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Virtual Proceedings in Arbitration: Legal Gaps and Reform Imperatives for Effective Enforcement of Arbitral Awards

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Abstract

The rapid normalization of virtual proceedings has transformed the procedural landscape of arbitration, fundamentally altering how arbitral hearings are conducted and awards are rendered. While virtual arbitration has enhanced efficiency, reduced costs, and expanded access to dispute resolution, it has also raised complex legal questions at the enforcement stage. Existing national arbitration statutes and international enforcement instruments were largely conceived in a pre-digital era and offer limited explicit guidance on the procedural validity of awards rendered through virtual proceedings. This has resulted in doctrinal uncertainty concerning due process, equality of arms, the juridical seat of arbitration, admissibility of electronic evidence, cybersecurity risks, and the legal status of electronically signed arbitral awards. This article critically examines the legal gaps arising from the use of virtual proceedings in arbitration and evaluates their implications for the recognition and enforcement of arbitral awards in both national and international contexts. Through a doctrinal and comparative analysis of statutory frameworks, international conventions, institutional arbitration rules, and judicial decisions, the study demonstrates that virtual proceedings do not inherently undermine the enforceability of arbitral awards. Instead, enforcement challenges primarily arise from the absence of uniform legal standards and procedural safeguards governing digital arbitration. The article argues for targeted legislative, institutional, and judicial reforms to harmonize enforcement practices and ensure that arbitration retains its legitimacy and effectiveness in the digital era.

Keywords : Virtual Arbitration; Virtual Proceedings; Arbitral Awards; Enforcement of Awards; Due Process; New York Convention; Arbitration Law Reform.

1. Introduction

The institution of arbitration has long been recognised as a cornerstone of commercial dispute resolution, particularly in cross-border transactions where neutrality, flexibility, and enforceability are paramount. In India, arbitration has evolved significantly from a rigid, court-controlled mechanism to a modern, party-centric system under the Arbitration and Conciliation



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Act, 1996. This transformation has been driven by legislative amendments, judicial pro-arbitration attitudes, and India's increasing integration with global commerce. However, the rapid emergence of virtual proceedings has introduced a new layer of complexity, particularly concerning the recognition and enforcement of arbitral awards.

The COVID-19 pandemic acted as a catalyst in accelerating the adoption of virtual hearings across legal systems worldwide. Arbitral institutions, tribunals, and parties were compelled to shift from physical hearings to online platforms almost overnight. Video conferencing, electronic filings, cloud-based document repositories, and digitally signed awards became the norm rather than the exception. While virtual arbitration ensured continuity of dispute resolution, it also exposed structural and doctrinal gaps in arbitration law, especially at the enforcement stage.

In India, arbitration law does not expressly regulate virtual proceedings. The Arbitration and Conciliation Act, 1996 was enacted at a time when physical hearings were presumed to be the default procedural mode. Concepts such as "place of arbitration," "oral hearings," "presentation of evidence," and "signing of awards" were framed within a traditional, in-person understanding. Consequently, when arbitral awards rendered through virtual proceedings are brought before Indian courts for enforcement, questions arise regarding compliance with due process, natural justice, and procedural legitimacy.

Enforcement represents the most critical phase of arbitration. An arbitral award, regardless of the efficiency or fairness of the proceedings, holds little value if it cannot be effectively enforced. Indian courts, while generally supportive of arbitration, are statutorily empowered under Sections 34 and 48 of the Arbitration and Conciliation Act, 1996 to refuse enforcement on limited but significant grounds. Virtual proceedings raise concerns under these provisions, particularly with respect to equal treatment of parties, opportunity to present one's case, authenticity of evidence, and procedural fairness.

At the international level, enforcement of foreign awards in India is governed by the New York Convention, 1958, which India has adopted through Part II of the 1996 Act. The Convention itself was drafted in a pre-digital era and does not contemplate virtual hearings or electronic awards. This creates interpretative challenges for Indian courts when determining whether awards arising from virtual proceedings meet the Convention's enforcement standards.

This research article critically examines how virtual proceedings impact the enforceability of arbitral awards under Indian law, identifies existing legal gaps, and proposes reform imperatives to ensure certainty, legitimacy, and uniformity in enforcement. The study adopts a doctrinal approach, grounded in Indian statutory law, judicial precedents, and internationally accepted arbitration principles as applied in India.



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2. Evolution of Virtual Proceedings in Arbitration

2.1 Traditional Arbitration Practice

Historically, arbitration proceedings were deeply rooted in physical interaction. Hearings involved in-person oral submissions, examination and cross-examination of witnesses before the tribunal, physical presentation of documentary evidence, and deliberations conducted at the seat of arbitration. Indian arbitration practice reflected this conventional model, with courts frequently emphasising procedural formality and adherence to natural justice principles. The “place of arbitration” was understood as a tangible geographical location where hearings occurred and awards were signed.

Under Section 20 of the Arbitration and Conciliation Act, 1996, parties are free to agree on the place of arbitration, failing which the arbitral tribunal determines it. Although the provision does not explicitly mandate physical hearings, judicial interpretation traditionally assumed a physical nexus between the arbitration and the seat. Virtual proceedings challenge this assumption by decoupling hearings from any fixed geographical location.

2.2 Impact of COVID-19 and Digital Shift

The global health crisis in 2020 fundamentally altered arbitration practice. With travel restrictions and court closures, arbitral institutions such as the ICC, LCIA, and SIAC issued guidance notes encouraging virtual hearings. Indian arbitral tribunals followed suit, conducting proceedings through video conferencing platforms while ensuring procedural fairness.

Indian courts also adapted rapidly. The Supreme Court of India endorsed virtual hearings and electronic filings, thereby implicitly recognising the legitimacy of digital adjudicatory processes. Although these developments primarily concerned court proceedings, they significantly influenced arbitral practice and judicial attitudes toward virtual dispute resolution.

2.3 Institutional Acceptance of Virtual Arbitration

Major arbitral institutions have formally incorporated virtual proceedings into their procedural frameworks. The ICC Arbitration Rules, 2021 expressly empower tribunals to decide hearings in person or remotely, after consulting parties. Similarly, the LCIA Rules, 2020 permit hearings by video or other communications technology. These institutional reforms have indirectly shaped Indian arbitration practice, particularly in international commercial arbitrations seated in India or enforced by Indian courts.

However, institutional rules do not override national law. While tribunals may conduct virtual hearings under institutional authority, enforcement remains subject to Indian statutory standards. This creates a disconnect between arbitral practice and enforcement jurisprudence, highlighting the need for doctrinal clarity.



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3. Conceptual Framework of Enforcement under Indian Law

3.1 Enforcement of Domestic Awards

Enforcement of domestic arbitral awards in India is governed by Section 36 of the Arbitration and Conciliation Act, 1996. Following the 2015 amendment, an award becomes enforceable as a decree of the court once the time for filing a challenge under Section 34 has expired or such challenge has been rejected. Section 34 allows limited judicial interference, including grounds such as violation of natural justice, incapacity of parties, and procedural irregularities.

Virtual proceedings raise important questions under Section 34(2)(a)(iii), which permits setting aside an award if a party was unable to present its case. Allegations of inadequate internet access, technological inequality, or inability to effectively cross-examine witnesses during virtual hearings could potentially fall within this ground.

3.2 Enforcement of Foreign Awards

Foreign arbitral awards are enforced in India under Sections 47 to 49 of the Act, which incorporate the New York Convention framework. Section 48 sets out grounds for refusal of enforcement, mirroring Article V of the Convention. Among these grounds, denial of proper notice, inability to present one's case, and violation of public policy are particularly relevant to virtual proceedings.

Indian courts have consistently held that enforcement should be refused only in exceptional circumstances. However, the absence of explicit statutory guidance on virtual arbitration introduces uncertainty in determining whether procedural safeguards have been met.

3.3 Judicial Approach to Enforcement

The Supreme Court of India has repeatedly emphasised a pro-enforcement bias. In *Vijay Karia v. Prysmian Cavi e Sistemi SRL*, the Court held that enforcement courts should not act as appellate forums and must respect the finality of arbitral awards¹. Nonetheless, courts retain discretion to examine procedural fairness, especially when allegations of due process violations arise.

Virtual proceedings test the boundaries of this discretion. Courts must balance technological realities with traditional legal principles, ensuring that innovation does not undermine procedural justice.

4. Due Process and Natural Justice in Virtual Arbitral Proceedings

4.1 Due Process as the Cornerstone of Arbitration

Due process constitutes the foundational pillar of arbitration, both domestically and internationally. Under Indian law, the principles of natural justice—*audi alteram partem* and absence of bias—are expressly embedded in Section 18 of the Arbitration and Conciliation Act, 1996. This provision mandates that parties shall be treated with equality and each party shall be given a full opportunity to present its case. Any deviation from this mandate exposes an arbitral award to challenge under Section 34 or refusal of enforcement under Section 48.



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Virtual proceedings pose unique challenges to due process, primarily because procedural equality is now mediated through technology. Access to stable internet connectivity, familiarity with digital platforms, quality of audio-visual infrastructure, and cybersecurity safeguards can significantly influence a party's ability to effectively participate in proceedings. In a country like India, where technological disparities remain pronounced, virtual hearings may unintentionally create inequality between parties.

Indian courts have consistently held that violation of natural justice must be substantive rather than technical. However, when virtual proceedings are alleged to have impaired effective participation, courts are required to engage in a nuanced evaluation of procedural fairness.

4.2 Opportunity to Present the Case in Virtual Hearings

The “opportunity to present one’s case” is not merely a formal right but a substantive guarantee. In *ONGC Ltd. v. Saw Pipes Ltd.*, the Supreme Court underscored that procedural fairness is integral to the legitimacy of arbitral awards². Virtual hearings complicate this assessment, particularly in relation to witness examination and cross-examination.

Cross-examination is a critical aspect of adversarial proceedings. Concerns have been raised regarding witness coaching, off-camera assistance, and difficulties in assessing demeanor during virtual testimony. While these concerns do not automatically vitiate proceedings, they may assume relevance at the enforcement stage if a party demonstrates actual prejudice.

Indian courts have begun acknowledging that virtual hearings, per se, do not violate due process. What matters is whether reasonable procedural safeguards were adopted and whether parties consented to or were adequately heard during such proceedings. Consent, however, cannot override statutory guarantees of fairness.

4.3 Equality of Arms and Technological Asymmetry

Equality of arms requires that neither party be placed at a substantial disadvantage vis-à-vis the other. In virtual arbitration, technological asymmetry may manifest in unequal access to hardware, software, or secure digital platforms. Large corporate entities may be better equipped to conduct virtual hearings, while smaller parties may struggle to participate effectively.

The Arbitration and Conciliation Act, 1996 does not expressly address technological inequality. Nevertheless, Indian courts have interpreted Section 18 broadly to encompass substantive fairness. If virtual proceedings are conducted without accommodating genuine technological constraints faced by a party, enforcement courts may view such proceedings as violative of natural justice.

However, courts are cautious not to encourage frivolous objections. In *Associate Builders v. DDA*, the Supreme Court clarified that mere procedural irregularities without demonstrable prejudice do not warrant interference³. This principle is likely to guide judicial scrutiny of virtual arbitration proceedings.



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5. Seat, Venue, and Place of Arbitration in Virtual Proceedings

5.1 Conceptual Distinction between Seat and Venue

The distinction between the “seat” and “venue” of arbitration has been a recurring theme in Indian arbitration jurisprudence. The seat determines the juridical home of arbitration and the applicable curial law, while the venue merely denotes the physical location of hearings. This distinction assumes added complexity in virtual proceedings, where hearings may not occur at any identifiable physical location.

In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, the Supreme Court held that the seat of arbitration anchors the arbitration to a particular legal system⁴. Virtual hearings challenge the traditional understanding of this anchor, as parties and arbitrators may participate from multiple jurisdictions simultaneously.

5.2 Determination of Seat in Virtual Arbitration

Indian courts have clarified that the seat of arbitration is determined by the arbitration agreement and the intention of the parties, not by the physical location of hearings. In *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd.*, the Court reaffirmed that once the seat is designated, it confers exclusive jurisdiction on the courts of that place⁵.

In virtual proceedings, hearings conducted online do not alter the seat unless parties expressly agree otherwise. However, ambiguity arises when arbitration agreements merely specify a venue or are silent on the seat. In such cases, enforcement courts may be required to infer the seat from surrounding circumstances, which becomes more complex in the absence of a physical hearing location.

5.3 Place of Arbitration and Enforcement Implications

The place of arbitration assumes significance at the enforcement stage, particularly for determining whether an award is domestic or foreign. Virtual proceedings blur territorial boundaries, but Indian courts have consistently prioritised juridical concepts over physical realities. This approach ensures continuity and predictability but also underscores the need for legislative clarity to avoid conflicting interpretations.

6. Validity of Electronic Evidence and Digitally Signed Arbitral Awards

6.1 Admissibility of Electronic Evidence

Virtual arbitration relies heavily on electronic evidence, including emails, digital contracts, electronic records, and cloud-stored documents. The admissibility of such evidence in India is governed by the Information Technology Act, 2000 and the Indian Evidence Act, 1872. Section 65B of the Evidence Act prescribes conditions for admissibility of electronic records, which may pose practical challenges in arbitration.

Although arbitral tribunals are not bound by strict rules of evidence under Section 19 of the Arbitration and Conciliation Act, enforcement courts may scrutinise whether reliance on



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electronic evidence resulted in procedural unfairness. Courts generally refrain from re-appreciating evidence, but allegations of fabricated or tampered digital records may attract closer examination.

6.2 Digital Signatures and Validity of Awards

Section 31 of the Arbitration and Conciliation Act, 1996 requires arbitral awards to be in writing and signed by the members of the tribunal. The provision does not explicitly mandate physical signatures. The Information Technology Act, 2000 recognises digital signatures and electronic authentication, thereby providing a statutory basis for digitally signed awards.

Indian courts have yet to definitively rule on the validity of purely digitally signed arbitral awards. However, given judicial acceptance of electronic filings and digitally signed court orders, it is likely that courts will uphold such awards, provided authenticity and integrity are established.

6.3 Cybersecurity and Confidentiality Concerns

Confidentiality is a defining feature of arbitration. Virtual proceedings expose sensitive information to cybersecurity risks, including data breaches and unauthorised access. While the Arbitration and Conciliation Act does not explicitly address cybersecurity, tribunals are expected to adopt reasonable safeguards.

7. Judicial Approach of Indian Courts towards Enforcement of Awards Arising from Virtual Proceedings

7.1 Pro-Enforcement Bias of Indian Courts

Indian arbitration jurisprudence has steadily evolved towards a pro-enforcement and minimal-intervention approach, particularly after the 2015 amendments to the Arbitration and Conciliation Act, 1996. The Supreme Court has repeatedly affirmed that courts should not re-examine the merits of arbitral awards and must respect party autonomy and finality. This judicial philosophy becomes crucial when examining awards rendered through virtual proceedings.

In *Vijay Karia v. Prysmian Cavi e Sistemi SRL*, the Supreme Court held that refusal of enforcement under Section 48 must be exercised sparingly and only in cases of clear violation of fundamental principles of justice⁶. This principle is equally applicable to awards arising from virtual proceedings. Indian courts have shown reluctance to treat procedural innovations, including online hearings, as inherently suspect.

7.2 Virtual Proceedings and Public Policy Objections

Public policy remains the most frequently invoked ground for resisting enforcement. However, Indian courts have narrowed the scope of public policy objections, particularly after the 2015 amendment. In *Renusagar Power Co. Ltd. v. General Electric Co.*, the Supreme Court restricted public policy to fundamental policy of Indian law, interests of India, and justice or morality⁷.



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Virtual proceedings may invite public policy objections on grounds such as denial of natural justice or procedural unfairness. Nevertheless, Indian courts have consistently held that procedural irregularities must be substantial and must cause actual prejudice. The mere fact that hearings were conducted virtually does not, by itself, constitute a violation of public policy.

7.3 Treatment of Procedural Objections at Enforcement Stage

Indian courts distinguish between procedural objections raised during arbitral proceedings and those raised belatedly at the enforcement stage. In *MMTC Ltd. v. Vedanta Ltd.*, the Supreme Court reiterated that parties who participated in proceedings without objection cannot later challenge enforcement on procedural grounds⁸.

This principle has direct relevance to virtual arbitration. If parties consented to or participated in virtual hearings without protest, enforcement courts are unlikely to entertain objections related to mode of hearing. This approach strengthens enforceability and discourages tactical challenges.

8. Legal Gaps in the Indian Arbitration Framework Concerning Virtual Proceedings

8.1 Absence of Statutory Recognition of Virtual Hearings

The most significant legal gap in Indian arbitration law is the **absence of express statutory recognition of virtual proceedings**. The Arbitration and Conciliation Act, 1996 neither defines nor regulates online hearings, electronic submissions, or virtual evidence presentation. While Section 19 grants procedural flexibility to arbitral tribunals, it does not provide explicit safeguards tailored to virtual arbitration.

This legislative silence places excessive reliance on judicial interpretation and institutional rules, creating uncertainty at the enforcement stage.

8.2 Ambiguity Regarding Electronic Awards

Although Indian law recognises electronic records and digital signatures under the Information Technology Act, 2000, the Arbitration Act does not expressly validate electronically signed arbitral awards. Section 31 merely requires the award to be “in writing and signed,” leaving room for interpretative disputes during enforcement.

Given the increasing prevalence of digital awards, this ambiguity poses risks to enforceability, particularly in execution proceedings before civil courts.

8.3 Lack of Procedural Safeguards for Technological Inequality

Indian arbitration law does not address technological inequality between parties. Virtual proceedings may disadvantage parties lacking access to adequate digital infrastructure. While tribunals may attempt to mitigate such issues, absence of statutory guidance increases the likelihood of enforcement challenges based on alleged denial of equal treatment.



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9. Reform Imperatives for Effective Enforcement of Virtual Arbitral Awards

9.1 Legislative Reforms

There is an urgent need to amend the Arbitration and Conciliation Act, 1996 to explicitly recognise and regulate virtual proceedings. Such amendments should:

- Recognise virtual hearings as valid procedural modes
- Clarify that the seat of arbitration remains unaffected by virtual hearings
- Validate electronically signed arbitral awards
- Provide guidance on procedural fairness in online hearings

These reforms would significantly reduce uncertainty at the enforcement stage.

9.2 Judicial Guidelines and Best Practices

Pending legislative reform, Indian courts may issue interpretative guidelines to ensure consistency. Courts could clarify that virtual proceedings do not per se violate natural justice and that enforcement challenges must demonstrate real prejudice. Judicial consistency would enhance India's reputation as an arbitration-friendly jurisdiction.

9.3 Institutional and Technological Safeguards

Arbitral institutions operating in India should adopt detailed protocols for virtual hearings, addressing issues such as cybersecurity, witness examination, data protection, and confidentiality. Courts are more likely to enforce awards where proceedings were conducted under robust institutional safeguards.

10. Conclusion

Virtual proceedings represent an irreversible transformation in arbitration practice. In India, the shift towards online hearings has ensured continuity, efficiency, and accessibility of arbitral justice. However, this transformation has also exposed significant legal gaps in the existing arbitration framework, particularly at the stage of recognition and enforcement of arbitral awards.

Indian courts have demonstrated commendable restraint and adaptability in addressing challenges posed by virtual arbitration. Judicial emphasis on minimal interference, pro-enforcement bias, and substantive justice has largely protected awards arising from virtual proceedings, reliance on judicial interpretation alone is insufficient to ensure long-term certainty. This study concludes that virtual proceedings do not inherently undermine the enforceability of arbitral awards under Indian law. The real challenge lies in the absence of explicit statutory guidance. Legislative reform, combined with judicial consistency and institutional best practices, is essential to harmonise technological innovation with procedural fairness.



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