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DIGITALIZATION OF ARBITRATION IN INDIA: CONSTITUTIONAL SAFEGUARDS, DUE PROCESS, AND THE RISE OF ONLINE DISPUTE RESOLUTION

Vaibhav Pandey¹

I. ABSTRACT

In India, the digitisation of arbitration shows a major shift towards modernising how disputes are resolved through arbitration, creating new and important questions regarding how these digital processes comply with the Constitution of India and whether they are fair. The Arbitration and Conciliation Act of 1996 has traditionally governed arbitration, but many courts now use technology to implement virtual hearings, e-filing, and Online Dispute Resolution (ODR) to administer their dispute resolution processes more quickly and efficiently, particularly as a result of the COVID-19 pandemic. The paper compares digital arbitration against both the current statutory and legal frameworks and technology trends to better understand how digital arbitration fits within the overall context of the Constitution, and how digital arbitration is governed by the rights and protections in Articles 14, 19, and 21. This study seeks to evaluate if digital arbitration respects the principles of equality, due process, and natural justice; in addition to examining the continued concerns of the digital divide, privacy of data, and enforcement against ODR mechanisms. Key research questions shape the inquiry regarding the fairness of virtual hearings, the accessibility of technology-based dispute resolution systems, and whether technology-based dispute resolution systems comply with the constitution. The study employs a doctrinal and comparative research methodology, analysing statutory law, judicial precedents, policy reports, and studies from other countries. The findings of the study suggest that while digital arbitration improves efficiencies, cost-effectiveness, and access to justice, it also creates new structural and constitutional threats. The conclusion of the paper advocated for a rights-based approach to the development of regulations which incorporate procedural protections, cybersecurity standards,

¹ Student, 6th Semester pursuing BBA LL.B (Hons) at Amity Law School, Amity University Uttar Pradesh, Lucknow (India). Email: vaibhavpandeyesq@gmail.com

and inclusiveness in order to promote that technological innovation remains consistent with the spirit of the Constitution.

II. KEYWORDS

Digital Arbitration, Online Dispute Resolution (ODR), Constitutional Safeguards, Due Process, Arbitration and Conciliation Act, 1996

III. INTRODUCTION

India's dispute resolution system has been significantly structured around arbitration for years. As business developed and court dockets became fuller, companies found that the best way to resolve complicated commercial issues was through arbitration. The 1996 Arbitration and Conciliation Act was created in recognition of this fact and to align Indian law with the UN Commission on International Trade Law Model Law. Since the enactment of the act, thousands of arbitration cases have been filed annually in areas ranging from infrastructure and energy to banking and intellectual property.

In the early twenty-first century, digital technology began to change the way that legal matters would be handled forever. Courts incorporated electronic filing systems, video conference technology came to the courtroom and online databases reduced reliance on paper records. Arbitrations were already flexible contracts with party autonomy, making them perfectly suited to adapt to these technological changes faster than traditional courts.²

In 2020-2021, the COVID-19 pandemic created a fundamental change, it changed a fundamental moment in history by creating an inflection point in global arbitration practice. The judicial system came to a standstill due to government mandates regarding lockdown and the closure of court buildings. As a result, the international arbitration community adapted quickly, turning to remote platforms such as Zoom, Cisco Webex, and Microsoft Teams for hearings and other procedures that were formally conducted in

² Drishti IAS, 'Digitisation of Indian Judiciary' (30 May 2023) <https://www.drishtiiias.com/daily-news-editorials/digitisation-of-indian-judiciary> accessed 24 March 2026.

physical places.³ E-filing of pleadings and electronically submitting evidence, along with issuing awards online after issuing them electronically, became commonplace after years of experimentation. Thus, the pandemic effectively pushed 10 years of technological change into an 18-month time frame.

The e-Courts Mission Mode Project is a planned rollout of ICT infrastructure to digitally transform India's legal system; it's being rolled out in a phased manner, with Phase III occurring between 2023-2027. During this phase, the focus will be on providing e-filing of documents, conducting virtual hearings, and digitising all court records, to make the court system operate more efficiently and be easily accessible to the public. To date, there have been more than 637 crore pages digitised. Millions of cases have been processed via these digital platforms; as a result, the digitisation initiative has improved the effectiveness of case management and created greater transparency in the case management process.⁴

Several tools exist in support of increasing access to judicial data and e-courts workflows; the National Judicial Data Grid, CIS 4.0, and Digital Courts 2.1 are examples of these tools.⁵ A significant increase in the availability of video conferencing and other online services have improved equitable access to justice when there is no physical access to a courthouse; continued investment in security and cybersecurity will promote ongoing and sustainable digital transformation.

A significant legal concern arising under the above-mentioned backdrop relates to whether the digitalisation of arbitration fulfils or undermines the constitutional protection afforded under the Constitution of India. This research paper seeks to systematically answer that question. It will provide an analysis of how virtual arbitral

³ Elizabeth Roberts, 'Impact of COVID-19 on Arbitration Centers' in *The Impact of Covid on International Disputes* (Brill 2022) 230 <https://brill.com/edcollchap-oa/book/9789004514836/BP000015.xml> accessed 24 March 2026.

⁴ Ministry of Law and Justice, 'Digitization of Courts' (Press Information Bureau, 12 February 2026) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2227226> accessed 24 March 2026.

⁵ Press Information Bureau, 'Artificial Intelligence Based Judicial Reform: e-Courts Software Applications Developed under eCourts Project' (18 December 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2205770®=3&lang=1> accessed 24 March 2026.

proceedings match up against Articles 14, 19 and 21 of the Constitution⁶, examine due process pursuant to digital means, and determine the constitutionality of ODR platforms. In addition, it proposes a reform framework designed to ensure that the efficiency gained through/due to digitalisation is not at the detriment to the protection of fundamental rights.

A. Research Objectives

The objectives of this study are to:

1. Identify legal and institutional guidelines for digital arbitration in India.
2. Evaluate how constitutional protection applies to arbitration and online dispute resolution processes.
3. Explore whether digital hearings comply with due process and natural justice.
4. Evaluate potential structural risks (e.g., digital exclusion, breaches in privacy, and discriminatory practices). Suggest changes that make the practice of digital arbitration constitutionally valid.

B. Research Questions

Central questions that inform this research include:

1. Is the digitalization of arbitration compliant with article 14, 19 & 21 of the constitution of India?
2. Are virtual hearings conductible on the basis of the principle of natural justice?
3. Is the digital divide a source of substantive inequality in access to arbitral justice?
4. Will ODR mechanisms allow for enforceability while preserving fairness for parties involved and confidentiality of information?

C. Research Hypothesis

⁶ Constitution of India 1950

The following three hypotheses serve to frame the analysis:

1. Digital arbitration can increase procedural efficiency, while introducing new constitutional weaknesses.
2. ODR frameworks that lack structured oversight could potentially jeopardize the guarantees of equality and due process.
3. Finally, a properly calibrated regulatory framework can be introduced to ensure that technological innovation is in balance with constitutional obligations.

D. Research Methodology

The methodology is primarily doctrinal in nature, utilizing an examination of the constitutional provisions and statutes (such as the Arbitration and Conciliation Act, 1996 and its 2015, 2019, 2021 amendments) as the basis for the analysis of case law and judicial decisions. The use of arbitral institutional rules, government policy documents on ODR and a review of the available academic literature on the topics of digital justice and reform of arbitration, all supplement the analysis. The study will also provide a limited amount of comparative analysis of international digital arbitration framework, including UNCITRAL technical notes and the SIAC procedural guidelines, as a component of the domestic analysis.

E. Literature Review

Arbitration is grounded by the two base principles of party autonomy (i.e., allowing individual parties to enter into their own arbitration agreements) and procedural contractualism (i.e., the parties can thereafter choose the procedures for their arbitration). The most comprehensive text on the jurisdiction and procedure of international arbitration remains the treatise by Gary Born⁷. In India, the empirical and policy basis for the Arbitration and Conciliation (Amendment) Act, 2019 was largely derived from the

⁷ Gary Born, 'Gary Born's Collection on International Arbitration' (Kluwer Arbitration) <https://www.wolterskluwer.com/en/solutions/kluwerarbitration/born> accessed 24 March 2026.

report of the High-Level Committee chaired by Justice B.N. Srikrishna on reforming institutional arbitration⁸.

Since the pandemic, there has been a rapid proliferation of scholarly material discussing digital courts from various authors, including Richard Susskind, who has written on The Future of Courts⁹. Most of the literature currently available address issues of arbitration law separately from issues of digital justice; however, the integrated constitutional analysis of digital arbitration in the context of Indian law that this article provides addresses a significant gap in literature on this issue.

IV. EVOLUTION OF ARBITRATION IN INDIA

The history of Indian arbitration has evolved from outdated laws from colonial times to a new legislation that will facilitate international business. For several decades, the Arbitration Act of 1940 governed arbitration, however, its reliance on the courts for every step of the process was not appropriate for post-liberalization business practices. The Arbitration and Conciliation Act of 1996 adopted UN's Model Law¹⁰ with modifications for contemporary Indian situations and now provides a full regime for conducting both domestic and international business arbitration.

Judicial interpretation defined the contours of the 1996 Act in a significant manner. The Supreme Court of India's judgment in the case *Bhatia International v. Bulk Trading S.A.* (2002) expanded the jurisdiction of Indian courts to include international arbitration seated outside India, thereby causing significant controversy¹¹. Subsequently, the decision of the Supreme Court of India in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)* (2012)¹² rectified this position and reaffirmed the

⁸ Ministry of Law and Justice, 'The Quest for making India as the Hub of International Arbitration' (Press Information Bureau, 12 June 2019)

<https://www.pib.gov.in/PressReleaseframePage.aspx?PRID=1574073> accessed 24 March 2026.

⁹ Richard Susskind, 'The Future of Courts' (The Practice, July/August 2020)

<https://clp.law.harvard.edu/knowledge-hub/magazine/issues/remote-courts/the-future-of-courts/> accessed 24 March 2026.

¹⁰ UNCITRAL Model Law on International Commercial Arbitration 1985

¹¹ *Bhatia International v Bulk Trading SA* (2002) 4 SCC 105 (SC)

¹² *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552 (SC)

territoriality principle, thus bringing Indian law into line with international standards. These cases have demonstrated the sensitivity of arbitral jurisprudence and the importance of maintaining a balance between judicial oversight and arbitral autonomy.

The substantial changes made in 2015 pursuant to the 246th Law Commission Report provided for shorter timelines for completion of arbitral proceedings, minimisation of judicial intervention during the arbitration process, and a fast-track procedure to resolve smaller disputes.

The changes made in 2019 built upon the 2015 amendments by establishing the Arbitration Council of India (ACI) as a regulatory body tasked with promoting institutional arbitration, including through grading of arbitral institutions and accreditation of arbitrators; however, the ACI has not been fully operationalised. Subsequently, the Draft Arbitration and Conciliation (Amendment) Bill, 2024, released for public consultation, proposes a significant recalibration of this framework. The draft Bill redefines the role of arbitral institutions by moving away from the earlier court-designation model and instead emphasises institutional autonomy, including powers to extend arbitral timelines and determine fee structures without judicial intervention. It also introduces provisions for emergency arbitration through a proposed Section 9A, thereby strengthening interim relief mechanisms within the arbitral process.

Importantly, the draft Bill revises the role of the ACI from a mandatory grading authority to a body focused on recognition and guidance of arbitral institutions. Finally, amendments made to Section 36 in 2021 affected the enforcement regime of arbitration, limiting automatic stays on enforcement of awards to cases involving fraud or corruption, thereby seeking to balance enforcement with challenges to arbitral awards.¹³

The COVID-19 pandemic caused a dramatic change to arbitration practices. Major Indian arbitration institutions, such as DIAC, MCIA and ICADR have enacted protocols

¹³ Ganesh Chandru, Aditi Sheth and Hrithik Merchant, 'The 2021 Amendment to Arbitral Legislation in India: Is it a Step in the Right Direction?' (2021) 7(2) NLS Business Law Review <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1099&context=nlsblr> accessed 24 March 2026.

allowing for virtual hearings, electronic filing, and the issuance of digital awards. The Supreme Court & High Courts also issued comprehensive directions recognizing the legal validity of virtual proceedings, thereby giving a judicial stamp of approval to the switch to digital operation. This transformation began reactively but has since taken on an established, permanent status in institutional practice.

V. CONCEPTUAL FRAMEWORK: DIGITALIZATION OF ARBITRATION

Digital arbitration refers to a broad category of technology integration in arbitration, ranging from basic e-filing of documents to fully automated algorithmic dispute resolution processes. At the low end, digital arbitral processing may include replacing physical submissions and in-person hearings with electronic submissions and video hearings. At the higher end, digital arbitration includes the possibility of AI-assisted decision making through the use of machine learning technologies that will analyse facts, assess them against applicable legal standards and issue awards with limited human involvement.

Virtual hearings have been gaining traction as the leading indicator of digital arbitration, with the most common method being Zoom, Microsoft Teams or other specialized technology used for arbitration like Opus2. Through the use of these platforms, parties who are geographically and temporarily separated can simultaneously present evidence, conduct witness examinations, and provide their submissions. Also, through e-filing, pleadings, statements of claim and documentary evidence can be electronically submitted, which reduces costs and delays associated with physical delivery of documents. Specialized platforms also allow for the management of arbitral case records, tracking of procedural timelines and creating alerts for scheduled hearing dates.

Arbitration is benefiting from the development of artificial intelligence due to its ability to improve decision making and create unique solutions to existing issues in an expedited way. In particular, document review, e-disclosure, predictive analytics for litigation risk

analysis, and natural language processing to analyse precedent have all been implemented with the use of AI. One of the more advanced uses of AI is the drafting of an arbitral award by way of an algorithm generating a draft based on pleadings and transcripts. While this method is not only efficient but also provides a means by which to evaluate how various factors contribute to the implementation of a decision, it raises concerns with regard to transparent algorithms, bias in the data utilized in training, and diminishment of the arbitrator's ability to deliberate through the use of technology.¹⁴

There are regulatory and practical concerns with cybersecurity. Digital arbitration can be defined as the process of transferring and storing very confidential commercial information including trade secrets, financial projections, contractual terms, and business strategy. The use of inadequate encryption, insecure platforms, and video-conferencing software that contains security vulnerabilities expose all parties involved to a risk of data breach. There are no such binding cybersecurity standards for arbitration proceedings under Indian law, resulting in an important regulatory gap.¹⁵

In addition, to be admissible as electronic evidence under the Bharatiya Sakshya Adhiniyam, 2023 and the Information Technology Act, 2000, such evidence must comply with the requirements under Section 63 of the Bharatiya Sakshya Adhiniyam, which replaces the earlier Section 65B of the Indian Evidence Act. This provision requires certification of the electronic record's authenticity, including the production of a hash value certificate verified by an appropriate expert, thereby increasing the procedural complexity for digital arbitration.

VI. ONLINE DISPUTE RESOLUTION (ODR): A PARALLEL DEVELOPMENT

¹⁴ K&L Gates LLP, 'Arbitration and AI: From Data Processing to Deepfakes: Outlining the Potential – and Pitfalls – of AI in Arbitration' (Lexology) <https://www.lexology.com/library/detail.aspx?g=28c69ba4-96d4-40df-a81b-2f8bf0bd91ee> accessed 24 March 2026.

¹⁵ Arun Chawla, 'Cybersecurity and Confidentiality in Tech-Driven Arbitration Processes' (Bar and Bench, 22 July 2025) <https://www.barandbench.com/view-point/cybersecurity-and-confidentiality-in-tech-driven-arbitration-processes> accessed 24 March 2026.

A. What is ODR?

ODR, or ODR (Online Dispute Resolution), uses technology-based systems to negotiate, mediate, conciliate, and/or arbitrate (dispute resolution) outside of the traditional court or tribunal process. ODR is different from digital arbitration in that it incorporates processes that are (automated/assisted), and where the ODR system has a role in the resolution of the dispute, even to the point of displacing the human intermediaries from the dispute resolution process entirely. The UNCITRAL Technical Notes on ODR (2016) provide an internationally recognised framework for understanding ODR, incorporating negotiation, conciliation, mediation and arbitration of disputes by means of electronic communications.

B. Growth of ODR in India

The ODR ecosystem in India has seen huge advancements in the recent past. A key milestone was achieved with the 2021 Report from the Expert Committee on ODR by Niti Aayog where they provided the first comprehensive policy framework for ODR in India: recommending the establishment of an ODR institution, graded ODR platforms, and model ODR rules. There are several Government-affiliated ODR platforms such as the “SAMADHAAN Portal” platform (which was developed with support from Niti Aayog) for MSME disputes and ODR mechanisms included as part of the pre-pack process under the Insolvency and Bankruptcy Code.¹⁶

Major e-commerce websites in India such as Amazon, and Flipkart have developed and will apply ODR (online dispute resolution) systems to handle large numbers of disputes involving consumers via fully automated or AI-assisted processes¹⁷. Thousands of claims are processed each month through these digital-only methods. MSMEs (micro, small and medium enterprises) are responsible for a large percentage of commercial disputes

¹⁶ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (October 2021) <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> accessed 24 March 2026.

¹⁷ ‘Online Dispute Resolution (ODR): Meaning, Benefits, Challenges & Trends’ (The Legal School) <https://thelegalschool.in/blog/online-dispute-resolution> accessed 24 March 2026.

arising in India¹⁸; therefore, they stand to benefit significantly from ODR systems since they will help these businesses resolve their disputes quickly, efficiently, and at a cost that doesn't include the fees typically incurred due to formal arbitration. The Government e-Marketplace (GeM) has tested an ODR system for resolving procurement-related disputes; they recognize that digital solutions scale better than traditional solutions.

C. Legal Validity and Enforceability

Digital arbitral awards in India have the same enforceability rules as traditional arbitral awards; that is, the same enforcement regime applies to an award coming from a tribunal that conducted a hearing via video. To be enforceable, the issuance of the award must be in accordance with relevant statutory requirements, including: the existence of an arbitration agreement in writing (Section 7 Arbitration and Conciliation Act, 1996); the tribunal was duly constituted; and the parties were afforded due process. Additionally, electronic arbitral agreements have been recognised as legally enforceable under Indian law.

In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.* (2010) 3 SCC 1, the Supreme Court held that a binding contract, including an arbitration agreement, may be validly concluded through exchange of electronic communications. This position is further supported by Section 7(4) of the Arbitration and Conciliation Act, 1996, which expressly recognises that an arbitration agreement may be constituted through exchange of letters or other means of telecommunication. Furthermore, the Information Technology Act, 2000 affirms the legal validity of electronic contracts, thereby reinforcing the framework supporting digital arbitration.

VII. CONSTITUTIONAL SAFEGUARDS IN DIGITAL ARBITRATION

A. Article 14: Equality Before Law

¹⁸ Aarna Law, 'Arbitration Regimes Applicable to Small and Medium Businesses in India' (25 April 2023) <https://www.aarnalaw.com/insights/arbitration-regimes-applicable-small-and-medium-businesses-in-india> accessed 24 March 2026.

The Constitution's Article 14¹⁹ stipulates that all persons are equal before the law and have equal access to justice. When looking at issues related to Digital Arbitration, there is also a requirement under the Constitution to ensure that the construction and use of Digital Platforms do not lead to or worsen pre-existing structural inequalities in access to justice. In India, the Digital Divide is a significant issue with rural areas of India having far lower internet connectivity than urban areas, which the Telecom Regulatory Authority of India (TRAI) has noted as of 2023, with millions of people without sufficient access to an internet connection. For the parties required to participate in Digital Arbitration, whether these parties involved in Commercial Disputes or smaller businesses and those operating in the MSME sector, their lack of access to an adequate internet connection means they cannot effectively present their case, which violates the principles of procedural equality.

From a comparative perspective, the Supreme Court of Canada has recognised that formal equality is insufficient and that achieving substantive equality requires active measures to address structural disadvantages. In the Indian context, the Supreme Court in *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310 articulated the principle of substantive equality under Article 14, recognising that differential treatment may be necessary to redress existing inequalities. This position was further developed in *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1, where the Court emphasised that Article 14 prohibits both direct and indirect discrimination and requires a contextual evaluation of laws that perpetuate structural disadvantage.

Additionally, in *Navtej Singh Johar v. Union of India* (2018), the Court reinforced the broader equality doctrine by recognising the need to eliminate discriminatory practices that undermine constitutional morality. The imposition of requirements for parties that do not have technological ability to utilize digital arbitration - as no reasonable alternatives or supports would be provided - would be seen as unreasonable and in breach of Article 14 due to the way they would classify individuals. Digital environments

¹⁹ Constitution of India, art 14.

create additional challenges to disenfranchised groups, pro se litigants, and those who live outside urban settings because they do not have access to the technology required for digital applications nor the legal assistance needed to navigate through various complex platforms.

B. Article 19: Freedom and Procedural Fairness

According to Article 19(1)(g)²⁰, one is able to practice any profession or have any type of job, business or trade. Due to the nature of the digital arbitration environment, the transition to virtual hearings has created different challenges for legal professionals, including advocates, arbitrators and legal representatives. Many junior advocates are unable to participate at remote proceedings because they do not have appropriate technology available for them to be involved. The dynamics associated with how witnesses are asked questions and provide answers and advocate provide oral arguments within a courtroom in person differs from how that same process occurs during a video conference.

Though it is reasonable for the state to implement limits for the purpose of improving efficiency and modernising processes, if the state implements technology-driven processes without the appropriate support mechanisms it may create an undue burden upon practitioners in that they will not have available access to provide services to their clients due to being excluded from the system. The recognition of the existence of digital divides and limitations caused by infrastructure continues to be addressed through policy frameworks created by the likes of the NITI Aayog's ODR Policy Plan and through other initiatives that facilitate equitable access to justice.

Concerns surrounding data protection, particularly with regards to digital arbitration, also have an impact on our ability to freely practice law. Communications that are protected by the Advocates Act²¹ and Protected by the Courts would include rules around confidentiality, and lawyer and client privilege would include digital forms of

²⁰ Constitution of India, art 19(1)(g).

²¹ Advocates Act 1961.

communication as well as traditional modes of communication. If an arbitral platform holds, collects, stores, finds, or uses attorney-client communications without the benefit of sufficiently secured (e.g. encrypted) and reasonably controlled access, that could impact the rights of legal professionals protected by Article 19 of the Constitution of India. The Supreme Court reaffirmed the importance of this analysis by recognising the right to informational self-determination as a constitutional right in Justice K.S. Puttaswamy (Retd.) v. Union of India.²²

C. Article 21: Right to Life and Personal Liberty

The Supreme Court has interpreted Article 21's protection of personal liberty as including the right to access justice including the right to a fair hearing and procedural due process.²³ In *Maneka Gandhi v Union of India* (1978)²⁴, the Supreme Court confirmed that the procedure established by law must not be arbitrary, fanciful or oppressive but must be "right, just and fair." This standard applies with equal force to arbitral proceedings for which limited judicial oversight of them makes compliance with the procedural fairness standard particularly important.

Virtual hearings challenge the boundaries of procedural fairness on multiple levels. A tribunal's inability to physically observe a witness, such as micro-expressions, body language and demeanour, limits its ability to assess credibility in that case. Other than through professional means, parties may lose significant portions of a Virtual Hearing process due to technical interruptions, connectivity failures or platform failures without any immediate remedial relief. The integrity of the evidentiary record is also lessened for the parties through cross-examination evidence that is introduced across an unstable video connection. These procedural shortcomings directly affect the Article 21 right to a fair hearing.

²² Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (SC)

²³ Constitution of India, art 21.

²⁴ *Maneka Gandhi v Union of India* AIR 1978 SC 597

The Supreme Court of India's decision in Justice K.S. Puttaswamy (Retd.) v Union of India (2017)²⁵ established that the right to privacy is a fundamental right under Article 21 of the Constitution and includes both informational privacy and the right of an individual to control how their personal data is collected, processed or stored. This is particularly significant in relation to Digital Arbitration, where sensitive Commercial and Personal Data will be collected and processed via online platforms (i.e. virtual hearings, Cloud based Case Management Systems, etc.) and thus Parties involved in Arbitration retain an interest in the manner in which their Data will be collected, used and shared. While India now has a statutory framework pertaining to the processing of Digital Personal Data, through the Digital Personal Data Protection Act, 2023, there remain issues relating to the lack of Arbitration specific Data Protection standards and enforcement techniques, making it difficult for parties to ensure adequate safeguards exist within Digital Arbitration settings.

D. Natural Justice in Virtual Hearings

Natural justice principles (*audi alteram partem* (hear the other side) and *nemo iudex in causa sua* (no one can be a judge in their own cause)) are the foundation of the arbitration process. Section 18 of the Arbitration and Conciliation Act of 1996 codifies the principles of equality and providing each party with a full opportunity to present its case. The principles of natural justice must be satisfied in virtual hearings and through whatever medium is used to conduct these hearings. The key question is whether digital platforms adequately replicate the procedural conditions necessary for a fair hearing.

There are growing fears about natural justice due to the use of algorithmic decision-making in Online Dispute Resolution (ODR). In automated or rule-based systems (especially in low-value consumer disputes), parties have a limited chance to show context-specific arguments outside of pre-defined parameters. Another issue is that decision-making systems are often opaque meaning it is impossible to know how or why

²⁵ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (SC)

a particular decision has been made and therefore it is difficult to meet the requirement to provide the reasons for a decision.

The general requirement of legal systems to provide reasons for decisions, such as Section 31 of the Indian Arbitration and Conciliation Act, 1996 (which states that unless otherwise agreed, arbitral awards must state the reasons for a decision), may be compromised by using non-explainable systems. Algorithms also contain bias because of the nature of the data used to provide training". That means they may cause systematic disadvantages to some parties and add to forms of structural bias which cannot be detected or challenged using the traditional methods of arbitration.²⁶

VIII. CHALLENGES IN DIGITAL ARBITRATION AND ODR

As new digital arbitration models arise, there has been an increasing concern over cyber security and data protection as structural issues. The use of online platforms to conduct arbitration means that highly sensitive commercial information needs to be transmitted and stored, increasing exposure to cyber risks. In India, confidentiality of arbitration is recognised in section 42A of the Arbitration and Conciliation Act 1996, but there is no specific cybersecurity standards related to arbitration to which parties and institutions may adhere. Parties and institutions can only rely on contract terms and their own institution's internal protocols for cyber security.

On the one hand, the recently enacted Digital Personal Data Protection Act 2023 (DPDPA) establishes a general framework for personal data protection; however, the DPDPA does not create requirements specific to arbitration and the exchange of confidential information (such as trade secrets, pricing data, and contract terms). As a result, if there is a breach of data or misuse of information in the arbitration process due to cybersecurity

²⁶ Pratyush Singh and Arunoday Rai, 'A Reasoned Dilemma: Unraveling the Knots of Section 31(3) of India's Arbitration Act 1996' (Kluwer Arbitration Blog, 28 July 2023) <https://legalblogs.wolterskluwer.com/arbitration-blog/a-reasoned-dilemma-unraveling-the-knots-of-section-313-of-indias-arbitration-act-1996/> accessed 24 March 2026.

issues, the process will be compromised, and the parties will suffer commercially as a result.²⁷

Digital arbitration introduces a number of complex cross-border jurisdictional issues. The increasing popularity of virtual hearings, cloud-based document storage, etc., has led to renewed discussion/debate on the "seat" of arbitration (the seat of arbitration is where the arbitrator(s) have their legal power and authority; this is also the basis for some activities that require enforcement). The meaning of the term "seat" is ultimately an independent legal construct from the physical location of the arbitration proceedings, but when arbitration proceedings are fully conducted online and/or across multiple jurisdictions, it may not be clear/in doubt as to where those arbitrations are taking place in practice. Most of the legal systems will differentiate between the seat of arbitral proceedings and the place (where) the arbitral hearings or meetings took place; nevertheless, the application of due process standards to virtual hearings/meetings can be different among jurisdictions.

Finally, although there is no distinction made within the New York Convention between traditional "hard copy" (physical) arbitration awards and "soft copy" (electronic) arbitration awards, by looking at contemporary state practice of arbitrators who are employing digital technology to render/reconcile their arbitration awards, and by reviewing applicable UNCITRAL legal texts, you should recognise an increase in the recognition of digitally rendered arbitration awards, assuming that those digital awards were rendered in compliance with applicable formality requirements (i.e., authenticity) and in compliance with applicable due process principles.²⁸

²⁷ Arun Chawla, 'Cybersecurity and Confidentiality in Tech-Driven Arbitration Processes' (Bar and Bench, 22 July 2025) <https://www.barandbench.com/view-point/cybersecurity-and-confidentiality-in-tech-driven-arbitration-processes> accessed 24 March 2026.

²⁸ Felipe Volio Soley, 'Signing the Arbitral Award in Wet Ink: Resistance to Technological Change or a Reasonable Precaution?' (Kluwer Arbitration Blog, 6 November 2020) <https://legalblogs.wolterskluwer.com/arbitration-blog/signing-the-arbitral-award-in-wet-ink-resistance-to-technological-change-or-a-reasonable-precaution/> accessed 24 March 2026

When there's a technological failure at an arbitration hearing, whether it be the internet going down, a platform crashing, or software being incompatible; it can impact the procedural record and prevent participants from receiving a fair hearing. In traditional trial courts, the judge has the option of simply adjourning when there's an issue, while arbitration tribunals will have to consider how to reconvene according to their own procedural rules and/or the parties' arbitration agreement. Without any standardized guidelines for dealing with technologically related problems in Indian arbitration, there exists a degree of procedural uncertainty. Bias in AI used for Automated Dispute Resolution can be problematic as algorithms, that depend on training datasets that are historically biased against certain groups of people, may serve to perpetuate and entrench existing disparities within the judicial system on a large scale.²⁹

IX. COMPARATIVE PERSPECTIVE

Digital arbitration systems around the world can provide useful insights for India. The United Nations Commission on International Trade Law (UNCITRAL) Technical Notes on Online Dispute Resolution (ODR) (2016) are not mandatory or prescriptive but provide a global standard framework for the development of ODR systems. The Technical Notes outline key principles that include, but are not limited to, fairness, transparency, due process, impartiality, and accountability, and serve as important benchmarks in evaluating Indian ODR systems. In addition, these principles also require that there is a clear and accessible process to resolve procedural issues and to ensure accountability in ODR systems.³⁰

The Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) have developed protocols for conducting virtual arbitration

²⁹ Wensdai Brooks, 'Artificial Bias: The Ethical Concerns of AI-Driven Dispute Resolution in Family Matters' (2022) *Journal of Dispute Resolution* 2022(2) <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1917&context=jdr> accessed 24 March 2026.

³⁰ United Nations Commission on International Trade Law, *Technical Notes on Online Dispute Resolution* (2016) https://uncitral.un.org/en/texts/onlinedispute/explanatorytexts/technical_notes accessed 24 March 2026.

hearings. These address issues such as bandwidth requirements, selection of a platform to conduct hearings, cybersecurity standards, submission of evidence, and procedures for examinations of witnesses during virtual hearings. Indian arbitral institutions could benefit from benchmarking against these best practices. The European Union provides an additional example of a legislative framework for institutional ODR in the form of its Online Dispute Resolution system for consumer disputes established under the EU ODR Regulation (2013).³¹ This system includes accountability mechanisms.

Although federal law does not currently set forth laws when it comes to doing arbitration online³², most American courts functionally allow arbitrators to render awards, so long as there was compliance with the principles establishing procedural fairness. American Arbitration Association's virtual hearing guidelines provide technical and procedural standards to guide arbitrators conducting virtual hearings. Conversely, there have been some issues raised about the proof value of remote witnesses in some Civil Law countries which pertain to philosophical differences regarding how time and physical presence are viewed in relation to adjudication and would be applied to India's constitutional due process analysis.

X. BALANCING EFFICIENCY AND CONSTITUTIONALISM

The Indian arbitration framework must consist of a regulatory scheme that can support the use of new technologies in delivering more efficient results, while maintaining the constitutional framework that protects individual rights. As a starting point, Indian lawmakers must accept that the benefit of digital arbitration is derived from the increased efficiencies of lower costs, quicker processing times, and wider geographical reach; but these benefits are only meaningful if they do not come at the expense of constitutional rights.

³¹ European Parliament , 'REGULATION (EU) No 524/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013' <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF#:~:text=This%20Regulation%20aims%20to%20create,use%20the%20case%20management%20tool>. Accessed 25 March 2026.

³² Federal Arbitration Act 1925

A consistent set of procedural safeguards must be in place for virtual hearings, which all arbitral institutions should adhere to. These procedural safeguards should include a requirement for minimum bandwidth and required stability of the platform being used, as well as protocols outlining how to manage a technical failure, including rights to a mandatory adjournment. The procedures should also set standards for authenticating electronic evidence and provide guidelines for remote witness examination, which includes verifying the identity of remote witnesses as well as the prohibition of coaching them. The Arbitration Council of India (once operational) is the body that is best suited to establish these standards and monitor compliance with these standards by using grading mechanisms.

Compliance with data protection laws needs to be part of the overall digital arbitration framework. All arbitral platforms should be required to comply with the Digital Personal Data Protection Act 2023, in addition to any other sector-specific standards governing how commercial arbitration data is handled. Additionally, end-to-end encryption, access controls, data minimization principles, and defined retention periods for all arbitration records must be required procedures. Additionally, arbitral parties should be made aware of how data will be used by having clear consent mechanisms, which will ensure compliance with the right of informational self-determination set forth in *Puttaswamy*.³³

Article 14³⁴ mandates that all individuals receive fair treatment, and one means of ensuring this is by providing appropriate inclusivity measures; additionally, inclusivity will also confer legitimacy on digital arbitration functioning as an effective dispute resolution system. Examples of inclusivity measures would include affordable internet connectivity made available to small claimants; accessible user interfaces for individuals who have disabilities or other challenges accessing technology; multilingual platforms that support India's linguistic diversity; and hybrid or combined methods for hearing cases in person while also allowing for participation via remote methods of

³³ Justice KS Puttaswamy (Retd) v Union of India (2017) 10 SCC 1 (SC)

³⁴ Constitution of India, art 14.

communication. The design of public online dispute resolution systems should begin by integrating universal access principles into their initial conception or foundation.

XI. SUGGESTIONS AND REFORM PROPOSALS

A. Dedicated ODR Legislation

India requires a separate Online Dispute Resolution Act that provides a comprehensive statutory scheme for digital arbitration and online dispute resolution. Legislation should be developed regarding the legal status of digital arbitration and online dispute resolution agreements/awards; establish minimum threshold standards for conducting virtual hearings; establish an independent regulatory/oversight agency with authority to grade/accredit virtual hearing providers; allow for a review of digital arbitration and online dispute resolution procedures via judicial review on constitutional grounds; align with the United Nations Commission on International Trade Law (UNCITRAL) Technical Notes on online dispute resolution³⁵ while also accommodating provisions required by the Constitution of India in order to ensure that these new methods of resolving disputes shall be legally binding.

B. Mandatory Cybersecurity Standards

The Arbitration Council of India (ACI), with the assistance of CERT-In and the Ministry of Electronics and Information Technology, should create binding cybersecurity standards for online arbitration platforms. These standards should require minimum levels of encryption, requirements for penetration testing, requirements for incident responses, and requirements for notifying of data breaches. Before ACI can grant a grade to an institution, the institution must meet these standards.³⁶

C. Judicial Guidelines for Virtual Arbitration

³⁵ UNCITRAL, *Technical Notes on Online Dispute Resolution* (2016).

³⁶ Neeti Biyani, Andrei Robachevsky and Prateek Waghre, 'Internet Impact Brief: India CERT-In Cybersecurity Directions 2022' (Internet Society, 1 June 2022)

<https://www.internetsociety.org/resources/doc/2022/internet-impact-brief-india-cert-in-cybersecurity-directions-2022/> accessed 24 March 2026.

The Supreme Court should provide guidance (via its supervisory jurisdiction under Article 227)³⁷ with respect to virtual arbitration proceedings by issuing broad guidance regarding: the required level of technology for the conduct of virtual hearings; the circumstances under which technological failures will invalidate virtual proceedings; the standards applicable to admissibility and authentication of electronic evidence; and the minimum standards of due process required by the Constitution for any type of Online Dispute Resolution (ODR). Such guidance from the Supreme Court would help to clarify questions of consistency for arbitrators and parties before arbitration, and it would reaffirm the constitutional minimum standards applicable to virtual arbitration proceedings.

D. Bridging the Digital Divide

To ensure that digital arbitration remains consistent with constitutional guarantees of equality and access to justice, targeted measures must be adopted to address the digital divide. Arbitral institutions should be required to provide hybrid hearing options, allowing parties to participate either in person or through virtual means depending on their technological capacity. Affordable and subsidised internet access schemes should be developed, particularly for MSMEs and smaller claimants, to facilitate meaningful participation in arbitral proceedings.

In addition, Online Dispute Resolution platforms must adhere to universal design standards, ensuring accessibility for persons with disabilities and ease of use for individuals with limited technological literacy. Multilingual interface requirements should also be mandated to reflect India's linguistic diversity. Finally, coordinated efforts between the Arbitration Council of India and the Ministry of Electronics and Information Technology should be undertaken to invest in digital infrastructure in underserved and rural regions, thereby promoting inclusive access to digital arbitration mechanisms.

E. Ethical Standards for AI in Arbitration

³⁷ Constitution of India, art 227.

Ethical guidelines that uphold human reasoning and judgment in the adjudication process should govern the application of AI tools to arbitration. Administrative tasks; case management, document analysis, and translation; can use AI tools, but human arbitrators should retain all authority over substantive final decisions on the issues of a case. When either one party presents to the tribunal predictive analytics or risk assessments developed using AI, the other party must have access to the underlying methodology used to create these analytics to challenge the same appropriately. Parties need to have mandatory disclosure of AI tool usage in arbitral proceedings to identify and challenge potential algorithm bias³⁸. The Arbitration Council of India should devise a code of ethics for the use of AI in arbitration in accordance with international best practice guidelines.

XII. CONCLUSION

Evolving digitalization of arbitration in India is unavoidable and is already taking place. The pandemic's move to a virtual hearing model has illustrated that digital arbitration can be performed at scale effectively, resulting in less cost, better access to geography, and faster procedures. The advent of online dispute resolution platforms will create opportunities for e-commerce consumers, MSME's, and other parties without practical means to access formal dispute resolution mechanisms, thus extending their ability to seek access to justice. At the same time, digitalization gives rise to legitimate constitutional concerns that must be taken into account.

Articles 14, 19 and 21 all impose binding obligations on digital arbitration systems. Income inequality as a result of the digital divide leads to disparate access to technology, raising concerns under article 14: equality of the law before illegal actions. Privacy and security of personal data are governed by article 21 as recognized by the Puttaswamy case; thus, adequate legal mechanisms exist to require robust data protection obligations. Therefore, due process and natural justice requirements as articulated in article 21 and

³⁸ AMLEGALS, 'Guidelines for Artificial Intelligence in Arbitration' (25 July 2025) <https://amlegals.com/guidelines-for-artificial-intelligence-in-arbitration/> accessed 25 March 2026.

section 18 of the arbitration act will require credible assurance that virtual proceedings accurately replicate the conditions necessary for fair hearings. This paper proposes an inclusive, rights-based ecosystem of digital arbitration, including measures to ensure that constitutional compliance and efficiency can co-exist.

Development of dedicated ODR legislation, legal standards for cybersecurity, judicial guidelines, requirements for inclusivity, and governance of ethical ai technology will provide the necessary regulatory framework. The establishment of a regulatory authority such as the arbitration council of India to facilitate the transition from conceptualization to operationalization of digital arbitration must occur urgently.

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