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Rise in International Arbitration: Virtual Hearing

With the onset of COVID-19 and the bar on international travel, we have all seen a major shift to virtual communication and the same has been the case for Arbitrations. International Arbitration has garnered attention due to a surge in disputes and easier access to the virtual world of Arbitrations which Indian businesses have not shied away from exploring. For example, according to the SIAC Annual Report 2020¹, out of the 1018 international cases, India has around 690 users. Similarly, arbitration institutions such as ICC, ICSID, HKIAC, LCIA and so on have shown a major hike in cases during 2020.

With the virtual world in arbitration scaling up, the debate on 'seat' vs. 'venue' becomes more complicated and much required. Further, the rules for Arbitration and the conduct of parties become more of a relevant discussion topic. Moreover, the relevance and progression of an institutionalised arbitration becomes more of a need than a choice to establish a systematic arbitral approach. The challenges that arise are not only with respect to the presence of parties in a virtual forum but also the impact and binding nature of the virtual hearing, the conduct of arbitrators, the inadvertent and unavoidable technical glitches etc. These may seem to be a more of a procedural issue, whereas these could very well transcend into an approach of violation of natural justice resulting in bias.

In India, while various rules were being laid down for virtual e-courts, the same did not include the Arbitral Tribunals and institutions. Leading Arbitration institutions have welcomed and adopted virtual hearings and have also developed the requisite infrastructure to facilitate the same. Although the institutions in India can adopt a more autonomous approach in developing their own guidelines, it will be prudent and progressive to ensure that a framework accessible to the common pool, integrating the entire Arbitration scene in India is laid down. This will also ensure that issues relating to 'seat' vs. 'venue' in virtual courts, determining the completion of pleadings, timeframes, etiquette, examination of witnesses and so on will be addressed and be brought to a uniform platform. Another perspective to look at it is to view the enforceability angle of the awards granted in the virtual forum without actually having to re-establish its enforceability. The lag caused will also put India away from the map causing major setbacks.

To combat such issues, the Indian Government is making constant efforts to establish more international commercial Arbitration centres and independent centres to foresee the possibility of making India an

¹ SIAC Annual Report 2020 - https://www.siac.org.sg/images/stories/articles/annual_report/SIAC_Annual_Report_2020.pdf

Arbitration hub. The New Delhi International Arbitration Centre Act (NDIAC), 2019² was enacted with effect from 02.03.2019 and Arbitration Council of India³ have been set up to aid the growth of arbitration. the inclusion of specific guidelines and regulations for e-arbitration will contribute to its exponential growth, as virtual hearings will likely be a prominent presence in the future.

² The New Delhi International Arbitration Centre Act (NDIAC), 2019 - <https://legallaffairs.gov.in/sites/default/files/The%20New%20Delhi%20International%20Arbitration%20Centre%20Act%2C%202019.pdf>

³ <https://www.icaindia.co.in>



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