
ROLE OF TECHNOLOGY IN INTERNATIONAL ARBITRATION

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ABSTRACT

International dispute resolution, in general, and international arbitration are highly affected by the emergence and fast development of innovation-driven technologies. On the one hand, such technologies are cost and time-effective. To name a few, they allow online case filing, collection of e-evidence, and remote hearings, among others. On the other hand, they also may lead to some challenges that must be addressed. The primary concerns comprise e-arbitration agreements and e-awards, cybersecurity, and data protection. Therefore, this begs whether such new technologies will significantly impact the dispute resolution landscape and thus become a game-changer therein. This analysis concludes that the emergence of new technologies provides an opportunity to establish a long-lasting new standard for international arbitration.

1. INTRODUCTION

1.1 BACKGROUND

The significant increase in the economic development of nations over the last few decades has been accompanied by a considerable increase in the number of commercial disputes as well. As a result, alternative dispute resolution mechanisms, including arbitration, have become more crucial for businesses operating in India and those doing business with Indian firms. Considering the broader exploration of the quality of legal performance and economic growth, this paper critically evaluates arbitration in India as a legal institution. In this paper, the prime position in dispute resolution is discussed. This paper examines and assesses the International Arbitration Regime in India under the 1940 and 1996 Acts and also discusses the main concepts like arbitrator, arbitration agreement, arbitral awards, foreign awards, public policy, etc. This paper also deals with recognising and enforcing the award and identifies the Indian regime governing domestic and International Commercial Arbitration. In International commercial arbitration, contracts are frequently applied. ADR techniques, especially arbitration, are seen as a way out of arbitration as a private, independent, and neutral system, with time and cost benefits that are felt to be the hallmarks of the arbitration. Arbitration is increasingly becoming popular among the parties to settle their international and domestic commercial disputes. The international arbitration has been facing major changes with the development of new technology and AI.

2. DIGITALIZATION IN INTERNATIONAL ARBITRATION

The term "online courts" was introduced by Richard Susskind. Indeed, he referred to the use of new technologies in the judicial system. One must note twofold approaches to such innovation-driven technologies. On the one hand, it concerns the online determination of cases by human judges without the need to conduct hearings in physical courtrooms. This type of online court is much more appropriate in the case of low-value disputes where proceedings are not conducted remotely. On the other hand, given the "general concept" of online courts, technology is used not only to support judges in delivering decisions but also to provide users with tools that may be helpful to understand relevant laws better and formulate arguments alongside collecting evidence. Therefore, this type of online court also involves non-judicial

settlement mechanisms, including negotiation and neutral evaluation, among others.¹

Interestingly, Susskind's book "Online Courts and the Future of Justice" predicts that all courts worldwide must undergo such digital transformation and thus use Artificial Intelligence (AI). Indeed, AI can be used in court proceedings as a tool and technique. Given the history, there were two waves of AI development. The first one refers to the 1980s and relies on rule-based systems and logic programming. The second, in turn, has emerged recently and focuses on supervised machine learning alongside deep neural networks. As such, this wave is mainly classified as a more "functional approach", which means it focuses on what the systems can achieve given the past data.

Regardless of the potential benefits of online courts and the use of AI in dispute resolution, many practitioners and scholars are sceptical due to their conservative and risk-averse nature. In addition, using digital technology can be problematic in conflict zones. Another problem involves different time zones that may complicate the organization of remote hearings, regardless of being usually still feasible. There may be some legal restrictions that prevent witnesses from testifying remotely. In addition, some users may even be hesitant to use innovation-driven technologies based on their cost, although this may be offset by savings on both travel and accommodation in the arbitral proceedings. Aside from these issues, the mandatory use of digital technology can interfere with the parties' rights to a fair and equal opportunity to set forth their case.²

Despite some initial scepticism, implementing new technologies and the growth of digitalization in international dispute resolution, particularly in international arbitration, has become increasingly commonplace. The COVID-19 pandemic even accelerated the entire process of digitalization. In the case of dispute resolution, there has been a significant shift towards e-filing of cases and remote hearings, thus limiting in-person interactions between the parties involved. The future of arbitral tribunals worldwide is closely linked to such a digitalization process, which requires the collection of e-evidence and rendering of e-awards. Therefore, the alterations resulting from the COVID-19 pandemic would significantly affect

¹ Susskind, R. 2019. *Online Courts and the Future of Justice*, 3–4. Oxford: Oxford University Press.

² Paperless arbitration: The new trend. *International Journal of Online Dispute Resolution* 7 (2): 186.

the global scenario of settling disputes comprehensively, particularly the global arbitration system. Therefore, a new framework is likely to become the norm.³

3. NEW TECHNOLOGIES IN INTERNATIONAL ARBITRATION

New technologies are promoted in international arbitration to improve and enhance efficiency and lower expenses. They also allow arbitration to reach new market segments. Interestingly, various legal systems have already recognized efficiency and cost management as priorities for arbitration. Indeed, the widespread use of emerging innovation-driven technologies will lead to many new and complicated disputes based on the technology's unique features or the slow development of regulations covering these issues.⁴

Arbitration is seeking ways to become more efficient, faster, and even less burdensome for the parties involved. One of the recent advancements in this field is the emergence of online arbitration, which has been widely implemented in prominent arbitral institutions worldwide. To illustrate, online arbitration is available in the International Chamber of Commerce, the American Arbitration Association, the World Intellectual Property Organization Arbitration and Mediation Center, and the Chartered Institute of Arbitrators. The institutions above highly benefited from the emergence of innovation-driven technologies and thus heavily rely on information technology. Aside from the positive sides, one must note that online arbitration still lacks a sense of reality while reconstructing the offline world. Technology is rapidly and constantly developing to address such challenges and thus provides new tools for handling disputes. Indeed, such tools could help bridge this gap. Given the literature, technology is widely recognized as the "Fourth Party" in dispute resolution. This means it has been introduced to support the third-party mediator, arbitrator, or judge.

The so-called "Fourth Party" evolves in twofold ways. Indeed, it corresponds to two types of online dispute resolution (ODR) platforms. Firstly, simple tools are developed, including red flags, emoticons, images, or sounds instead of pens and flipcharts widely used in traditional offline dispute resolution mechanisms. The tools above are relatively easy to implement, and thus, they lead to the emergence of primary forms of "electronic body language", which can

³ The Impact of Covid on International Disputes, eds. Shaheez Lalani, Steven G. Shapiro, "International and Comparative Business Law and Public Policy" vol. 2, Leiden-Boston, p. 208.

⁴ New technologies and arbitration. *Indian Journal of Arbitration Law* 7 (1): 84–85. Return to ref 4 in article

help to communicate more effectively. On the contrary, evaluating the body language of witnesses or experts in arbitral proceedings would be more challenging.⁵

Indeed, without any verbal cues, it is impossible to scrutinize the individual's demeanour. Given the national context, judges occasionally refer to the "chemistry" regarding verbal interactions within a courtroom. This rapport can develop between a judge and counsel or a cross-examiner and witness. Assessing the credibility of a witness when providing evidence via video link is challenging. It should be noted, however, that non-verbal cues, such as body language, maybe discernible during remote hearings when a video transmission showing the witness's complete profile is available from multiple angles. Once there is high-quality transmission via video link and a suitable remote setup, including large screens, the tribunal can perceive the witness much better than in an offline courtroom.

Similarly, the audio volume can be adjusted to meet the personal requirements of each participant. As "electronic body language" is more easily perceived through screens than offline communication, it is imperative to maintain clear and objective language devoid of emotional and figurative expressions. Holding one's arms could signal hostility or dissatisfaction. As a result, eye-rolling is commonly seen as a manifestation of exasperation and, as such, could be perceived as unprofessional or even impolite. Meanwhile, eye contact and rolling eyes play vital roles in non-verbal communication, particularly in evaluating one's reaction to a message. Similarly, during remote hearings, maintaining eye contact with the camera creates the perception of direct eye contact with other attendees.⁶

Due to the absence of reliable indicators of honesty, many people rely on eye contact, posture shifts and body movements as indicators of honesty. If these indicators are obscured during remote witness viewings, the absence of these trusted cues will likely affect observers' assessments of the credibility of a remote witness. Participants in remote international arbitration have encountered this issue firsthand.

The camera settings, particularly the angle, can affect the proper evaluation of credibility and blame. Based on the data available, a tighter camera angle that focuses on the primary person

⁵ Remote hearings in international arbitration: An analytical framework. *Journal of International Arbitration*

⁶ Kessler, J.B., and P. King. The Significance of Nonverbal Communication in Mediation and Arbitration, "JAMS ADR Insights" 12.08.2021, <https://www.jamsadr.com/blog/2021/the-significance-of-nonverbal-communication-in-mediation-and-arbitration>. Accessed on 30 December 2023.

of interest increases the attribution of cause "to personal factors (such as the person's choices, behaviour or motivation) rather than situational factors that might cause those choices, behaviour, or motivation". Therefore, witnesses are considered less credible when the camera angle only focuses on the alleged perpetrator or uses a neck-up (rather than a chest-up) camera frame.

Secondly, through the "Fourth Party" concept, there is an increasing number of experiments with sophisticated technological tools and platforms, for instance, virtual workspaces aimed at exploiting the tools offered by electronic communication technology. One must note that between these two extremes, there is a range of technologies, namely extranets, virtual case rooms, case management platforms, and remote videoconferencing, which already exist and are widely used in arbitral proceedings worldwide.

The increasing complexity of international arbitration cases is a significant challenge for dispute resolution. On the one hand, it can easily lead to undue delay and expense. On the other hand, it may be challenging to adjudicate such cases properly. Such complexity of cases relies on the large volume of factual evidence, some technical details and intricate legal issues. Using specialized arbitrators with specific knowledge and expertise seems adequate to address such challenges. Therefore, such arbitrators can adequately understand both the technical details and complexities of the case.

Additionally, it may be appropriate to use technology to manage the complexities of the case. To name a few, the use of e-discovery tools can be beneficial to handle large volumes of documents and data efficiently. Given this tool, identifying relevant evidence and streamlining the entire arbitration process would be much easier.

4. E - ARBITRATION

There are, as of now, numerous illustrations of digitalization in worldwide intervention. It is worth investigating imaginative arrangements and diverse approaches to digitalization within the worldwide debate settlement landscape. One of the foremost common cases and commonsense approaches alludes to using new technologies in case administration frameworks. The Universal Chamber of Commerce (ICC) presented the NetCase framework in 2005 to demonstrate some illustrations. Given this stage, the parties could screen the online intervention and prepare and communicate online. One must note that the ICC Case Interface

supplanted this framework in October 2022. The ICC Discretion profoundly energizes parties to yield their application record electronically, advancing the online recording of cases. The ICC Case Interface is a secure online case administration framework introduced to associate the parties, arbitral tribunals and the ICC Secretariat. It points to encouraging all communication and document-sharing within the arbitral procedures.

In any case, it is worth specifying that this framework is regarded to oversee cases enrolled by October 2022. Interests, both parties and arbitral tribunals can openly choose how much they need to depend on this framework, which is free of extra charge. Even though the ICC Case Interface is committed to taking care of just unused cases submitted to this arbitral tribunal, there are, as of now, many exemptions. Therefore, it is conceivable to require a case through the ICC Case Interface within the following circumstances:

- "(i) the case file has not, however, been exchanged to the arbitral tribunal,
- (ii) all taking an interested party to the discretion concur to its utilization, and
- (iii) where the utilize of the stage will give a clear advantage to the proceedings".

Another case of a web stage is the Stockholm Chamber of Commerce (SCC), which has presented imaginative arrangements for streamlining discretion procedures through computerized innovation. Outstandingly, the SCC issued rules requiring all SCC assertions to be dealt with in a secure advanced stage, broadly known as the SCC Stage. This stage was propelled in May 2019, giving end-to-end administrations the option to request and render an arbitral grant. It has been presented to accomplish four chief goals:

Effectiveness, straightforwardness, straightforwardness, and security. This stage gives a straightforward, practical, and secure implication for all the members within the arbitral procedures (counting parties, guides, and the arbitral tribunal) to realize its objectives. In this manner, much obliged to this stage, the parties concerned are able not, as it were, to share archives and reports but, moreover, to communicate all through the whole procedures. To properly deal with the data assurance and cybersecurity issues, merely the participants of the progressing procedures are allowed to get to the stage. In expansion, all the information included in that is encrypted based on military-grade encryption to guarantee better security.

Aside from these prudent measures, all the records transferred to the stage go through one-of-a-kind filtering to identify potential malware.

The SCC stage has been presented to maximize benefits for the parties concerned. One of the key highlights is to guarantee straightforwardness, which can be accomplished through two fundamental capacities, such as safely putting away case materials nearby and keeping up a chronicle for a year after the conclusion of arbitral procedures. The SCC's rules for utilizing this stage are broadly respected as empowering the use of advanced innovation in assertion. Based on this positive case, numerous arbitral teachers worldwide were taken after such a hone and hence embraced comparative arrangements.

5. CONCLUSION

The use of innovation-driven technologies significantly impacts the international dispute resolution landscape. Among these methods, international arbitration stands out as particularly agile in adapting to the changing norms. There are already many examples of digitalization in international arbitral tribunals. Nonetheless, it is worth stressing the solutions adopted by the SCC. This arbitral institution has already implemented precautionary measures, including military-grade encryptions and malware detection, to ensure appropriate cyber security and data protection. Hence, this example could be a guideline for other arbitral institutions worldwide.

Although currently binding laws on international arbitration have been adopted and implemented far before the emergence of innovation-driven technologies, there is no prohibition on using such technologies. Indeed, according to the features of the arbitral proceedings, both the decision to arbitrate and the procedures of handling arbitration are determined by contracts. This means that parties and arbitrators are granted significant operational autonomy. Despite many positive sides of new technologies, some practical challenges arise. One of them concerns the e-arbitral award. Even though such an e-award may fulfil the criteria required by the New York Convention, arbitrators are deemed to provide the parties with a physical copy of the signed arbitral award. Therefore, such a signed document would prevent doubts concerning different interpretations made by national courts on the written form requirement. Considering remote hearings, it is much more desirable to use customized platforms explicitly introduced for arbitration instead of free and public platforms.

As such, choosing a platform that offers the so-called end-to-end encryption and unique user access based on password protection is recommended.

There are many new challenges and questions arising from using new technologies, primarily regarding AI arbitrators. It should be noted, however, that international arbitration can adapt to changing circumstances and offer optimal services to the involved parties. Therefore, once again, the party autonomy concerning procedural rules and confidentiality plays a crucial role in the proceedings. Indeed, the new technologies have significantly marked the international dispute resolution landscape and become a new standard.