



Use of Information Technology Tools for an Efficient and Speedy Dispute Resolution Mechanism

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ARTICLE INFO ABSTRACT

Information technology is the bedrock of modern society. The IT landscape is constantly evolving. With advancements like cloud, microservices and infrastructure as code (IaC), IT is a broad field that encompasses all the technologies used to communicate, store and process information. In recent years, the role of IT in dispute resolution is highly commendable in management of disputes. In this technology era, further moving forward becomes highly impossible without the aid of technology. Trade and commerce are increasing day by day. In case of disputes arising out of international trade and commerce, the mechanism used for dispute resolution is arbitration, that is exceptionally strong and widely accepted. Nowadays arbitration is the fast growing and widely accepted mode of dispute resolution. When Information technology is combined with this field of dispute resolution method, efficacy can be increased, at the same time it becomes more competitive, and the desired results can be achieved in a faster phase. Arbitration is considered as one of the fastest and cheapest mode of dispute resolution mechanism. The impact that IT has made in this field of dispute resolution during the covid pandemic and post- covid period is notable. In arbitration, selection of seat, place and venue became much more practical and effective by the application of Information and Technology. Also, in any form of dispute resolution, the storage of documents becomes very important and facilities like cloud storage has assisted effectively in storage of data and provide easy access to them irrespective of time and location constraints. Thus, the impact of IT in the field of arbitration as dispute resolution mechanism in all its stages has become highly commendable because the services became quick, effective and easier.

Keywords: Dispute Resolution, Arbitration, Online Arbitration, IT in Arbitration, Post-COVID Arbitration

Introduction

Conflicts are natural from time immemorial within the human race, since homo sapiens are social animals, live in society and interact regularly with each other. Each individual has unique character and thus difference of opinion is natural in the society. Disputes are inevitable and are to be settled or resolved amicably for the benefit of both parties, and also for the benefit of the society. To resolve the dispute, some structural processes are necessary, which address the dispute of both parties and a third party facilitating to resolve the dispute. Dispute resolution mechanism in India, ordinarily meant the traditional 'Court' system. Indian Courts follows the adversarial system of dispute resolution for about the last three centuries. The Court system of dispute resolution is derived from Western countries and can be called as modern dispute resolution system. It is based on written or codified laws of procedure as well as subjective laws. Prior to that, 'naattu panchayat' or other traditional forms of indigenous dispute redressal mechanism was very common in India. Several forms of local dispute resolutions were prevailed in ancient India. India has a very ancient heritage in the arbitration mode of dispute resolution. The arbitration mode of dispute dissolution in India can be traced to the 'Vedic Period'. The Puga, the Sreni, the Kula are various forms of dispute resolution mentioned in 'Bhradarnayaka Upanishad'. Almost all types of disputes, whether they are criminal, contractual or family disputes, were placed before the Panchayats for amicable settlement. The decision of the Panchayat was binding on all parties to the dispute. The disputes within the family were settled by their elders, in ancient India. Settlement of differences by the selected team chosen by the parties themselves, is part of Indian culture. During the period of Mauryans, Sreni

or Guilds were there to interfere in family disputes, when the elders of family failed to settle the disputes in their family. The disputes which were not settled by the Guilds or Sreni, were settled by arbitration. King was the head of justice in ancient India. In Sikkim, there was Dzumsa dispute redressal system. Dzumsa means 'gathering of people'. It was just like a panjayath where village elders hear the case and decide as per the customary law. Though the present Arbitration form of dispute resolution is based on UNCITRAL¹ model, it is not entirely foreign to Indians. 'Naattu Panchayat' and its various forms can be termed as the forerunners of the present modern Arbitration system.

The advent of the Europeans, brought their forms of dispute resolution to India. Laws enacted for ruling the India, also included the dispute resolution methods. Bengal Regulation Act, 1772, provided that all disputes of accounts are to be submitted to arbitration and the decision of the arbitrator shall be final and binding as if it is a decree of a court. The Regulation Act of 1781 mandated that the judges shall recommend the parties to submit their disputes for amicable settlement before an arbitrator, mutually agreed by all the parties to the dispute. The award of the arbitrator is binding and final, unless it is proved to be partial or manifest error. Civil Procedure Code was drafted in 1859, which laid down the procedure for arbitration in Section 312-327. The Indian Contract Act, 1872, recognised arbitration. Arbitration is an exception to the provision of Section 28 of the Indian Contract Act, 1872 that 'any agreement in restraint of any legal proceedings is void'. The positive nature of arbitration form of dispute settlement encouraged the Europeans to enact Arbitration Act 1899 in the Presidency towns, so as to enable the amicable settlement of disputes out of court in a 'win-win' manner. Section 89 of the Civil Procedure Code 1908 provided for resorting to Arbitration. Thereafter Section 89 of CPC was repealed when Arbitration Act 1940 was enacted by repealing the old Acts.

After the independence, the Indian Republic followed the traditional Court system as the dispute resolution system. The traditional Court system and its complexity, ever rising expenses for the litigation, huge pendency of cases in various courts, unpredictability of final decision of the case, long duration taken to resolve the issue, never ending series of litigations and appeals, made the litigation through courts an unpopular method of dispute resolution in the later decades. The Constitution of India, envisaged for Arbitration and classified it in the Concurrent list as Entry 13 and Article 51(d) provided that the State shall endeavour to encourage settlement of international disputes by arbitration². Geneva Convention was accepted by India and the arbitration protocol was signed by India³ as per the Geneva Convention. Thereafter the Geneva Convention Act⁴ was enacted by the Parliament and ratified the Convention.

The development of information technology (in short, IT) from the mid of 90's changed the way of communication and the way of exchanging information, as it was changed from the manual form to electronic form. Internet technology, mobile phone and the digitalisation in the later years, made a sea change in the speed of exchange of communication and information, which actually shrunk the World itself and now within a fraction of seconds, one can communicate with anyone sitting other part of the World with the medium of internet connectivity and mobile phone technology. The astonishing growth of e-commerce over the last decade and the simultaneous growth of ADR⁵ have made a remarkable change in the dispute resolution mechanism in India.

It is no wonder that the hands of Information Technology reached every nook and corner of the life of human being and reached to the dispute resolution mechanism too. The positive integration of information technology in arbitration proceedings can make wonders in the domestic and international dispute resolutions. The efficiency and speed will increase and the cost will substantially decrease for the dispute resolution.

Development of Information Technology

Information technology is the use of gadgets such as computers, storage devices, other computer related hardware's, mobile phone, computer software and networking by internet for the storage and exchange of electronic data. Information Technology is the bedrock of modern society. The Information Technology landscape is constantly evolving. With advancements like cloud, microservices and infrastructure as code (IaC), Information Technology is a broad field that encompasses all the technologies used to communicate, store and process information.

In the olden days, a computer was as big as a room. Thanks to the advancement of technology, the present smart watch can do thousand times faster than that computer works in those days. Any use one can make of computer is termed as use of information technology. In 90's, floppy disk was used to store data and to take to another computer. CD has taken place of floppy disks, which turn way to DVD and thereafter pen-drives and external hard disks. As the technology changes, no hard disk is required to store the data in this modern age. Thus, the new idea came out as the 'cloud'.

¹ United Nations Commission for International Trade Law.

² Article 51 Promotion of International Peace and security: The State shall endeavour to (d) encourage settlement of international disputes by arbitration.

³ The Arbitration (Protocol and Convention) Act, 1937.

⁴ India ratified the Geneva Convention on 12th March 1960 by passing the Geneva Convention Act, 1960.

⁵ Alternative Dispute Resolutions.

In 2005, cloud computing meant merely storage of data through internet. Now cloud computing has wider meaning. Through the medium of internet, Information Technology resources are delivered on-demand by collecting pay-to-use charges is known as cloud computing. By using this facility, you can pay for use and not required to purchase the services and products of computer services. It is cost effective and time saving.

Analog phones gave way to digital land phones in a short period and land phones gave way to mobile phones and now the base phones gave way to smart phone and smart watch, which are equal to a laptop computer which can handle data management as well as communication management. Several user-friendly online video conferencing apps developed and provides free services. Zoom, Google meet, Webex, WhatsApp video call, are some of these apps to facilitate video conferencing. Paid services facilitate long time meetings. By using a smart phone, one person can attend a video call from anywhere and communicate directly without travelling to meet someone directly or to attend a conference in a far-away place. This saves the cost as well as time to both of them. This is useful for group calls as well.

Most of the day-to-day work of a lawyer, comes within the definition of the use of information technology, because the use of computer, mobile phone/smart phone, tablet computer, printouts, internet surfing, e-mail, SMS, ... the list goes on. The development of Information Technology influenced every walk of life in the past three decades. It transgressed into the field of dispute resolution too. In the recent years, the role of Information Technology in dispute resolution is highly commendable in managing the disputes. In this technologically advanced era, further moving forward becomes highly improbable without the aid of information technology. Traditions have to be changed if necessary. Change is innovative. Therefore, it can be rightly said that harbinger of change in this modern era is the emergence of the advanced information and communication technology.

Arbitration as a Dispute Resolution Mechanism

India is known for its trade and commerce for over a few millions of years. In this modern era also, Indian spices and minerals are World famous. Trade and commerce are increasing day by day. In case of disputes arising out of international trade and commerce, the mechanism widely used for dispute resolution is arbitration, that is exceptionally strong and widely accepted. Arbitration is a mode of dispute resolution, where the parties to the dispute by their own contract, agreed to submit their possible dispute to one or more arbitrators for resolution, whose decision is binding on them. Majority of the commercial contracts includes arbitration clause in their agreements. The decision of the arbitrators is known as award. An arbitration award is legally binding and enforceable through court as a decree of court. The benefit of arbitration is that the dispute resolution is made easy, fast, cost effective and binding on the parties. Courts cannot unnecessarily interfere in the arbitration proceedings. The aim of arbitration is to provide speedy, efficient, and binding resolution of disputes that have arisen between the parties in regard to their substantive obligations.⁶

Nowadays arbitration is the fast growing and widely accepted mode of dispute resolution. Among the various modes of mechanisms for disputes resolution, arbitration is considered as one of the fastest and cheapest mode of dispute resolution mechanism.

Use of Information Technology in Arbitration

Roll of Information Technology in Arbitration is tremendously increased in the recent years. Traditional arbitration proceedings required seat, venue, and the arbitration is to be taken in the specific venue as determined by the parties. To conduct the procedure, the arbitrator as well as the parties to the arbitration have to physically present in the arbitration room with all the documents and case files. After passing the award, the arbitrator has to send the award to the parties in hard copy, with his seal and signature.

When information technology is combined with this dispute resolution method, efficiency can be increased, at the same time it becomes more competitive, and the desired results can be achieved in a faster manner. This is evident from the experience of the Covid 19 Pandemic.

The impact that Information Technology has made in this field of dispute resolution during the covid pandemic and post-covid period is notable. In the arbitration procedures, selection of seat, place and venue became much more practical and effective by the application of Information and Technology. Moreover, in any form of dispute resolution, the storage of documents becomes very important and facilities like cloud storage has assisted effectively in storage of data and provide easy access to them irrespective of time and location constraints. Thus, the impact of IT in the field of arbitration as a dispute resolution mechanism in all its stages has become highly commendable because the services became quick, effective and easier.

Digitalization of Documents

One advantage of Information Technology is that the documents are digitalized. The storage of documents became much easier than ever before. The search on the documents is also much easier than the traditional methods of searching. Even the PDF documents are now searchable by using the key words or by googling. No need of big libraries to store the data in the present days. The password protected data can be accessed from anywhere at the convenience of the parties by using the password. Copying and printing the documents became

⁶ In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, 2023 INSC 1066.

much easier and reliable. Transfer of documents can be done within a fraction of seconds. E-mails, or other social media apps or other internet technology makes the transfer of data and documents in lightning speed.

Video Conferencing Apps

Communication between the parties is the key of arbitration and it is facilitated by a third party. Face-to-face meeting and open communication between the parties who negotiate are the key element for the success of arbitration. In traditional arbitration proceedings, seat and venue of arbitration was very important and this involves cost and time for the parties to attend the proceedings. The development of Information Technology provides a better facility through video conferencing, irrespective of that whether it is an ad hoc arbitration or an institutional arbitration, the parties can instantly attend the proceedings without spending much on the travel and accommodation. The documents can be exchanged through digital mode without any postage delay. Queens Mary University of London/ White & Case, conducted a survey, “2021 International Arbitration Survey: Adapting arbitration to a changing World”, in which a question was posed, “How often have you used the following forms of information technology in an international arbitration?” the response received from parties who were claimants or respondents or counsels in arbitration, lawyers and representatives of the arbitral institutions was amazing. 27% opted that they use videoconferencing ‘sometimes’, 48% opted that they use videoconferencing ‘frequently’, 15% opted that they use videoconferencing ‘always’ in international arbitration. 5% answered that they ‘never use’ videoconferencing and 5% answered that they use ‘rarely’.

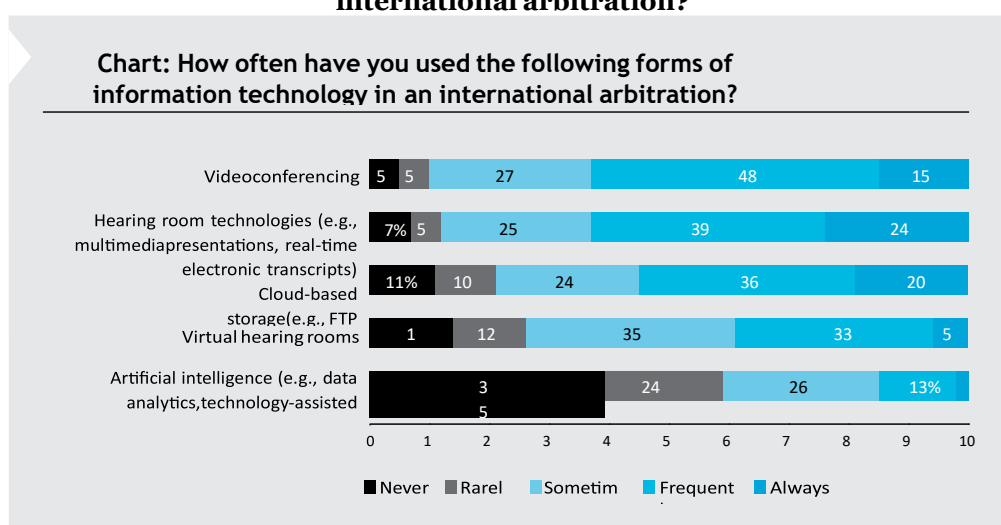
Regarding the use of hearing room technologies (e.g. multimedia technologies, real-time electronic transcripts, etc) 25% of the respondents in survey opted that they use hearing room technologies ‘sometimes’, 39% opted that they use hearing room technologies ‘frequently’, 24% opted that they use hearing room technologies ‘always’ in international arbitration. 7% answered that they ‘never use’ hearing room technologies and 5% ‘rarely’.

Regarding the use of ‘Cloud based storage (FTP sites, data rooms)’, 24% of the respondents in the survey opted that they use Cloud based storage (FTP sites, data rooms) ‘sometimes’, 36% opted that they use Cloud based storage (FTP sites, data rooms) ‘frequently’, 20% opted that they use Cloud based storage (FTP sites, data rooms) ‘always’ in international arbitration. 11% answered that they ‘never use’ Cloud based storage (FTP sites, data rooms) and 10% ‘rarely’.

Regarding the use of ‘Virtual hearing rooms’, 35% of the respondents in survey opted that they use Virtual hearing rooms ‘sometimes’, 33% opted that they use Virtual hearing rooms ‘frequently’, 5% opted that they use Virtual hearing rooms ‘always’ in international arbitration. 14% answered that they ‘never use’ Virtual hearing rooms and 12% ‘rarely’.

Regarding the use of ‘Artificial intelligence (e.g. data analysis, technology assisted document review)’ 26% of the respondents in the survey opted that they use Artificial intelligence ‘sometimes’, 13% opted that they use Artificial intelligence ‘frequently’, 2% opted that they use Artificial intelligence ‘always’ in international arbitration. 35% answered that they ‘never use’ Artificial intelligence and 24% ‘rarely’.

(Chart 1: How often have you used the following forms of information technology in an international arbitration?)



Source: Queens Mary University of London/ White & Case, 2021 International Arbitration Survey: Adapting arbitration to a changing World.)

Online Dispute Resolution (ODR)

Information Technology can be used for translating the communication between the negotiating parties and of the facilitating party. Where the commercial arbitration is with a party in China and with a party in Delhi, can easily be facilitated by using the Artificial Intelligence (AI) in ODR in ADR. ODR is the use of technology in dispute resolution. ODR is also known as the fourth party negotiator in dispute resolutions. Any form of technology integration in the resolution of dispute is referred as ODR. Use of e-mail for sending the notices to the party, taking printout of the Award by the Arbitrator, digitally signing the Award or scanning the documents to make it as digital document, copying a PDF document, typing the deposition/ evidence of the parties to the computer, informing the claimant or Respondent through the mobile phone about the next date fixed for hearing of the arbitration or the informing the venue of arbitration, are instances of integration of technology in dispute resolution. By transmitting messages and files, meeting from afar, handling of documents, creating documents, managing documents, managing case files, visually presenting arguments and facts, tracking, etc., the present-day lawyer is already engaged the benefits of information technology integrated into the arbitration method of dispute resolution method. ODR is however different from Automated Dispute Resolution which is by the use of automated software with artificial intelligence.

The e-banking and online transactions such as Paytm, Phone-pay or G-pay, etc., is a leaping step in the dispute resolution by multiplying the speed of payments and transactions, even for India. Recent tie-up by India with Singapore by linking the online transaction systems by 'Pay-now', one can transfer up to Rs.60,000/ per day instantly, is also a leaping step in the international commercial dispute resolution.

ODR in arbitration is cost effective, convenient and quick. Future of ODR is online dispute resolution by using artificial intelligence and to resolve the dispute by the computer itself by using the pre-settled norms installed as the software. This type of Artificial Intelligence based dispute resolution is presently not available in India, but cannot be ruled out and may come into existence in the near future.

However, there are some cautions to be taken while using Information Technology in Arbitration proceedings. Information technology integrated software and other computer programmes may be useful in facilitating the arbitration mode of dispute resolution. But the user should be well versed with the technology or the use of gadget. Master an Information Technology solution before using it. Do not try new tools in an important situation or when things are getting serious.

Present Practice

Some of the most significant arbitration institutions of the World developed software for the online arbitration system. ICC developed a case management website known as NetCase, for the participants in the arbitration proceedings conducted through ICC. This software is accessible by the Secretariate, by the arbitrators, by the parties to the arbitration and for the counsels for the arbitration. This software is working with internet. To share and communicate information rapidly is the goal behind this project. This software is not an arbitral procedure in itself. It is one of the ways to facilitate the arbitration and to share the information on round the clock basis. If the parties consented to it, they can use this method or they can continue the traditional method of physical mode of arbitration. The benefit of using this platform is the accessibility, organisation, speed, and also the feeling of security and confidentiality. The messages and documents are encrypted before sending and is scanned and ensured as virus free by the system itself. Documents are made available to all the participants, whenever shared on the NetCase. Documents are organised in a uniform manner. NetCase is always assessable through internet, irrespective of the operating system. NetCase reduces the preparing costs, as it is handling with digital documents.

The online service provided by the American Arbitration Association is known as Web-File. This online service allows the users to file claims, make payments, online case management, electronically transfer documents and to know case status. To use this facility, parties must register themselves and select password for their use. Filing a claim online by using this platform is very easy, by entering the name of the claimant and name of the respondent in the windows provided for it and to select the set of rules and type of resolution, whether arbitration or mediation, thereafter filing the claim and enter claimant information and submit documents. Then can pay fees from the Fees payment page. Thereafter can get the date of the case and other information from Filed Case Information page.

The Arbitration and Mediation Center of the WIPO was created in 1994. This center is to assist in resolving private international commercial disputes. The mode of dispute resolution by this center is by Arbitration, or Mediation or Mediation followed by Arbitration and by expedited Arbitration. The secure web facility created by this center is known as Electronic Case Facility (ECAF). This facility enables the parties to file, store, and retrieve case-related submissions electronically. This is a secure platform accessible from anywhere through internet. It takes the form of a case management system, a central database accessible via the Internet that allows participants in a case to submit documents online and to access a case overview, contact information, time tracking, docket listing, a finance overview, and a message board.⁷ One can get the contact information of the claimant, respondent, or any other person related to the claim, from the contact information page of the

⁷ WIPO, WIPO Electronic Case Facility (ECAF), <http://arbiter.wipo.int/ecaf/introduction.jsp>.

platform. In the docket listing page, documents can be submitted electronically and all the participants can view the document from the website at their convenience. The case fees due and received can be viewed from the Finance Overview page. There is a message board, which is only for communication and not for record purpose.

Some concerns about the use of videoconferencing arise continuously. The issue of technical breakdowns is a real issue. The broadcast quality of videoconferencing depends essentially on the bandwidth used. The fact that the participants cannot see what lies outside of the field of the camera is certainly a genuine issue, but it seems highly overrated. When there is an expert- evidence is being recorded, one cannot see whether the expert is deposing on the brim of knife point or not. Though there are negative impacts on certain points, these online platforms provide cost effective and fast services for the resolution of the dispute.

The Indian Arbitration Institutions can make better online facilities than the above major three Arbitration Centres and thus the Delhi International Arbitration Centre as well as the Hyderabad Arbitration Centre can become World level institutions with less cost than any other World level Arbitration Institution.

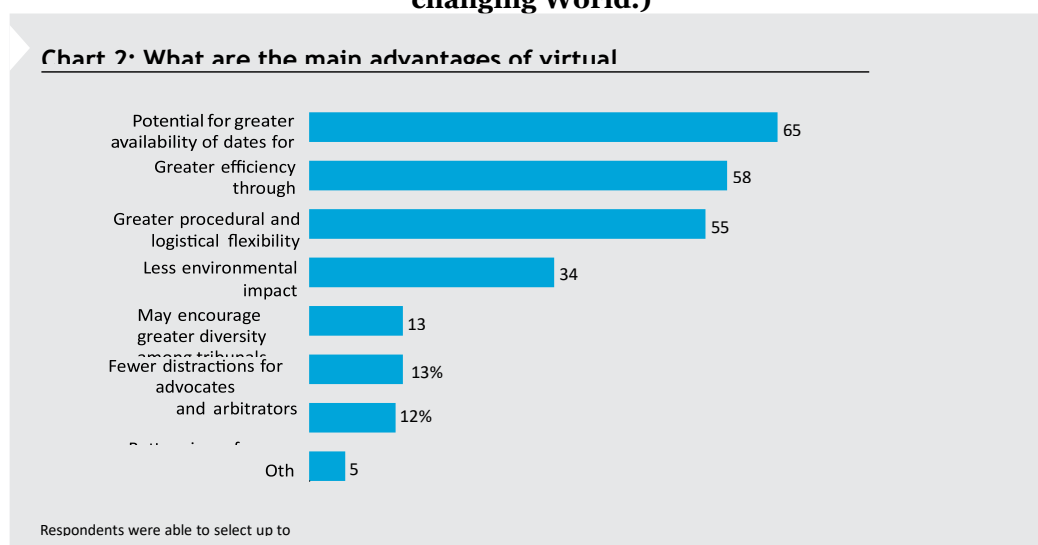
The Advantages of Virtual Hearings

The advantages of virtual hearings are more when comparing to its disadvantages, and the advantages increase as the technology advances. Virtual hearings can bring greater procedural and logistical flexibility in domestic as well as international commercial arbitration. Travel can be reduced by implementing virtual hearing and thereby environmental impact can be reduced in comparison with the in-person hearing of the dispute resolution. This will encourage the tribunals to diversify themselves. During virtual hearings, comparatively lesser chance is there for interruptions for the lawyers as well as for the arbitrators. In-person hearings may not give clear view of people who participate in the proceedings. But in the case of virtual hearing, the face of every participant is clearly be visible to all the participants.

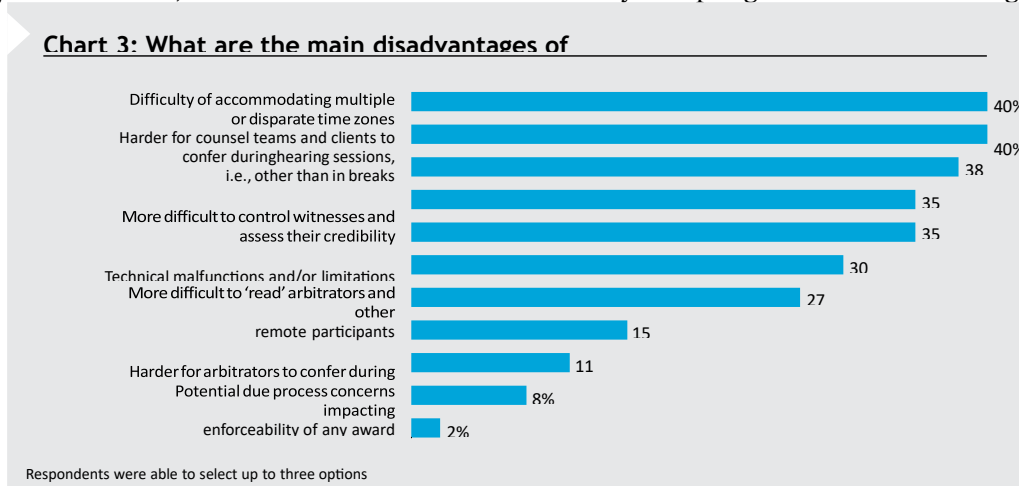
Queens Mary University of London/ White & Case, conducted a survey, “2021 International Arbitration Survey: Adapting arbitration to a changing World”, in which a question was posed, “What are the main advantages of virtual hearings?”,

the response received was informative. 65% of the respondents answered that virtual hearings provide ‘greater availability of dates for hearings’. 58% replied positively that ‘greater efficiency is available through use of technology’. 55% replied that ‘greater procedural and logistical flexibility is possible’ through virtual hearings. 34% answered that ‘less environmental impact than in-person hearing’. 13% ‘may encourage greater diversity among tribunals’. 13% replied that ‘fewer distractions for advocates and arbitrators during the virtual hearing’ of the case. 12% replied that ‘virtual hearings give a better view of people’s faces than at in-person hearing’.

(Chart 2: What are the main advantages of virtual hearings? Source: Queens Mary University of London/ White & Case, 2021 International Arbitration Survey: Adapting arbitration to a changing World.)



(Chart 3: **What are the main disadvantages of virtual hearings?** Source: Queens Mary University of London/ White & Case, 2021 International Arbitration Survey: Adapting arbitration to a changing World.)



Main Disadvantages of Virtual Hearing

The use of information technology tools into arbitration was not a preplanned one. Covid19 Pandemic was a catalyst to expedite the use of IT in arbitration, such as virtual hearing, videoconferencing, cloud storage, virtual hearing room, hearing room technologies, artificial intelligence and other technologies to aid the arbitration. But the integration of the tools of technology to arbitration was not experimented and all parties including the arbitrators were lacking the knowledge and expertise in using such technologies. Trial and error method was following in arbitration and this caused many disadvantages to the virtual hearing. Some of such disadvantage was that 'difficulty of accommodating multiple or disparate time zones', 'harder for counsel teams to confer during hearing sessions, i.e. other than in breaks', 'more difficult to control witnesses and access their credibility', 'technical malfunctions and/or limitations (including inequality of access to particular and/or reliable technology', 'more difficult for participants to maintain concentration due to 'screen fatigue', 'confidentiality and cyber security concerns', more difficult to 'read' arbitrators and other remote participants, 'harder for arbitration to confer during hearing sessions, i.e. other than in breaks', 'potential for ethical or procedural abuses', 'potential due process concerns impacting enforceability of any award', etc. These challenges are to be overcome for a smooth, fast and efficient resolution of disputes.

Queens Mary University of London/ White & Case, conducted a survey, "2021 International Arbitration Survey: Adapting arbitration to a changing World", in which a question was posed, "What are the main disadvantages of virtual hearings?", the response received was informative. 40% of the respondents in the survey raised that 'difficulty of accommodating multiple or disparate time zones' as the main disadvantage of virtual hearing. 40% of the respondents in the survey recorded that 'harder for counsel teams to confer during hearing sessions, i.e. other than in breaks' as the main disadvantage of virtual hearing. 38% of the respondents in the survey stated that it is 'more difficult to control witnesses and access their credibility' as the main disadvantage of virtual hearing. 35% of the respondents in the survey stated that 'Technical malfunctions and/or limitations (including inequality of access to particular and/or reliable technology' is the disadvantage. 35% of the respondents stated that 'more difficult for participants to maintain concentration due to 'screen fatigue' and it is the main disadvantage of virtual hearing. 30% of the respondents in the survey stated that 'confidentiality and cyber security concerns' as the disadvantage in virtual hearing. 27% of the respondents in the survey stated that it is more difficult to 'read' arbitrators and other remote participants. 15% of the respondents in the survey raised that it is 'harder for arbitration to confer during hearing sessions, i.e. other than in breaks' as the disadvantage. 11% of the respondents in the survey stated that 'potential for ethical or procedural abuses' are the disadvantage. 8% of the respondents in the survey stated that 'potential due process concerns impacting enforceability of any award' is the disadvantage. 2% of the respondents in the survey stated that 'other' disadvantages are also there.

From the 2021 survey of the Queens Mary University of London, what we can understand is that even the disadvantages mentioned in the survey can be minimised by incorporating further tools by positively using the developments of technology, as the technology evolves day by day.

India can Benefit

The Indian environment of arbitration made a sea change during the past few years. Recently, the Indian Parliament passed New Delhi International Arbitration Bill, 2019 and Arbitration and Conciliation (Amendment) Bill 2019 to promote institutional arbitration. The 2019 Amendment Act enacted for the constitution of the Arbitration Council of India with wide powers to "take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and

maintenance of uniform professional standards in respect of all matters relating to arbitration”.⁸ The Arbitration Council of India has power to grade the arbitration facilitating institutions “on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations”.⁹ The 2019 Amendment empowers the Supreme Court to designate such graded arbitral institutions to appoint arbitrators for the international commercial arbitrations and the High Courts to designate such arbitral institutions to appoint arbitrators for the arbitrations other than international commercial arbitrations.

India, established hi-tech centres such as ‘The Delhi International Arbitration Centre’ (DIAC) at New Delhi and ‘International Arbitration and Mediation Centre’ (IAMC) at Hyderabad, which are at par with any other top organizations of repute in the World. The facilities and the infrastructure, including the online video conferencing rooms for the online arbitrations provided by these centres are incomparable and cost effective. The availability of human resource comparatively at cheaper rate, both under the technical and subject field together with the world class infrastructure, can handle any international commercial arbitrations at amazingly speedier manner at cheaper cost.

The threshold question is who decides that Information Technology is to be used in Arbitration. The parties to the arbitration or the Arbitrator have to decide the use of Information Technology in Arbitration proceedings. Even if the parties agree to use the Information Technology platform for arbitration, if the arbitrator is not well versed with the Information Technology platform, it would be difficult to continue the arbitration smoothly. India can tap this opportunity by overcoming the challenges and make India as the preferred destination for all countries for the dispute resolution for their international commercial arbitrations.

Conclusion

Disputes are to be resolved at the earliest with minimum cost. By taping the benefit of the development of information technology to the arbitration proceedings, together can achieve greater efficiency. Virtual hearings can bring greater procedural and logistical flexibility. Travel can be reduced by adapting virtual hearing and thereby environmental impact can be reduced in comparison with the in-person hearing of the dispute. This will encourage the tribunals to be diversify their profession. During virtual hearings, comparatively lesser chance is there for interruptions for the lawyers as well as the arbitrators. In-person hearings may not give clear view of people who participate in the proceedings. But in the case of virtual hearing, the face of every participant is clear and visible to all the participants.

The challenges faced today in using information technology tools for arbitration is temporary. The disadvantages marked today are due to the lack of further technological development. We are not yet in teenage after adapting information technology tools into arbitration. High speed internet connectivity worldwide is changing the scenario. Further development of user-friendly and advanced videoconferencing tools, development of more advanced virtual hearing rooms by the arbitral institutions will minimise the challenges faced by using information technology tools into arbitration today. The most wanted in this field of arbitration is the requirement of drafting a fool-proof ‘online arbitration code’ for the smooth and cost-effective online dispute resolution’, which will certainly remove the present challenges faced by online arbitration. All the challenges faced today such as ‘difficulty of accommodating multiple or disparate time zones’, ‘harder for counsel teams to confer during hearing sessions, i.e. other than in breaks’, ‘more difficult to control witnesses and access their credibility’, ‘technical malfunctions and/or limitations (including inequality of access to particular and/or reliable technology’, ‘more difficult for participants to maintain concentration due to ‘screen fatigue’, ‘confidentiality and cyber security concerns’, more difficult to ‘read’ arbitrators and other remote participants, ‘harder for arbitration to confer during hearing sessions, i.e. other than in breaks’, ‘potential for ethical or procedural abuses’, ‘potential due process concerns impacting enforceability of any award’, etc. can be well managed and minimised by implementing ‘online arbitration code’.

Technology evolves, the available Information Technology tools may change quite radically. Adapting to new opportunities and challenges are not an issue to the still evolving homo sapiens, and thus adopting Information Technology tools in arbitration proceedings will certainly add one more golden feather on the crown on India by facilitating the International Commercial Arbitrations in a quick and cost-effective manner through the World class arbitral institutions hatching up in India.

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