



COVID-19 and Arbitration in India- Human Rights Issues and Challenges

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Abstract

The COVID-19 pandemic has had a significant impact on the arbitration process in India. The Indian courts have been closed or operating at reduced capacity, which has caused delays in the resolution of disputes. This has led to a backlog of cases and an increase in the time it takes for disputes to be resolved. Additionally, many parties to disputes have been unable to participate in arbitration proceedings because of travel restrictions and quarantine measures.

The Indian government has taken steps to address these challenges. The Indian Council of Arbitration has issued guidelines for conducting virtual arbitration proceedings, which have allowed for the resolution of disputes to continue even during the pandemic. The government has also passed legislation to allow for the use of video conferencing and other technology to conduct arbitration proceedings.

Despite these efforts, there are still concerns that the pandemic is having a negative impact on the arbitration process in India. Some parties to disputes may be unable to participate in virtual proceedings due to a lack of access to technology or other barriers. Additionally, there is a risk that the backlog of cases and delays in the resolution of disputes may cause undue hardship for parties to disputes, particularly small businesses, and individuals.

Overall, the COVID-19 pandemic has presented significant challenges to the arbitration process in India, but the government and other organizations have taken steps to mitigate these challenges and continue resolving disputes.

Keywords: COVID-19; Arbitration in India; Human Rights

Introduction

Arbitration is a form of alternative dispute resolution in India, where parties choose to have their disputes resolved by an impartial third party rather than by a court. However, there have been concerns raised about the compatibility of arbitration with human rights standards in India [1].

One major issue is the lack of transparency and accountability in the arbitration process. Arbitration proceedings are often private and not subject to public scrutiny [1], which can raise questions about the fairness and impartiality of the proceedings. Ad-

ditionally, there are limited opportunities for parties to appeal the decisions of arbitrators, which can result in a denial of justice.

Another concern is the unequal bargaining power between parties in the arbitration process. Smaller or weaker parties may feel pressured to accept arbitration clauses in contracts without fully understanding the implications, which can limit their ability to protect their rights. In some cases, this can result in human rights abuses, such as forced labor or discrimination.

Despite these concerns, there have been recent efforts in India to promote greater alignment between arbitration and human rights

standards. For example, the Indian government has proposed reforms to the Arbitration and Conciliation Act 1996 to improve the transparency and accountability of the arbitration process. Additionally, there have been calls for greater education and awareness about the human rights implications of arbitration, as well as for the development of international best practices in this area.

In conclusion, while arbitration can be an effective form of dispute resolution in India, there are ongoing concerns about its compatibility with human rights standards. Further work is needed to address these concerns and promote greater alignment between arbitration and human rights in India.

Arbitration in India

Arbitration is a form of alternative dispute resolution (ADR) in India, used as an alternative to traditional court litigation. In India, arbitration is governed by the Arbitration and Conciliation Act, of 1996, which provides the legal framework for conducting arbitration proceedings in the country.

Arbitration in India is generally seen as a more efficient and cost-effective method of resolving disputes compared to court litigation. It is commonly used in commercial and contractual disputes, as well as in disputes related to construction, intellectual property, and other areas.

Arbitration proceedings in India are typically conducted by one or more arbitrators who are appointed by the parties to the dispute or by an arbitral institution. The arbitrator(s) hear evidence and make a determination of the dispute, which is binding on the parties. The awards of the arbitrator(s) can be enforced through the courts if necessary.

Arbitration has gained popularity in India in recent years, with a growing number of parties opting for this form of dispute resolution. The Indian government has also taken steps to promote and support the use of arbitration in the country, including the establishment of specialized arbitration institutions and the implementation of measures to improve the efficiency and effectiveness of the arbitration process.

Overall, arbitration is a well-established form of ADR in India, providing a viable and efficient alternative to traditional court litigation for resolving disputes.

Advantages of Arbitration in India

- **Flexibility:** Arbitration provides greater flexibility in terms of procedural rules and the choice of arbitrators compared to court proceedings. This allows for a more tailor-made resolution process that can better meet the needs of the parties involved.
- **Speed:** Arbitration proceedings are generally quicker than court proceedings, leading to a faster resolution of disputes.
- **Confidentiality:** Arbitration proceedings are confidential, which can be beneficial for parties who wish to keep the details of their dispute private.
- **Expertise:** Arbitrators are often chosen for their expertise in a particular field, ensuring that the resolution of disputes is informed by specialized knowledge.
- **Cost-effectiveness:** Arbitration can often be less expensive than court proceedings, particularly for complex or high-value disputes.

Disadvantages of Arbitration in India

- **Lack of transparency:** Unlike court proceedings, arbitration proceedings are not open to the public, leading to a lack of transparency in the dispute resolution process.
- **Limited appeal:** The awards rendered in arbitration are generally final and binding, with limited opportunities for appeal.
- **Imbalance of power:** In some cases, one party may have significantly greater bargaining power than the other, potentially leading to an unfair outcome.
- **Bias:** There is a risk that an arbitrator may have a bias towards one of the parties, undermining the impartiality of the dispute resolution process.

The COVID-19 pandemic has had a significant impact on the arbitration process globally. Some of the ways in which the pandemic has impacted arbitration include

- **Delays:** The pandemic has caused delays in arbitration proceedings due to lockdowns, travel restrictions, and other measures aimed at preventing the spread of the virus.
- **Shift to virtual proceedings:** The pandemic has led to a shift towards virtual arbitration proceedings, using video conferencing and other digital technologies, to continue with arbitration despite the challenges posed by the pandemic.

- Concerns over fairness and impartiality: The shift to virtual proceedings has raised concerns over the fairness and impartiality of the proceedings, particularly in terms of ensuring equal access to technology and the ability to present evidence effectively.
- Enforceability of virtual awards: There may be uncertainty over the enforceability of virtual awards in certain jurisdictions, particularly where local laws do not explicitly provide for virtual arbitration [2].
- Financial difficulties: The pandemic has caused financial difficulties for many parties involved in arbitration, which may impact their ability to participate in the proceedings or enforce awards.

These are just a few of the ways in which the COVID-19 pandemic has impacted arbitration. It is important for the arbitration community to continue to adapt and evolve to meet the challenges posed by the pandemic while ensuring that the principles of fairness, impartiality, and transparency are maintained [3].

Challenges during and after COVID

The Covid-19 pandemic continues to cause severe disruptions as of April 2021. Several public health measures give hope that the pandemic can be contained in most of the world by the end of 2021, if not completely eradicated. The world continues to face significant health and socioeconomic challenges as a result of the pandemic [4].

This is the second of two articles on the pandemic’s profound impact on litigation, arbitration, and related alternative dispute resolution (ADR) that were published in *Dispute Resolution International (DRI)*. Law, practice, technology confidentiality, and cybersecurity are just a few examples. disparities in access to human, financial, and technological resources; and emerging public policy, as well as the ways in which various institutions and jurisdictions are responding to these challenges [5].

The first article, titled “The Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution in the First Seven Months,” was published in the October 2020 issue of *DRI*. It looked at how the pandemic affected commercial dispute resolution all over the world in countries like Australia, Brazil, Egypt, England and Wales, Germany, Hong Kong SAR, India, China, Kenya, South

Korea (litigation), Singapore, Sweden, the United Arab Emirates (UAE) (arbitration), and In the three legislation, practice, and guidelines appendices, it also provided information regarding Nigeria (arbitration and litigation), the United Arab Emirates (litigation), and South Korea (arbitration) [6].

This article examines a further eight jurisdictions for litigation and nine jurisdictions for international arbitration (Argentina, France, Indonesia, Japan, the Philippines, Russia, Saudi Arabia, and Turkey for litigation, and these jurisdictions plus South Korea for international arbitration) [7]. It also provides updates on 11 of the 15 jurisdictions that were discussed in the article that was published in October 2020, as well as a discussion of the trends that emerged from the examination of 23 jurisdictions [8].

With the exception of a few essential areas primarily related to criminal law, courts in the 23 jurisdictions examined largely ceased operations during the first wave of the pandemic in 2020. The majority of jurisdictions’ courts made adjustments during subsequent waves of the pandemic to enable them to continue functioning, albeit with some backlog of cases. Since the transition to online proceedings was already in progress before the pandemic accelerated, the conduct of international arbitration has not been significantly impacted. Online mediation has been shown to be very successful.

The pandemic’s impact on commercial dispute resolution in each of the jurisdictions examined was influenced by the severity, duration, and high rate of infection. However, the openness to innovation and adaptability of each jurisdiction varied significantly. Their respective human, technological, and financial resources, as well as the adaptability of their legal framework and culture, have all contributed to this [9].

The 23 jurisdictions surveyed have revealed the following primary trends

- the growth of online platforms for document management, hearings, and proceedings, as well as their rapid adoption.
- the creation of guidelines, codes, and practice notes; and increasing the use of cutting-edge scheduling, practices, and technology [10].

The pandemic spread more quickly, prompting the provision of electronic filing, document exchange and storage, and communications services in litigation in some jurisdictions (such as Australia

and India). It also sped up the process of providing these services in mediation and arbitration. Online hearings, also known as remote or virtual hearings, and hybrid hearings, which combine online and in-person hearings, are becoming increasingly common. One commentator said that the pandemic has increased the rate of change in arbitration, forcing arbitral institutions to be more adaptable and more in line with international best practices [11].

Courts and arbitral institutions have almost always developed specific protocols for how to conduct online hearings. These protocols emphasize fairness, efficiency, the use of cutting-edge technology, confidentiality, and cybersecurity. In the jurisdictions surveyed, legislation enacted in response to the pandemic has primarily focused on border issues and public health; These are typically brief in nature (and may last longer). In terms of statutory limitations, time bars, suspension of payment deadlines, and insolvency-triggering events, most of the surveyed jurisdictions have enacted amendments to their laws that are again only temporary. In response to the pandemic, a small number of the jurisdictions examined enacted legislative changes that affected dispute resolution: Turkey, the United States, and England and Wales did so for litigation; Saudi Arabia, China, and Hong Kong SAR all did so for arbitration [12].

Many stakeholders have utilized innovative digital technology, flexible scheduling, and flexible cost structures more and more as the pandemic's effects have persisted. Auto-transcription, document management, automated docketing, blockchain, inferential artificial intelligence (AI), natural language processing (NLP), and visual perception tools (including facial recognition technologies, radar, light detection and ranging (LIDAR), and ultrasound sensors) are among the cutting-edge digital technologies utilized in dispute resolution processes.

It is unclear whether online proceedings are less expensive than in-person hearings, despite the fact that there may be some savings due to the absence of travel and lodging costs. During the hearing, the online hearing platform and third-party online services like document sharing and transcription may result in additional costs. Also, hearings might take longer [13].

Concluding Remarks

The COVID-19 pandemic has had a significant impact on the arbitration process in India. With restrictions on physical move-

ment and gatherings, conducting arbitrations in person has become challenging. As a result, many arbitration proceedings have shifted to virtual platforms, such as video conferencing and online file sharing. However, the shift to virtual arbitration has also raised concerns about fairness and accessibility, particularly for parties that lack access to technology or are unfamiliar with virtual proceedings. To address these concerns, the Indian government and arbitration institutions have taken steps to provide support and guidance for virtual arbitration. For example, the Indian Ministry of Law and Justice issued guidelines for virtual court proceedings, which are also applicable to virtual arbitrations.

Despite these efforts, there are still challenges that need to be addressed, such as ensuring the security and confidentiality of virtual proceedings and addressing unequal access to technology. Nevertheless, the pandemic has accelerated the adoption of technology in the arbitration process, which could lead to long-term benefits and improvements in the efficiency and accessibility of arbitration in India.

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