



REINFORCING PARTY AUTONOMY IN INDIA: NEED FOR LEGAL FRAMEWORK ON MODEL ONLINE ARBITRATION RULES (MOAR)

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Abstract:

Parties and their counsels to disputes in international trade and commerce have been keenly observing the legal environment in India regarding the progress of its arbitration regime. In recent times, offering technological support to the settlement procedure has enhanced the parties' ability to more effectively manage their arbitration proceedings. The study thematically reviews the rise of party autonomy principle in India and traces its development from traditional form of arbitration to its modern context in online arbitration. Further, by employing a doctrinal methodology, the paper examines the legal validity of an online or technology-based arbitration conducted in India. The findings of the study conclude that albeit, an entirely online-based arbitration would be legally valid in India, there is an absence of a consolidated legal framework to regulate such proceedings in the country. Predictability and certainty in online proceedings would potentially enhance the principle of party autonomy in India, thereby increasing its arbitration friendliness. The study provides a justification on the need for model online arbitration rules (hereinafter MOAR) in India while also referring to similar rules drafted in jurisdictions like Sweden, China, and South Korea. The paper also discusses potential issues that might arise while drafting online arbitration rules for India, thus, providing a momentum towards initiating legal discussions on the drafting of such rules.

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1. INTRODUCTION

India has come closer to witnessing the rise of a new dawn in international commercial arbitration. The last decade observed many transformations in the arbitration regime of India.¹ For instance, establishment of international arbitration institutes in the country, empanelment of international arbitrators, setting up arbitration council of India, upholding the principle of party autonomy by judiciary, giving deference to the autonomy of arbitral tribunal, limiting the role of courts, validating emergency arbitrator's award, and also recognizing the group of companies' principle. Both judicial as well as legislative actions have given fillip to the status of India as an arbitration-friendly state.²

Nevertheless, it is considered wise to take caution before selecting India as a seat for international commercial arbitration.³ An extensive reach given to the courts by the Arbitration and Conciliation Act, 1996 (hereinafter the 1996 Act) causes delayed proceedings in arbitrations conducted in India.⁴ Furthermore, the backlog of cases in the courts exacerbates the delay.⁵ The duration of a proceeding is closely linked to the expenses borne

¹ Sagnik Sengupta, 'Advancing International Commercial Arbitration in India: Insights from Singapore and Japan' (2024) 57 Vand J Transnat'l L 1413.

² Xinyi Shen, 'India Moves One Step Further Towards "Arbitration-friendly" jurisdiction' (2019) 11 Arb L Rev 266.

³ 'Inside Arbitration: Choosing wisely - Selecting a Seat for India-related Arbitrations' (Herbert Smith Freehills, 27 September 2023) <www.herbertsmithfreehills.com/insights/2023-09/inside-arbitration-choosing-wisely-%E2%80%93-selecting-a-seat-for-india-related-arbitrations> accessed 20 January 2025.

⁴ Manu Thadikkaran, 'Judicial Intervention in International Commercial Arbitration: Implications and Recent Developments from the Indian Perspective' (2012) 29 J Int Arb 681; Dilber Devitre, 'India's Waltz with Arbitration: A Critical Analysis of the 2015 and 2019 Amendments to the Indian Arbitration Act' in Leïla Choukroune and Rahul Donde (eds), *Adjudicating Global Business in and with India: International Commercial and Investment Disputes Settlement* (Taylor & Francis 2021).

⁵ 'High Courts of India' (National Judicial Data Grid) <https://njdg.ecourts.gov.in/hcnjdg_v2/> accessed 27 January 2025. See also Azeefa Fatima, 'India's judiciary choked by vacancies, delays, and gender gaps: IJR 2025' (*The News Minute*, 16 April 2025) <www.thenewsminute.com/news/indias-judiciary-choked-by-vacancies-delays-and-gender-gaps-ijr-2025> accessed 14 July 2025. As per the report, there has been a 20% increase in the pendency of cases from 2020 to 2024, and around 61% of the cases in the High Courts of India have been pending for more than 3 years.

by the parties involved in arbitration.⁶ Therefore, any extended court proceeding related to arbitration undermines the effectiveness of the arbitration process.⁷

To address the issue of delay in courts, technological intervention has played a crucial role. The judiciary in India has expressly favoured technological advancements in the justice delivery system to provide speedier redressal, reduce the case pressure on courts, and make dispute resolution more efficient. This approach also aligns with the international principles on access to justice for all, establishing rule of law.⁸

The 1996 Indian Arbitration Act does not make any provision on online arbitration. Nevertheless, the role of technology in arbitration proceedings is not obscure.⁹ The principle of party autonomy, recognized as the brooding spirit of arbitration in India,¹⁰ makes it possible for the parties to select any mode of arbitration.¹¹ It is because of this principle, that parties are free to select either physical (in-person) or virtual (online)

⁶ Adetoyese Latilo and others, 'Management of Complex International Commercial Arbitrations: Insights and Strategies' (2024) 6 IJARSS 1884.

⁷ Alex Baykitch and Edmund Bao, 'A Return to Innate Arbitration Culture: Implications from a Cost and Efficiency Perspective' (2019) 35 *Arbitr Int* 57. See also Yeqiong Wang and Fuyong Chen, 'Balancing Substantive Fairness and Procedural Efficiency: An Analysis of the ISDS Appeal Mechanism Under the Rules of Beijing International Arbitration Center' in Marc Bungenberg and others (eds), *Asian Yearbook of International Economic Law* (Springer 2023). This chapter of the book illustrates the problem of legitimacy of investor-state dispute settlement (ISDS) awards in the recent times. Parties to the dispute struggle between balancing substantive fairness and procedural efficiency. The authors in this source propose that such procedural hurdles may be resolved by establishing an ISDS appellate mechanism after addressing the problem of parallel proceedings. A parallel proceeding or a three-tier arbitration, including the remedy of setting aside an award along with appeal, would increase the time and cost associated with the arbitration.

⁸ See Agenda 2030 and Sustainable Development Goals by the United Nations, Goal 16 – Peace, Justice and Strong Institutions; International Covenant on Civil and Political Rights 1966, art 14; Universal Declaration of Human Rights 1948, arts 6, 7 and 8.

⁹ Dushyant Dave and others, *Arbitration in India* (Wolters Kluwer 2021).

¹⁰ *PASL Wind Solutions Private Limited v GE Power Conversion SLP* (Civil) 3936 of 2021 (Supreme Court of India).

¹¹ Chijioke Uzoma Agbo, 'Customary Law Arbitration and the Challenge of Party Autonomy: A Contextual Overview' (2022) 4 *IJOCLLEP* 155.

mode of arbitration.¹² However, the Indian judiciary's attempts at strengthening party autonomy in the arbitration regime of the country cannot, on its own, make India a preferable destination for conducting arbitration. It is imperative that a resilient regulatory framework that aligns with international standards is also established in the country.¹³ By incorporating online arbitration rules within the statutory framework parties will have certainty and clarity over online mode of arbitration proceedings conducted in India.

The article is divided into six parts including introduction and conclusion. The *first part* provides introduction to the contextual background of the study and identifies the problem related to regulatory gap in the conduct of online-based arbitration proceedings in India.¹⁴ The *second part* reflects the underlying theoretical framework of the paper vide the autonomy principle, its significance in the arbitration law of India, and further scope in online arbitration. The *third part* employs a doctrinal methodology to examine how the Indian law legitimizes e-arbitration agreements and e-arbitration proceedings providing autonomy to the parties to opt for online arbitrations in India. *Fourth part* surveys the institutional practices governing online arbitrations established in countries like Sweden, China, and South Korea. Unlike these jurisdictions, the current study does not aim to limit the proposed Model Online Arbitration Rules (hereinafter *MOAR*) for India, to only institutional arbitration. The authors suggest that such rules must be established for both *ad-hoc* as well as institutional

¹² Singhania & Co, 'Virtual Hearings in arbitrations in India' (*Lexology*, 8 July 2020) <www.lexology.com/library/detail.aspx?g=1c85d10b-e340-4dc7-8dfa-72ec3832bd04> accessed 25 June 2025. See also Pablo Cortes, 'Using Technology and ADR Methods to Enhance Access to Justice' (2018) 5 *IJODR* 5 <www.elevenjournals.com/tijdschrift/ijodr/2018/1-2/IJODR_2352-5002_2018_005_102_011> accessed 20 February 2025.

¹³ See *Amazon.com NV Investment Holdings LLC v Future Retail Ltd. & Ors.* (2022) 1 SCC 209 (Supreme Court of India) (hereinafter *Amazon.com*). In this case, though, the Supreme Court of India upheld the validity of emergency arbitrator's award, clarity regarding the same under the 1996 Act would have helped the parties to avoid proceedings in the court.

¹⁴ The term 'online-based' arbitration is used interchangeably with 'technology-based' arbitration in the paper. However, before addressing the difference between 'technology-assisted arbitration' and 'technology-based arbitration' in this paper, the authors use the term 'online-based' arbitration.

online arbitrations.¹⁵ The *fifth part* addresses the issues that might arise while drafting a regulatory framework for governing online-based arbitrations in India. And finally in conclusion, under the *sixth part*, the authors summarize their arguments to stress upon the need of a statutorily recognised consolidated framework on MOAR which would enhance the autonomy of parties in arbitration.

2. THEORETICAL UNDERPINNINGS OF THE STUDY

The autonomy of parties has been universally accepted as a doctrine for all arbitration proceedings.¹⁶ This doctrine represents an advanced explanation of Immanuel Kant's autonomy theory which enables parties to mutually decide, based on their inherent rationality, to resolve their disputes through right or moral actions.¹⁷ The mutual decision of the parties is based on the reason – to timely resolve their dispute which does not affect their business, to maintain neutrality in the dispute resolution process, and to also keep the process unbiased. Kant talked about external freedom as part of his legal theory but did not address choice of law as part of this freedom.¹⁸ It was Savigny who provided an extensive explanation to the Kantian legal philosophy on external freedom to address the concept of choice of law.¹⁹ Furthermore, jurists like Dumoulin, Gamillscheg and Mancini laid the early foundations for the current day understanding of the principle of party autonomy.²⁰ In contemporary scholarship, Jan Paulsson, a Swedish academic and arbitrator, is associated

¹⁵ See Department of Legal Affairs, *High Level Committee to Review the Institutionalization of Arbitration Mechanism in India* (Ministry of Law and Justice 2019, 36) (hereinafter *High Level Committee Report*). The committee suggested that there should be enactment of model rules for conducting ad-hoc arbitrations in the country.

¹⁶ See Sunday A. Fagbemi, 'The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?' (2015) 6 JSDLP 222.

¹⁷ See Pauline Kliengeld, 'The Principle of Autonomy in Kant's Moral Theory: Its Rise and Fall' in Eric Watkins (ed), *Kant on Persons and Agency* (CUP 2017).

¹⁸ Sagi Peari, 'Choice-of-Law in Family Law: Kant, Savigny and the Parties' Autonomy Principle' (2012) *Nederlands Internationaal Privaatrecht* 597, 600.

¹⁹ Ibid.

²⁰ Yuko Nishitani, 'Party Autonomy in Contemporary Private International Law - The Hague Principles on Choice of Law and East Asia' (2016) 59 JYIL 59, p. 307; Alex Mills, 'Historical and Theoretical Foundations of Party Autonomy' in *Party Autonomy in Private International Law* (CUP 2018) 29-90.

with the theory advocating for party autonomy in arbitration.²¹ The principle enables the parties to an arbitration dispute to select their preferred mode of procedural law, including preferred choice of arbitrators, seat, as well as institution. It has shaped arbitration into a flexible mechanism enabling it to adapt to modern-day developments. Today, parties make use of Internet and Artificial Intelligence (AI) technologies to support their arbitration proceedings.²² The following sub-part discusses the implementation of the party autonomy principle under the arbitration law of India. It reflects how India is exploring mechanisms to enhance efficiency of arbitration through autonomy principle.

2.1 Growing importance of arbitration and party autonomy in India

In the pre-colonial India, alternative methods of resolving disputes served a significant role in the society. With time, influence of the British led to the establishment of formal courts and legal frameworks to oversee the dispute resolution process.²³ As statutory laws developed, the citizens of India became aware of their legal entitlements and began to inundate the courts with a growing number of lawsuits each passing day.²⁴ As a solution to the backlog of cases in the courts,²⁵ Alternative Dispute Resolution (hereinafter *ADR*) methods were encouraged and adopted alongside the conventional approach. These alternative mechanisms paved way for individuals from distant regions to exercise their right of access to justice.²⁶

²¹ Jan Paulsson, 'Delocalisation of International Commercial Arbitration: When and Why It Matters' (1983) 32 ICLQ 53.

²² Magdalena Łągiewska, 'New Technologies in International Arbitration: A Game-Changer in Dispute Resolution?' (2023) 37 Int J Semiot Law 851.

²³ Law Commission of India, *Arbitration Act, 1940* (76th Report, 1978).

²⁴ KL Bhatia and others, 'Delay: A Riddle Wrapped in a Mystery Inside an Enigma' (1995) 37 JILI 42; NR Madhav Menon, 'Evaluating Judicial Performance: A Consumer Perspective' (2008) 50 JILI 468.

²⁵ KG Balakrishnan, 'Judiciary in India: Problems and Prospects' (2008) 50 JILI 461; Abhishek Singhvi, 'Reforms in the Administration of Justice: Beating the Backlog' (2016) 58 JILI 115.

²⁶ William Davis and Helga Turku, 'Access to Justice and Alternative Dispute Resolution' (2011) 2011 JDR 47.

Arbitration emerged as a private dispute resolution process having a binding decision on the parties, without any provision to appeal. Being adjudicatory in nature made arbitration different from other ADR methods, such as mediation or conciliation.²⁷ The report of 76th Law Commission of India, with respect to the then 1940 arbitration law of the country, stated that the Act, "...was premised on mistrust towards independent arbitral processes and party autonomy, giving multiple opportunities to litigants seeking intervention from courts."²⁸ It was the United Nations Commission on International Trade Law's (hereinafter *UNCITRAL*) 'Model Law on International Commercial Arbitration of 1985' (hereinafter *Model Law on ICA*) which was ratified by the Indian government to enforce the 1996 Act.²⁹ However, this Act was still burdened with issues such as excessive court intervention, delayed proceedings, subpar awards and a deficient institutional framework.³⁰ The 246th Law Commission Report emphasised on advancing institutional arbitration, lowering costs related to arbitration proceedings, limiting the intervention of courts and enhancing party autonomy.³¹

After a lengthy deliberation, the parliament introduced the 2015 bill (the first amendment to the 1996 Act) to resolve the issues in the principal Act. Party autonomy was given preference through this amendment under provisions like section 7 – to include electronic means of communication

²⁷ Gary B. Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2020) 182.

²⁸ See 76th Report of Law Commission of India (n 23). See also Moazzam Khan and others, 'Preference of Domestic Parties Towards Foreign Seat and Foreign Governing Law: Rationale, Advantages and Learnings' in *Repositioning India for Arbitration: Envisioning an Empowered Nation* (Oak Bridge 2018).

²⁹ Law Commission of India, *The Arbitration and Conciliation (Amendment) Bill, 2001* (176th Report, 2001). See also Nidhi Gupta, 'Making the Impossible Possible: UNCITRAL's Impact on the Harmonisation and Modernisation of India's Legal Framework for Dispute Resolution' in Ridhi Gulati and others (eds), *The Elgar Companion to UNCITRAL* (Edward Elgar Publishing Ltd 2023).

³⁰ Khan and others (n 28)

³¹ Law Commission of India, *Amendments to the Arbitration and Conciliation Act, 1996 (Along with supplementary report)* (246th Report 2014).

within the definition of arbitration agreement; and section 28 – where parties may agree to decide the dispute based on trade usages.³²

The principle of party autonomy gained acceptance overtime in almost all national jurisdictions, including the Indian law on arbitration.³³ The Apex Court of India upholds the autonomy principle and has time and again emphasised on its adherence by lower courts in the country.³⁴ The Indian legal system is experimenting online arbitration, although, the Supreme Court is yet to comment on the matter.³⁵ Furthermore, on various instances, the Indian laws and judgements have favoured the use of technology in dispute resolution, including arbitration.³⁶

2.2 *The shift towards technology & Online Dispute Resolution (ODR)*

With the progression of information and communication technology, the process of dispute resolution in India incorporated electronic methods to improve the efficiency of the justice delivery system.³⁷ The ‘e-courts initiative’ has been digitizing judgments and orders across all tiers of the

³² Later on, amendments in 2019 and 2021 were also enacted to fortify the country’s pro-arbitration stance. Both these amendments uphold the principle of party autonomy – the 2019 amendment established the arbitration council of India to limit the intervention of courts in the appointment of arbitrators; the 2021 amendment repealed schedule VIII of the 1996 Act which restricted foreign arbitrators from being appointed in arbitrations conducted in India.

³³ Redfern and others, *Law and Practice of International Commercial Arbitration* (4th edn, Sweet & Maxwell 2004) 315. See also, Okezie Chukwumerije, *A Choice of Law in International Commercial Arbitration* (Quorum Books 1994) 105-106.

³⁴ *Amazon.com* (n 13); *Oil and Natural Gas Corporation Ltd. v Afcons Gunanusa JV* (2022) INSC 884 (Supreme Court of India); *Shinhan Bank v Carol Info Services Limited* (2023) INSC 217 (Supreme Court of India); *Arif Azim Co. Ltd. v Micromax Informatics FZE* (2024) INSC 850 (Supreme Court of India).

³⁵ Dave and others (n 9). See Department of Legal Affairs, *The Arbitration and Conciliation (Amendment) Bill, 2024*.

³⁶ See Rahul Nikam and Bangkim Singh Nongthombam, ‘An Analytical Study on Legal Validity of Online Dispute Resolution (ODR) System in India and Indonesia’ (2022) 12 *Indones L Rev* 41.

³⁷ See *State of Maharashtra v Dr. Praful B Desai* 2003 (4) SCC 601 (Supreme Court of India); *Santini v Vijaya Venkatesh* AIR 2017 SC 5745 (Supreme Court of India) (hereinafter *Santini*).

Indian judiciary.³⁸ At the time of writing this paper, it is in its third phase; focusing on integrating internet and AI technologies to ensure that justice is accessible to everyone.³⁹ Ratification of the UNCITRAL Model Law on Electronic Commerce and subsequent enactment of the Information Technology Act, 2000 (hereinafter *the IT Act*), marked a significant milestone in legitimizing electronic contracts in India.⁴⁰ While considering electronic evidence, admission in courts is done only upon meeting the criteria established under the IT Act and the law of evidence.⁴¹ The courts also permit the examination of witnesses via videoconferencing.⁴² Thus, the laws in India reflect technology as an integral part of its justice delivery system.

In the context of integrating technology with dispute resolution, ADR mechanisms have also not remained averse.⁴³ Since the COVID-19 pandemic in 2020, technological advancements have had a great impact on dispute resolution mechanisms.⁴⁴ International arbitration has also been generously utilising internet technologies for communication between parties and arbitrators, exchange of documents, and conducting hearings online.⁴⁵ In 2021, the government of India, under the aegis of NITI Aayog, released a report on Online Dispute Resolution (hereinafter *ODR*) – policy for India.⁴⁶ This report aims to incorporate ODR – friendly

³⁸ ‘Cabinet Approves e-Courts Phase III for 4 years’ (*Department of Justice*) <<https://doj.gov.in/phase-iii/>> accessed 25 March 2025 (hereinafter *e-Courts Phase III Project*).

³⁹ Ibid.

⁴⁰ See The IT Act 2000, preamble.

⁴¹ The IT Act 2000, s 79A; *Bhartiya Sakhya Adhiniyam* 2023, ss 61, 62, and 63.

⁴² *Santini* (n 37).

⁴³ Cortes (n 12). See also Daniel Rainey and others, *Online Dispute Resolution – Theory and Practice: A Treatise on Technology and Dispute Resolution* (2nd edn, Eleven 2021).

⁴⁴ Masood Ahmed, ‘Alternative Dispute Resolution During the Covid-19 Crisis and Beyond’ (2021) 32 *KLJ* 147.

⁴⁵ Łagiewska, ‘New Technologies in International Arbitration: A Game-Changer in Dispute Resolution?’ (n 22).

⁴⁶ The NITI Aayog Expert Committee on ODR, ‘Designing the Future of Dispute Resolution – The ODR Policy Plan for India’ (*NITI Aayog*, October 2021) <www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> accessed 25 February 2025.

policies in the country to ease the doing of business factor with Indian companies and businessmen.

India has witnessed a noticeable boom in the number of platforms and institutes conducting ADR in online mode.⁴⁷ A number of ODR platforms, with their own specific guidelines to govern the proceedings, have been established in the country.⁴⁸ One such online platform recognized by the Ministry of Law and Justice of India is *SAMA*.⁴⁹ While this kind of platforms help domestic parties resolve their disputes and reduce the burden of courts, they are unlikely to be selected by parties in an international commercial arbitration. In an arbitration where foreign parties are involved, the need of expertise, security, and administration by a trusted institute increases.⁵⁰ Thus, it is required to establish procedural clarity for online-based arbitrations. Though, the principle of party autonomy enables the parties to select online mode of arbitration, uncertainty of the law may undermine this principle. In the garb of their autonomy to conduct online proceedings, parties must not deviate from due process of law. Therefore, certainty of law in the form of a framework on model online arbitration rules (hereinafter *MOAR*) must be established.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ ICICI Bank has collaborated with SAMA to provide quick and accessible solutions to its customers. ICICI Bank, 'SAMA - Online Dispute Resolution Platform' (*YouTube*, 22 June 2021) <www.youtube.com/watch?v=kcjfttLq_1c> accessed 25 February 2025. The platform is web-based and provides ADR services through its website www.odr.sama.live. The services are administrative in nature for both offline and online ADR, helping the parties in the appointment of arbitrator, mediator, or conciliator in an ADR proceeding, as well as making a solemn endeavor to provide the parties with a definitive solution. Similar ODR platforms in India include the Center for Alternative Dispute Resolution Excellence (CADRE), the Center for Online Dispute Resolution (CODR), AGAMI, Presolv360, and WeVaad.

⁵⁰ Daniel Brantes Ferreira and others, 'Arbitration Chambers and Trust in Technology Provider: Impacts of Trust in Technology Intermediated Dispute Resolution Proceedings' (2022) 68 *Tech Soc* 101872.

3. RECOGNIZING ONLINE ARBITRATION VIS-À-VIS GLOBAL DEVELOPMENT AND THE INDIAN LAW

A joint venture project in 1996, called ‘the Virtual Magistrate’, established the foundation for technology-assisted arbitration.⁵¹ It is one of the first ‘rapid-response’ systems, specifically created to resolve conflicts, through arbitration, arising out of online messages and posts.⁵² Today, almost 70 per cent of arbitrations use some form of technology for their proceedings.⁵³ To comprehensively understand the notion of online arbitration, it is essential to establish a definition. According to Jie Zheng, Professor and Research Fellow at Shanghai University of Finance and Economics, online arbitration is simply the use of information and communication technology in arbitration proceedings.⁵⁴ He further adds, based on the extent to which technology is used in an arbitration it can either be ‘technology-assisted’ arbitration or completely ‘technology-based’ arbitration.⁵⁵

In *technology-assisted* arbitration, the traditional form of arbitration, which is conducted in person, is augmented by electronic means to facilitate the exchange of documents or to conduct certain hearings via videoconferencing. On the other hand, *technology-based* arbitration eliminates the need for parties to meet physically.⁵⁶ In a *technology-based* arbitration, the entire proceedings of an arbitration are conducted electronically or online, including notification to invoke arbitration clause,

⁵¹ Janet Osen, ‘The Virtual Magistrate’ (1996) 1996 Network Security 18; Mohamad Fateh Labanieh and others, ‘The Legal Capacity of International Conventions and Laws to Legalise E-Arbitration’ (2021) 17 J Int Stud 211.

⁵² Osen (n 51).

⁵³ School of International Arbitration, ‘2021 International Arbitration Survey: Adapting Arbitration to a Changing World’ (Queen Mary University of London 2021) <www.qmul.ac.uk/arbitration/research/2021-international-arbitration-survey/> accessed 19 July 2025. See also Ethan Katsh and Daniel Rainey, ‘The “Cans,” “Shoulds,” and “Musts” in the New Virtual Arbitration Environment’ (2021) 8 BCDR Int Arb Rev 19.

⁵⁴ Jie Zheng, ‘The Recent Development of Online Arbitration Rules in China’ (2017) 26 Inf Commun Tech L 135.

⁵⁵ Ibid.

⁵⁶ Ibid. See also Gunawan Widjaja and Victoria Regine Andriyawan, ‘“Online Arbitration”: Comparative Analysis’ (2019) 472 ASSEHR 46.

appointment of arbitrators, exchange of documents, hearings, negotiations with the help of arbitrators, and even issuing of award.⁵⁷

Technological advancements, such as virtual hearings, have transformed the nature of arbitration and its efficacy in dispute resolution. The availability of online arbitration facilitates direct participation from the parties involved, rather than solely their legal representatives. This development has enhanced mutual understanding between the parties and has created more opportunities for settlement.⁵⁸

Online arbitration facilitates greater access to justice, expedites the conduct of proceedings, alleviates the caseload on courts, and enhances both efficiency and party autonomy in commercial arbitration processes.⁵⁹ Nevertheless, not all categories of disputes are amenable to resolution through online arbitration. While expedited proceedings or small-claim matters may be appropriate for such a process, disputes that entail extensive documentation, such as those related to construction, may not be suitable.⁶⁰ It is also essential to consider the maintenance of technological equity between parties; otherwise, the presence of information asymmetry could contravene procedural due process.⁶¹ In addition, addressing security concerns related to data breaches is crucial for maintaining the confidentiality of arbitration proceedings. While open platforms like Google Meet or Zoom offer free access, they may not be secure.⁶² And, other platforms which provide end-to-end encryption

⁵⁷ Emad Abdel Rahim Dahiyat, 'A Legal Framework for Online Commercial Arbitration in UAE: New Fabric but Old Style!' (2017) 26 Inf Commun Tech L 272.

⁵⁸ Gai Matsushita and others, 'YSIAC Tokyo Event: Arbitration as an Advantage: Strategic Use of International Arbitration for Business Success' (*Kluwer Arbitration Blog* 19 January 2025) <<https://arbitrationblog.kluwerarbitration.com/2025/01/19/ysiac-tokyo-event-arbitration-as-an-advantage-strategic-use-of-international-arbitration-for-business-success/>> accessed 4 March 2025.

⁵⁹ Widjaja (n 56) 48.

⁶⁰ Amy Schmitz, 'Drive-Thru' Arbitration in the Digital Age: Empowering Consumers through Regulated ODR' (2010) 62 *Bayl L Rev*; Zheng (n 54) 142.

⁶¹ Amy J Schmitz, 'Dangers of Digitizing Due Process' in Karim Benyekhlef (ed), *AI and Law: A Critical Overview* (Les Éditions Thémis 2020). See also Suzanne Van Arsdale, 'User Protections in Online Dispute Resolution' (2015) 21 *Harv Negot L Rev* 107.

⁶² Nicholas Hunter Gauthier and Mohammad Iftekhhar Husain, 'Dynamic Security Analysis of Zoom, Google Meet and Microsoft Teams' in *Silicon Valley Cybersecurity Conference*

might add on to the costs of online arbitration. Yet, the costs of a secure online platform would be less than the travel costs that the parties sustain in a conventional in-person arbitration. Thus, online arbitrations are practically more beneficial than traditional arbitrations. However, to ensure legality of online arbitration proceedings in a country, certainty of laws is required.

The technology law of India grants legal recognition to e-documents, e-evidence, and videoconferencing.⁶³ In addition, it provides functional equivalence to electronic documents for their paper-based counterparts.⁶⁴ Though, electronic communications are recognised as valid arbitration agreements under section 7 of the 1996 Act, ensuring compliance in an online cross-border commercial arbitration necessitates the existence of laws which validate electronic signatures in agreements and other documents submitted in an arbitration. The 2000 Act incorporates the notion of both ‘electronic signature’ as well as ‘digital signature’ (via its 2008 amendment).⁶⁵ While an electronic signature may be of use to endorse an e-arbitration agreement or other arbitration related documents, digital signatures may be helpful in securing and authenticating information in an online arbitration.⁶⁶ Though, Indian laws under different statutes provide legality to online arbitration proceedings, a separate consolidated set of rules governing technology-based arbitration would provide certainty, and predictability to the parties.⁶⁷

(Springer International Publishing 2021); Dima Kagan and others, ‘Zooming into Video Conferencing Privacy’ (2024) 11 IEEE Trans Comput Soc Syst 933.

⁶³ *Shakti Bhog Foods Ltd. v Kola Shipping Ltd.* 2009 (2) SCC 134 (Supreme Court of India).

⁶⁴ The IT Act 2000, ss 4 and 5.

⁶⁵ ‘Status: UNCITRAL Model Law on Electronic Signatures (2001)’ (*United Nations Commission on International Trade Law*) <https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_signatures/status> accessed 4 March 2025.

⁶⁶ Rishabh Sant Tiwari and Deepansh Goyal, ‘The Role of Digital Signatures in the Digitisation of Loan Documentation in India’ (2017) 14 Digit Evid Electron Signat L Rev 61.

⁶⁷ See Franco Ferrari and Friedrich Rosenfeld, ‘Limitations to Party Autonomy in International Arbitration’ in Stefan Kröll, Andrea K. Bjorklund, and Franco Ferrari (eds), *Cambridge Compendium of International Commercial and Investment Arbitration* (CUP 2023) 47.

This concept reflects in various practices and regulations established under different jurisdictions discussed in the following section.

4. INTERNATIONAL PRACTICES GOVERNING ONLINE ARBITRATION

In 2005, the International Chamber of Commerce (hereinafter *ICC*) introduced an online platform called the *NetCase* system for parties to exchange electronic documents and conduct hearings in arbitration. This was later replaced in 2022 by the ICC Case Connect platform. The online system has proven helpful for ICC to manage their cases efficaciously and has provided a secure platform for parties to share their documents.⁶⁸ Another internationally recognised online platform for conducting arbitrations is the Stockholm Chamber of Commerce (hereinafter *SCC*) Platform introduced in 2019. This platform utilizes end-to-end technology for conducting online arbitration, ensuring the security and confidentiality of the proceedings. This platform uses military-grade encryption techniques and anti-malware software to provide greater safety. The guidelines of the SCC Platform have encouraged many arbitral institutions across the world to make use of new technology in conducting arbitration proceedings.⁶⁹

Some arbitration institutions across the world have issued guidelines on online arbitration. For example, Arbitration Rules of ICC 2021, World Intellectual Property Organisation's Arbitration Rules 2021, the China International Economic and Trade Arbitration Commission Online Arbitration Rules 2009, the Guangzhou Arbitration Commission (hereinafter *GZAC*) Online Arbitration Rules 2015, the Shenzhen Court of International Arbitration Online Arbitration Rules 2019, Seol Protocol on Video Conferencing in International Arbitration 2020, and the Hong Kong International Arbitration Centre's Guidelines for Virtual Hearings 2020.⁷⁰

⁶⁸ See Łagiewska, 'New Technologies in International Arbitration: A Game-Changer in Dispute Resolution?' (n 22) 855.

⁶⁹ *Ibid.*

⁷⁰ See 'Arbitration Rules Mediation Rules' (*International Chamber of Commerce* 1 January 2021) <<https://iccwbo.org/wp-content/uploads/sites/3/2020/12/icc-2021-arbitration-rules->

Technology comes with issues related to security and data breach. Thus, it is primarily important to take care of data confidentiality and its security in an online dispute resolution proceeding. Such breaches have happened in the past, such as targeting the arbitration between the Philippines and China.⁷¹ Cybersecurity being an important aspect in online arbitration, must be addressed in the rules. For instance, in the Seoul Protocol on Videoconferencing, it is the duty of the parties to ensure security of documents, witnesses and videos recorded during virtual hearings.⁷² The arbitration institute must further inform the parties about the risks associated with selecting a particular online platform.

Another important aspect is related to fairness. The arbitration platform must ensure fair and transparent use of technology between the parties. This has been achieved under the GZAC Online Arbitration Rules of 2015, where parties waive their right to object on technological deficiency upon entering into an arbitration agreement to conduct their proceedings online.⁷³ This would ensure certainty and establish mutual consent in an

2014-mediation-rules-english-version.pdf> accessed 20 March 2025; 'WIPO Arbitration Rules' (WIPO 1 July 2021) <www.wipo.int/amc/en/arbitration/rules/index.html> accessed 21 March 2025; 'Online Arbitration Rules' (*China International Economic and Trade Arbitration Commission* 1 May 2009) <www.cietac.org/en/articles/25173> accessed 21 March 2025; 'China Guangzhou Arbitration Commission Online Arbitration Rules' (*Guangzhou Arbitration Commission* 8 April 2020) <www.gziac.cn/zcgz/528> accessed 21 March 2025; 'SCIA Online Arbitration Rules' (*Shenzhen Court of International Arbitration* 21 February 2019) <www.scia.com.cn/files/fckFile/file/SCIA%20Online%20Arbitration%20Rules.pdf> accessed 21 March 2025; Kevin Kim and others, 'Seoul Protocol on Videoconferencing in International Arbitration' <<https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Seoul%20Protocol%20on%20Video%20Conference%20in%20International%20Arbitration.pdf>> accessed 21 March 2025; 'HKIAC Guidelines for Virtual Hearings' (HKIAC 15 May 2020) <www.hkiac.org/sites/default/files/ck_filebrowser/PDF/services/HKIAC%20Guidelines%20for%20Virtual%20Hearings.pdf> accessed 21 March 2025.

⁷¹ Luke Eric Peterson, 'Permanent Court of Arbitration Website Goes Offline, with Cyber-Security Firm Contending that Security Flaw was Exploited in Concert with China-Philippines Arbitration' (*Investment Arbitration Reporter* 23 July 2015) <www.iareporter.com/articles/permanent-court-of-arbitration-goes-offline-with-cyber-security-firm-contending-that-security-flaw-was-exploited-in-lead-up-to-china-philippines-arbitration/> accessed 22 March 2025.

⁷² Seoul Protocol on Video Conferencing in International Arbitration 2020, arts 2, 3 and 5.

⁷³ China Guangzhou Arbitration Commission Online Arbitration Rules 2015, art 5.

online arbitration proceeding. The 2015 GZAC rules address all procedural aspects of an arbitration proceeding and provide a standard for best practice.

Furthermore in 2016, at the 49th session, the UNCITRAL finalised its 'Technical Notes on Online Dispute Resolution'.⁷⁴ These notes are a descriptive document which reflect aspects of an online dispute settlement procedure in the form of soft law.⁷⁵ Section II of the technical notes on ODR, discuss the principles to be followed in any ODR procedure, i.e. accountability, due process, transparency, and fairness. Section XII is an important provision, which provides for the importance of guidelines on regulating the conduct of ODR platforms and administrators. It is provided that online procedures must adhere to the same due process and confidentiality requirements as offline dispute resolution procedures, specifically independence, neutrality, and impartiality.⁷⁶ However, since these technical notes are non-legislative texts of the UNCITRAL and have a non-binding nature, they need not be ratified by the States.

Another important text of UNCITRAL which reflects pro-online arbitration approach is the note by the Secretariat on 'Recognition and Enforcement of Electronic Arbitral Awards'.⁷⁷ These notes encourage enabling reliance on electronic arbitral awards to enhance procedural efficiency of arbitration proceedings. To ensure the conduct of an online arbitration proceeding in compliance with these notes, the role of government is paramount. The government of India must pass such

⁷⁴ 'UNCITRAL Technical Notes on Online Dispute Resolution' (*United Nations Commission On International Trade Law*, 2017) <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf> accessed 4 March 2025.

⁷⁵ Ibid.

⁷⁶ UN General Assembly, 'Report of Working Group III (Online Dispute Resolution) on the Work of its Thirty-Third Session' (*United Nations*, 11 March 2016) <<https://docs.un.org/en/a/cn.9/868>> accessed 10 March 2025.

⁷⁷ UN General Assembly, 'Recognition and Enforcement of Electronic Arbitral Awards' (*United Nations Commission on International Trade Law*, 30 July 2024) <https://documents.un.org/doc/undoc/gen/v24/054/32/pdf/v2405432.pdf?_gl=1*1nki8j*_ga*NDEyNTk1NTIwLjE3NTA3NTcwODA.*_ga_TK9BQL5X7Z*czE3NjAxNjgwNjgkbzUkZzEkdDE3NjAxNzAxMzMkajYwJGwwjGgw> accessed 11 October 2025.

regulations which incorporate, within its framework, adherence to due process, neutrality, confidentiality, and impartiality.

5. POTENTIAL ISSUES TO ADDRESS WHILE DRAFTING MOAR FOR INDIA

As already discussed, online arbitration has gained prevalence in India.⁷⁸ Magdalena Łagiewska, Faculty at the University of Gdańsk, advocates that online arbitration has the ability to strengthen autonomy of parties.⁷⁹ Online platforms provide more flexibility to parties than traditional modes; for instance, taking part in the proceedings from the comfort of homes, submitting e-documents, and choosing from a large pool of arbitrators.⁸⁰ It reduces the cost of arbitration proceedings by enabling the parties to participate without travelling to the seat of arbitration, while allowing them to continue with their daily jobs.⁸¹

A lack of universal model law on online cross-border arbitration has created a regulatory vacuum to govern such proceedings uniformly. Nonetheless, it does not restrict arbitration institutes or legislatures at the domestic level to enforce rules governing online-based or technology-based arbitrations. The initial challenge for such rules, however, lies in defining the term ‘online arbitration’ and subsequently establishing the legality of e-arbitration agreements and e-awards in India. As discussed before, *technology-based* arbitration proceedings, conducted in India, cannot be held invalid vis-à-vis the existing laws of the country. It is a proceeding which is entirely facilitated by technology, beginning with notifying the opposite party of the dispute and continuing through to the issuance of the arbitral award. An award passed in this proceeding would

⁷⁸ See Ahmed (n 44).

⁷⁹ Łagiewska, ‘New Technologies in International Arbitration: A Game-Changer in Dispute Resolution?’ (n 22).

⁸⁰ Magdalena Łagiewska, ‘The New Landscape of Arbitration in View of Digitalization’ in *The Impact of Covid on International Disputes* (Brill | Nijhoff 2023).

⁸¹ Deskoski Toni and others, ‘(De)Localization of Arbitration – Online v Offline Arbitration – E-Arbitration in Time of Covid 19’ (2021) 12 *Iustinianus Primus L Rev* <<https://repository.ukim.mk/bitstream/20.500.12188/16961/1/10.%20Deskoski%2C%20Dokovski%2C%20Kocevdocx.pdf>> accessed 12 March 2025.

be an e-award and such an e-award would be binding in nature like the paper-based award passed in an in-person arbitration.⁸²

5.1 *Challenges related to technology*

Notwithstanding the apparent advantages of online arbitration, operating new technologies in a dispute resolution process comes at a cost. One likely challenge that might arise would be a disparity in the use of technology between the two parties. For instance, one of the parties might not be able to use a specific online platform because of a lack of access to the same in their jurisdiction. Alternatively, the type of hardware required to run the software of an online platform might not be available with one of the parties.⁸³ In a situation like this, mutual agreement between parties on the selection of an online platform would play a vital role.

In addition, use of an advanced technology like Artificial Intelligence (AI) by one party to evaluate their chances of winning and losing might create information asymmetry in the dispute resolution process. Consider a hypothetical situation in an international commercial arbitration dispute, wherein the law governing the arbitration proceedings is the law of Country A and one of the parties – Party X belongs to this country. Country A has developed an AI-system trained on its arbitration laws and judicial precedents which can provide the party probability of winning and losing a case.⁸⁴ In this situation, Party X, which belongs to Country A, has leverage of this information in the dispute. The regulations must address such situations to provide equality of information to both the parties. This can be done either by enabling all the parties the use of such

⁸² Amy J Schmitz, 'Building on OArb Attributes in Pursuit of Justice' in Maud Piers and Christian Aschauer (eds), *Arbitration in the Digital Age: The Brave New World of Arbitration* (CUP 2018).

⁸³ Shin Yi Peng, 'The Uneasy Interplay between Digital Inequality and International Economic Law' (2022) 33 Eur J Int L 205.

⁸⁴ For instance, China has established smart courts where AI is being used to provide probability of winning and losing a case. This promotes ADR in the country and helps in significantly reducing the burden of courts. See Yousra M. Kamal, 'Artificial Intelligence and International Arbitration' in *Artificial Intelligence and the Future of International Law* (Springer Cham 2024) 45–60.

technology, or by selecting a neutral seat where the accessibility to information is equal between the parties.

Another challenge related to technology would be the security of online arbitration proceedings. For instance, there might be a situation where the web-based software or application being used in an online arbitration is storing the data shared between the parties. This would breach the most essential feature of arbitration, ‘confidentiality’.⁸⁵ Therefore, parties must be cautious while selecting an online platform for conducting their arbitration proceedings. Here, taking recourse to the technology of end-to-end encryption as well as implementing stringent data protection protocols while designing an online platform may enhance confidentiality and trust amongst parties. Furthermore, in compliance with the privacy laws of the respective country, any data stored by the platform or shared with a third party must be disclosed to the parties and arbitrators involved in an arbitration. This disclosure enables the parties to make an informed and autonomous decision regarding the use of the ODR platform.⁸⁶ In the realm of arbitration, party autonomy and confidentiality are crucial principles to be upheld even in an online setting, while ensuring a balance with fairness and due process.⁸⁷

5.2 Technological adeptness of arbitrators and parties

Another significant advantage of online arbitration is that it provides a wider choice of arbitrators from across the world, benefitting the autonomy of the parties. This would enhance the equality, diversity, and inclusivity index of Indian arbitral institutes.⁸⁸ But here again, a concern might arise regarding the technological adeptness of arbitrators, which

⁸⁵ Olga N Tsiptse, ‘EU Data Protection Regulation and How It Affects Arbitration and ADR-ODR’ (2021) 3 RBADR 195.

⁸⁶ Nobumichi Teramura and Leon Trakman, ‘Confidentiality and Privacy of Arbitration in the Digital Era: Pies in the Sky?’ (2024) 40 *Arbitr Int* 277.

⁸⁷ Xueer Chen and others, ‘Online Arbitration of E-commerce Disputes in the People’s Republic of China: Due Process Concerns’ (2022) 8 *CWR* 227. See also Schmitz, *AI and Law: A Critical Overview* (n 61).

⁸⁸ Garv Malhotra and others, ‘Delhi Arbitration Weekend 2024: Setting the Stage for South Asia’s Aspiring Arbitration Jewel’ (*Kluwer Arbitration Blog*, 6 May 2024) <<https://arbitrationblog.kluwerarbitration.com/2024/05/06/delhi-arbitration-weekend-2024-setting-the-stage-for-south-asias-aspiring-arbitration-jewel/>> accessed 20 March 2025.

may limit the choice of parties.⁸⁹ Also, whether there would be a separate empanelment of arbitrators, whose availability would only be in online mode, must be clarified in the rules of the arbitration institute.

Along with arbitrators, there will also be some parties involved in an online arbitration lacking the proficiency in using the technology of the online platform. Arbitration institutes may be helpful in such situations to guide their proceedings in an online mode. The issue of technical ineptitude can be tackled by conducting trial sessions, for the parties and the arbitrators, before commencing with the formal hearings.⁹⁰

5.3 *Ad-hoc v. institutional arbitration*

According to the High Level Committee Report, parties in India primarily prefer *ad-hoc* arbitration.⁹¹ On the other hand, global preference shows an inclination towards permanent arbitration institutions.⁹² One of the significant reason is the lack of international standards employed by arbitration institutes in India.⁹³ Albeit, some best practices of international commercial arbitration have been incorporated in the institutional framework of India, nevertheless it would take a considerable amount of time for foreign parties to have confidence in these arbitration institutes.⁹⁴ Online arbitration can be of significant use in such scenarios. By conducting efficient and confidential arbitration proceedings in online

⁸⁹ See Łagiewska, 'New Technologies in International Arbitration: A Game-Changer in Dispute Resolution?' (n 22).

⁹⁰ Juan Pablo Gómez-Moreno, 'Advocacy for Online Proceedings: Features of the Digital World and Their Role in How Communication is Shaped in Remote International Arbitration' (2024) 37 Int J Semiotic L 865.

⁹¹ See High Level Committee Report (n 15) 14.

⁹² Shikha Sharma Jaipuria, 'Ad hoc to Institutional Arbitration: A Paradigm Shift in the Arbitration Law in India' (*Manupatra*, 9 July 2021) <<https://articles.manupatra.com/article-details/Ad-hoc-to-Institutional-Arbitration-A-Paradigm-Shift-in-the-Arbitration-Law-in-India>> accessed 25 March 2025; Niharika Salar, 'Institutional Arbitration versus Ad Hoc Arbitration: Determining the Right Choice' (2023) 15 J Leg Aff Disput Resolut Eng Constr <<https://ascelibrary.org/doi/10.1061/JLADAH.LADR-981>> accessed 27 January 2025. See also Loukas Mistelis, 'International Arbitration – Corporate Attitudes and Practices 12 Perceptions Tested: Myths, Data and Analysis' (2004) 15 Am Rev Int Arb 525, 559.

⁹³ Jaipuria (n 92) 1470.

⁹⁴ For instance, arbitration council of India, amendment to section 11, omission of eighth schedule from the 1996 Act.

mode, arbitration institutes in India can showcase their adeptness in providing the best online services to parties in cross-border commercial arbitration. These institutes can gain the trust of foreign parties by developing a clear set of guidelines for the administration of online arbitration. This would contribute to the arbitration-friendliness of the country and strengthen the autonomy of parties.

Drafting model rules for online arbitration in India would help both *ad-hoc* as well as institutional arbitration. The rules may be provided as a schedule to the existing law of arbitration in India i.e. the 1996 Act and be made applicable when parties select India as their seat of arbitration. These rules must be made applicable by default in an *ad-hoc* online arbitration and may be adopted by parties in their arbitration agreement in an institutional online arbitration.

5.4 Conflict with the rules of ODR platform

A significant issue that may emerge following the adoption of MOAR by Indian arbitration institutes is a potential conflict with the existing procedural rules of ODR providers in the country, discussed in part 2 of the paper. When parties choose an arbitration institute in India that has adopted MOAR and operates its own online platform to manage arbitration proceedings, there won't arise any regulatory conflict between the arbitration institute and the online platform. For instance, the Indian Institute of Arbitration and Mediation (hereinafter *IIAM*), has adopted its own application known as Peacegate to administer online arbitration.⁹⁵ In this case, the rules of IIAM would be applicable in an online arbitration proceeding being conducted via the Peacegate platform. Here, if IIAM adopts MOAR, then the adopted rules would apply for its online platform as well.

Nevertheless, if parties opt for an arbitration institution in conjunction with a distinct ODR platform, the arbitral tribunal may also be required to adhere to the regulations associated with the selected ODR platform.⁹⁶

⁹⁵ See Peacegate App (*Indian Institute of Arbitration & Mediation*) <www.arbitrationindia.com/peacegate.html> accessed 4 July, 2025.

⁹⁶ Yurii Bilousov and others, 'Applicable Procedural Law in International Commercial Arbitration' (2022) 31 *Studia Iuridica Lublinensia* 51.

Here, there might arise at least two scenarios, (i) where the parties select an ODR platform which follows the MOAR, and (ii) where the ODR platform has its own rules. In the former case, there won't be any conflict in the rules governing online arbitration. In the latter case, the tribunal must give preference to the parties' choice of an online platform, however, in case of a conflict, the rules of the arbitration institute must prevail.⁹⁷ The rationale here is to build trust amongst parties in favour of arbitration institutes in India.

5.5 Seat of online arbitration

Selecting the *seat* of arbitration is an important aspect of party autonomy, as it decides the applicable procedural law of the arbitration.⁹⁸ And, this *seat* or *place* of arbitration does not affect the *venue* of conducting arbitration.⁹⁹ Even after selecting a seat, parties upon mutual agreement may conduct the proceedings at a different place for their convenience. The seat of arbitration is selected for the purpose of deciding the jurisdiction of courts on the arbitration proceedings. Nonetheless, there have been instances where jurisdiction of multiple courts is implicated by the arbitration agreement.¹⁰⁰ Online-based arbitration has the potential of resolving this issue to an extent. Since the venue for conducting such proceedings would be online, the place mentioned in the arbitration agreement would incline towards the seat of arbitration.

5.6 Recognition and enforcement of e-arbitral awards

It is required that a separate framework be designed for online arbitration, as its nature is different from other ODR mechanisms like mediation and

⁹⁷ In a hypothetical situation, if parties select the Delhi International Arbitration Centre (hereinafter DIAC) for conducting their international online arbitration proceedings and, along with it, specify the online platform to be Presolv360 in their agreement, then even though DIAC has its own rules, the rules of Presolv360 will be applicable to the online proceedings. However, in case of conflict, the rules of DIAC would prevail over rules of Presolv360.

⁹⁸ Bilousov and others (n 96) 62.

⁹⁹ James Hosking and Marcel Engholm, 'The Central Importance of the Seat in Online Dispute Resolution' (2021) 8 BCDR Int Arbitr Rev 103.

¹⁰⁰ See *Arif Azim Co. Ltd. v Micromax Informatics FZE* 2024 INSC 850 (Supreme Court of India).

negotiation. Arbitration is an adjudicatory process, with a binding decision on both the parties without any appeal against the decision. The award or final decision by the arbitral tribunal may only be set aside by a competent court with jurisdiction to hear the application. Section 34 of the 1996 Act provides grounds on which an Indian-seated award, whether passed in domestic arbitration or international commercial arbitration, may be set aside. For a foreign award (seated outside India), the requirements of recognition and enforcement have been provided under section 48 of the Act.

It is thus, at this point, essential to provide legal clarity towards the enforcement of an award issued by the arbitrators in an online arbitration. There exist two kinds of awards: the first is an Indian-seated award, wherein the parties involved opt for the procedural law of India to govern the proceedings; the second is a foreign award, wherein the parties choose the procedural rules of another country. Section 31 of the 1996 Act stipulates the requirements for the 'form and contents of an arbitral award',¹⁰¹ mandating that the Indian-seated award be documented in 'writing and signed by the members of the arbitral tribunal'.¹⁰² By applying the doctrine of functional equivalence to an e-award passed in India, it can be interpreted that such an online award possesses the same legal validity as a paper-based award issued in India, in accordance with the provisions of the IT Act, 2000.¹⁰³

The other type of award is a foreign award. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter *the New York Convention 1958*) was ratified by India as the Foreign Awards (Recognition and Enforcement) Act of 1961, however currently it is covered by Part II of the 1996 Act. Article IV (1) (a) of the New York Convention 1958, declares that for recognising a foreign award, a party must produce 'duly authenticated original award or a duly certified copy thereof'.¹⁰⁴ Section 47 of the 1996 Act reflects Article IV of the New York Convention, and requires the parties to submit the original award of the

¹⁰¹ The 1996 Act, s 31.

¹⁰² Ibid. See also Model Law on ICA, art 31.

¹⁰³ IT Act 2000, s 4.

¹⁰⁴ The New York Convention 1958, art IV.

tribunal or its duly certified copy from the country where such award was passed. The judiciary is yet to determine whether an electronic arbitral award issued under the jurisdiction of a foreign court contravenes the mandatory provisions of the 1996 Act. The provision under the 1996 Act concerning the recognition of a foreign award mandates the submission of the original award to the court for enforcement. The question of whether a foreign award issued online by an arbitral tribunal qualifies as original is a legal matter to be adjudicated by the Apex Court of India.

Although the Apex Court of India is yet to enforce an e-arbitral award, a pro-autonomy interpretation of Indian laws along with reliance on UNCITRAL texts suggest that there is a possibility of validating electronic awards within the framework of the 1996 Indian Arbitration Act. In addition to this, article VII (1) of the New York Convention of 1958 incorporates the principle of ‘more-favourable right provision’.¹⁰⁵ According to this principle, if a more favourable domestic law exists in the country where the arbitral award is to be enforced, and applying this law would grant recognition to the award, then that favourable law should be applied. Thus, reading article VII (1) of the Convention with the provisions of IT Act, 2000 may provide recognition to foreign e-arbitral awards in the country.

Recent developments made by the UNCITRAL in the form of technical notes on ODR or reports of working group II,¹⁰⁶ imply the need for universal rules to govern online arbitrations. The governments of Germany, Israel, Japan, Republic of Korea and Spain have submitted a proposal, to the UNCITRAL, to promote recognition and enforcement of e-arbitral awards in international arbitrations.¹⁰⁷ These countries are reciprocating nations to India under the New York Convention and their

¹⁰⁵ Mohamad Fateh Labanieh and others, ‘E-arbitral in Malaysia: Issues, Challenges, and Opportunities’ (2024) 15 UUM J Leg Stud 409.

¹⁰⁶ Working Group II of the UNCITRAL is mandated with issues related to international commercial law and dispute settlement through arbitration or conciliation. See ‘Working Group II: Dispute Settlement’ (*United Nations Commission on International Trade Law*) <https://uncitral.un.org/working_groups/2/arbitration> accessed 19 October 2025.

¹⁰⁷ UN General Assembly, ‘Work Programme: Submissions by the Governments of Germany, Israel, Japan, Republic of Korea and Spain’ (*United Nations Commission on International Trade Law*, 11 June 2024) <<https://docs.un.org/en/A/CN.9/1186>> accessed 11 October 2025.

proposal provides a persuasive value to the judiciary to take a liberal approach to accommodate the interpretation of e-arbitral awards under the arbitration law of India. Further clarity may be established by drafting a model law for online arbitration through an international collaborative approach, to ascertain uniformity and certainty in the recognition of cross-border electronic arbitral awards.¹⁰⁸

6. CONCLUSION

India has the potential to enhance its position in cross-border commercial arbitrations by reinforcing the autonomy of the involved parties. This can be accomplished by granting parties increased control over the arbitration process, enabling them to determine the location, timeline, and procedural aspects of the arbitration. Thus, the autonomy principle turns out to be helpful in validating online procedures for conducting arbitration. In instances where parties will have a clear understanding of how arbitration proceedings will be conducted through online platforms, they will more likely be inclined to favour this digital approach over conventional, in-person arbitration methods.

In times when the Internet has taken over every phase of life, it is time to think in line with the ease and convenience of parties to arbitration. Online arbitration enhances accessibility and convenience for parties, allowing participation from any location without the necessity of travel. It reduces costs associated with traditional in-person arbitration by eliminating expenses related to travel and venue. Furthermore, online arbitration facilitates access to a broader pool of arbitrators from across the globe. It is a potent tool that can transform the arbitration dynamics of India.

The existing platform-specific or institution-based online arbitration rules in India, do not make clear whether they govern technology-assisted arbitrations or technology-based arbitrations. These rules should aim at establishing uniformity and certainty in conducting online arbitrations in India, for both ad-hoc as well as institutional arbitrations. The existing online arbitration rules in the country also do not address issues like technological inequality between parties, technological ineptitude of

¹⁰⁸ See Labanieh and others, 'The Legal Capacity of International Conventions and Laws to Legalise E-Arbitration' (n 51) 233-34.

arbitrators and parties, data privacy disclaimers by the ODR platform, use of technology to secure data shared between parties, and most importantly the validity of an e-arbitral award. These considerations must be taken note of while drafting the online arbitration rules.

To transform India into a jurisdiction conducive to arbitration, it is imperative that the legislative and judicial frameworks align with the principle of party autonomy and adhere to international best practices. To resolve the pendency of cases in India and improve efficiency, arbitration should be approached more practically. A separate code for online arbitration in the form of MOAR might prove to be helpful. While the establishment of an UNCITRAL Model Law on Online Arbitration would ensure international uniformity, immediate resolution could be achieved through the implementation of MOAR in India.

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