June 2019 and May 2021. Out of the 212 applications, as on 15<sup>th</sup> June 2021, 69 applications were pending disposal. As a result, statistics pertaining to the remaining 143 applications were taken into account. The applications examined as part of the study should not be treated as an exhaustive list of all the Section 11 applications filed between June 2019 and May 2021 in the Bombay High Court.

The researchers have relied on publicly available data pertaining to the daily orders passed by different judges of the Bombay High Court which are uploaded on [www.bombayhighcourt.nic.in](http://www.bombayhighcourt.nic.in).

30<sup>th</sup> June 2021