



THE IMPACT OF VIRTUAL ADR HEARINGS ON ACCESS TO JUSTICE- A COMPARATIVE STUDY OF UK, US AND INDIA

Dr. T.R. Arun
Principal (FAC)

Government Law College, Namakkal

ABSTRACT

The rapid advancement of technology has brought significant changes to the legal field. Due to the impact of technology in the legal field, the concept of virtual hearings and remote participation becoming increasingly prevalent, particularly during the COVID-19 pandemic. This research paper examines the guidelines, challenges, and acceptance of virtual alternative dispute resolution (ADR) hearings in the United Kingdom (UK), the United States (US), and India. The paper begins by defining the key terms "virtual hearings" and "remote participation" in the context of legal proceedings. It then delves into the guidelines and protocols developed by various organizations, such as the London Maritime Arbitrators Association, the American Arbitration Association-International Centre for Dispute Resolution, and the High Court of Delhi in India, to facilitate the smooth conduct of virtual ADR hearings. The paper highlights the key challenges faced by these jurisdictions, including security and confidentiality concerns, difficulties in assessing witness credibility, and technical difficulties. It also explores the unique challenges faced by India, such as the urban-rural digital divide and building trust in virtual ADR processes. Despite these challenges, the paper discusses the benefits of virtual ADR hearings, including lower costs, reduced emotional intensity, and increased flexibility. It also presents the findings of surveys conducted in the UK, US, and India, which suggest varying levels of acceptance and positive experiences with virtual ADR hearings. The paper concludes by emphasizing the need to strike a balance between innovations and safeguarding the principles of justice to unlock the full potential of virtual ADR hearings. Addressing the specific challenges faced by India, such as the digital divide and concerns about confidentiality, will be crucial for the country to fully embrace the benefits of this emerging trend in dispute resolution.

Key words: Virtual ADR hearings, legislation and guidelines, benefits, acceptance, challenges – UK, US and India.

INTRODUCTION

Technological revolution has brought significant changes in the legal field. From managing cases electronically to conducting court hearings virtually, the legal landscape is undergoing a positive transformation fuelled by technological advancements. Professor Maxi Scherer states that the term 'Virtual', in computer science is referred to as "not physically present as such but made by software to appear to be so from the point of view of a program or user. In the case of international arbitration hearings conducted in several locations, the participants of the hearing are not virtual, but really exist; they merely interact with each other using communication technologies¹. Virtual meetings refers to the meetings involving real-time interaction hosted over the Internet using integrated audio, video and other digital tools, where participants

¹ Maxi Scherer, 'Chapter 4: The Legal Framework of remote Hearings', in Maxi Scherer, Niuscha Bassiri et al (eds), International Arbitration and the COVID - 19 Revolution (Kluwer Law International 2020), p.68.

do not share a physical location². Remote participation refers to the simultaneous participation in a meeting which is being held in a physical location by someone who is not at the same location using integrated audio, video, and other digital tools over the internet³. The COVID - 19 pandemic situation during the year 2020, necessitates virtual hearings and remote participation as, in person hearings became strenuous and impractical due to lockdown. An International firm White & Case together with Queen Mary University of London and School of International Arbitration in its survey⁴ stated that the increase in the use of virtual hearing rooms appears to be the result of how the practice of arbitration has adapted in response to the COVID - 19 pandemic, as users have been forced to explore alternatives to in - person hearings⁵. Thus, the concept of virtual hearings and remote participation plays a crucial role in resolving disputes during the pandemic and is increasing tremendously in recent years. As a result of this, there arises a need to incorporate video conferencing techniques into the laws that governing the Alternate Dispute Resolution in the countries. The comparison of India with United States and United Kingdom is essential to identify the effective technologies and strategies for improving the virtual hearing processes, the understand the common issues and challenges faced by these countries, to identify the methods to reduce the cost of the ADR proceedings and to address the best practices and considerations for effective implementation of virtual ADR hearings in India.

The first part of the paper deals with the legislative framework, the rules, guidance and protocols existing in UK, US and India. The second part of the paper deals with the benefits and acceptance of Virtual ADR hearings in US, UK and India. And the third part of the paper deals with comparative study of challenges faced by the UK, US and India. Finally, the paper is concluded with the importance of comparing India with UK and US and whether India is efficient or lagging back in virtual ADR hearings when compared to US and UK.

2. LEGISLATIVE FRAMEWORK AND GUIDELINES REGARDING VIRTUAL ADR HEARINGS – COMPARATIVE ANALYSIS AMONG UK, US AND INDIA

2.1. PERSPECTIVE OF UK

The **Arbitration Act, 1996**⁶ has no provisions which explicitly deals with virtual hearings and remote participation.

2.1.1 THE LONDON COURT OF INTERNATIONAL ARBITRATION

a. LCIA ARBITRATION RULES, 2020: The London Court of International Arbitration (LCIA) conducts arbitration in accordance with the **LCIA Rules** which came into effect on 1 October 2020. This rules states that the arbitration is considered to be commenced on the date on which the registrar receives request electronically provided that registration fee has been paid to LCIA⁷. This rule makes provision for communication in regard to arbitration to agreement through e-mail or any other means of electronic communication⁸. It states that the emergency arbitrator informs the registrar of their decision. The Registrar then electronically send this decision to both parties involved in the dispute⁹. Any party can request the LCIA Court to appoint a replacement arbitrator quickly. His request must be submitted to the Registrar electronically and communicated to all other parties involved in the arbitration¹⁰. Article 14 of the rule deals with conduct of proceedings. The parties and the arbitrators must initiate communication within 21 days of receiving notice from the Registrar. This communication can take place via an in-person hearing or virtually through conference call, videoconferencing, or using any other communication technology or exchange of correspondence¹¹. Article 19 of the LCIA rules deals with hearings. Article 19.2 of the LCIA rules states that the Arbitral Tribunal has the fullest authority under the Arbitration Agreement to establish a conduct of hearing and it also specifically states that hearing can be conducted either in person or virtually through

² Western Michigan University,

<https://wmich.edu/sites/default/files/attachments/u370/2020/Definitions%20of%20Virtual%20Meetings%20and%20Remote%20Participation.8-28-2020.pdf>, (last visited Jun 12, 2024, 10:00 AM).

³ Ibid.

⁴2021 International Arbitration Survey: Adapting arbitration to a changing world, Queen Mary University of London, (last visited Jun 12, 2024, 3:00 PM), <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/>.

⁵Id. at 5.

⁶The Arbitration Act, 1996, (c 23), Acts of Parliament, 1996 (UK).

⁷The LCIA Rules for Arbitration Rules, 2020, (UK), Art 1.

⁸ Id.at Art 4.

⁹Id.at Art 9.9.

¹⁰Id.at Art 9C.

¹¹Id.at Art 14.3.

conference call, videoconference or using other communications technology. The participants who reside in one or more geographical locations can join the hearing virtually through any means as mentioned above. Article 26.2 of the rule states that “Unless the parties agree otherwise, or the Arbitral Tribunal or LCIA Court directs otherwise, any award may be signed electronically and/or in counterparts and assembled into a single instrument”. The transmission of the arbitral award can be made by electronic means or in paper form. In case of any disparity between electronic and paper forms, the electronic form shall prevail¹². It also states that any processing of personal data by the LCIA is subject to applicable data protection laws and also ensures security for the physical and electronic information shared in the arbitration¹³.

b. LCIA MEDIATION RULES, 2020: The LCIA Mediation Rules came into effect on 1st October 2020. The LCIA rules require submitting the request for mediation electronically to the Registrar, along with any accompanying documents¹⁴. Article 3 of the Rules deals with written communications. The request for mediation should be made to the Registrar electronically through email or other electronic means including via any electronic filing system operated by the LCIA. Electronic communication is preferred for all written communications between parties, the mediator and the Registrar. However, if a party has issues receiving electronic communications, they should inform the Registrar or mediator of the reason¹⁵. The mediator can communicate with the parties orally or in writing, individually or together or in-person or virtually via conference call, video conference or by using other communication technologies. The parties involved in the mediation must inform each other and the mediator about the attendees of any meetings. This applies to both in-person and virtual meetings through conference call, videoconference or using other communications or a combined form¹⁶. Article 8.3 of the Rules states that “Unless the parties agree otherwise, the settlement agreement may be signed electronically and/or in counterparts and assembled into a single instrument. All mediation sessions are private and restricted to specific attendees i.e., the mediator, the parties involved in the dispute and the individuals identified¹⁷. It also states that any processing of personal data by the LCIA is subject to applicable data protection laws and also ensures security for the physical and electronic information shared in the mediation¹⁸.

2.1.2. GUIDANCE ISSUED BY THE LMAA

The London Maritime Arbitrators Association issued **The LMAA Guidelines for the conduct of Virtual and Semi- virtual hearings** in the year 2021. This guideline mainly focuses on the early preparation, etiquette, oral testimony from witnesses, electronic bundles and the number of screens. The counsels, solicitors, legal representatives, all witnesses, interpreters and transcribers should test the technology to be employed and should practice using it. Before the hearing, “practice run” should be conducted to ensure that the relevant technological requirements for the hearing are met¹⁹. Before the hearing day, the claimant’s legal representative should circulate a contact sheet that lists all the participants which includes all witnesses, interpreters and transcribers. The contact sheet should provide a telephone number and e-mail address for contacting any person who is having any technical or connection issues during the hearing. Arrangements should be made to receive an invitation (link, meeting id., and password) before the time of hearing²⁰. At the start of the hearing, the participants should disclose their identity to the host and confirm the names of the person. The participants with speaking roles should be audible and visible and should mute themselves when they are not speaking. The participants with non-speaking roles should be muted by the host and they should be asked to switch off their videos in order to avoid any distractions and using too much bandwidth. Participants should take measures to minimise the disruptions that affects the hearing. Any participant who desires to speak during the hearing should raise their hand physically or use virtual ‘raise hand’ feature to alert the host²¹. While giving the evidence, witnesses should not communicate with the third parties and can consult documents that are in agreed bundles. The witnesses should be directed to stay away from mobile phones and other devices while giving evidence²². This guidance also advocates some measures for the easy using of

¹²Id.at Art 26.7.

¹³Id.at Art 30

¹⁴ The LCIA Mediation Rules, 2020, (UK), Art 1.2

¹⁵ Id.at Art 3.

¹⁶ Id.at Art 6.

¹⁷Id.at Art 12.1.

¹⁸ Id.at Art 13.1.

¹⁹The LMAA Guidelines for the conduct of Virtual and Semi- virtual hearings, 2021, (UK), Para 1.

²⁰Id.at Para 2.

²¹Id.at Para 3.

²²Id.at Para4.

electronic bundles such as the bundles should be contained in a single PDF, capable of being word searched, contain index entries and bookmarks, paginated from first to last, using hyperlinks if possible, etc²³. The requirement of number of screens varies from case to case and the participants should have a look on the number of screens they require²⁴.

2.1.3 CIArb ARBITRATION RULES

The Chartered Institute of Arbitrators issued CIArb Arbitration Rules on 1 December 2015. It states that “the arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference)²⁵”. Emergency arbitrator rules in Appendix I states that “the emergency arbitrator may conduct the emergency proceedings in any manner the emergency arbitrator determined to be appropriate under the circumstances, including through hearing by telephonic or electronic communication²⁶”. Submissions can be made to the arbitral tribunal through electronic means of communication and any other communication among the parties and the arbitral tribunal can also be made through electronic means of communication²⁷. Oral testimony of evidence can be presented through videoconference or any other means²⁸.

2.2. PERSPECTIVE OF US

2.2.1. GUIDANCE ISSUED BY THE AAA-ICDR

The American Arbitration Association - International Centre for dispute resolution issued a Virtual Hearing guide for Arbitrators and parties utilizing Zoom. It suggests using PC, Laptop or large tablet for the purpose of Virtual hearings²⁹. It suggests using a good quality webcam, checking lighting conditions, avoid using backlights and to turn off camera when appropriate.³⁰ It also suggests to come up with the best method to connect either by phone or through computer speakers or microphones, to mute the microphones / phones if multiple participants connected from a same location, finding a quiet location, etc.³¹ It advocates to take steps to establish high-speed internet connection (i.e., using Ethernet)³². Moreover, it suggested using Zoom Platform for virtual hearings.

The AAA-ICDR Model Order outlines the range of issues that should be considered by the arbitrator and the parties. It offers discussion points and sample language to memorialize those discussions in a procedural order, addressing logistics, technology and conduct of virtual hearings³³.

The AAA-ICDR Model Order and Procedures for Mediation via Videoconference acts as a model or template which mediator or the parties can modify to fit the specific needs of their specific case. The parties and the mediator are free to choose the Platform for mediation³⁴. It also prohibits the mediation recordings³⁵. The AAA case manager or the mediator will send the invitation to the participants through e-mail. In order to maintain the security, the access to the session will be password-protected and the only the authorised attendees can only attend the session³⁶. The mediator or the counsel should check the video conferencing system, connectivity, working of audio and video systems at least one week before the mediation³⁷. In case of any poor computer audio the parties /AAA shall have an optional dial-in conference call number³⁸. The participants should take necessary steps for good video and audio quality during the session. It suggests using taking steps to establish high speed internet connection, using computer microphone or phone. Eliminating background noise, camera positioning and lightning, accessing desktop or laptop instead of smartphone or tablet, in order to maintain privacy and security the participants should not use any unsecured or public Wi-

²³Id.at Para 5.

²⁴Id.at Para 6.

²⁵CIArb Arbitration Rules, 2015, (UK), Article 28.

²⁶Id.at Appendix I, Article 5.

²⁷Id.at Appendix II, Article 13.

²⁸Id.at Appendix II, Article 22 (a).

²⁹AAA-ICDR Virtual Hearing Guide Arbitrators and Parties Utilizing Zoom, 2021, (US), Para 1.

³⁰Id.at Para 4.

³¹Id.at Para 5.

³²Id.at Para 6.

³³Luis M.Martinez and Michael A. Marra, The Impact of COVID-19 on Arbitration, The Impact of COVID on International Disputes, Chapter 13: The Impact of Covid-19 on Arbitration, 224-229, (Brill Nijhoff 2022).

³⁴AAA-ICDR Model Order and Procedures for Mediation via Videoconference, 2020, (US), Para 1.

³⁵Id.at Para 2.

³⁶Id.at Para 3A.

³⁷Id.at Para 3B.

³⁸Id.at Para 3C.

Fi, etc.³⁹. In case of any connectivity issues, the participants should inform the mediator about the issues and should e-mail any further instructions⁴⁰. The cost of the mediation sessions held through video conferencing shall be borne by the Claimant and the respondent (i.e., 50% by each)⁴¹.

2.2.2. GUIDANCE ISSUED BY JAMS

The JAMS Comprehensive Arbitration Rules & Procedures came into effect on March 26, 2007. Rule 22 (g) of the JAMS Comprehensive Arbitration Rules & Procedures states that the hearing or any portion thereof maybe conducted telephonically with the agreement of the Parties or in the discretion of the arbitrator. Thus, it makes a provision for remote participation of parties in an arbitration proceedings.

2.3. PERSPECTIVE OF INDIA

2.3.1. LEGISLATION DEALING WITH VIRTUAL ADR HEARINGS

The **Arbitration and Conciliation Act, 1996** is silent on both virtual hearings and remote participation. The parties to an arbitration agreement may agree in writing at any stage, either before or at the time appointing the arbitral tribunal, to resolve their dispute through a fast track procedure⁴². The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case⁴³. Such arbitrations can surely be conducted through a reliable electronic platform and tools during these times⁴⁴. Section 19(2) of the Act, states that, “the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings” which includes virtual proceedings⁴⁵. Failing any agreement, the arbitral tribunal may, conduct the proceedings in the manner it considers appropriate⁴⁶. Further, Section 20(3) of the Act states that “the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property⁴⁷”. In the absence of any agreement or clause in the arbitration agreement, the arbitral tribunal has the power to conduct the proceedings physically or virtually⁴⁸. Moreover Section 24 of the Act talks about the hearings and written proceedings⁴⁹. But it has no specific provision which laid emphasis on in-person hearings.

2.3.2 GUIDANCE NOTE FOR CONDUCTING ARBITRATION PROCEEDINGS BY VIDEO CONFERENCE – HIGH COURT OF DELHI

The High Court of Delhi, issued a Guidance note for conducting Arbitration proceedings by Video conference. The Committee for preparation of Graded Action Plan of the Delhi High Court, directed Delhi International Arbitration Centre to start taking up measures through video conference. This guidance states the following: the parties who desires to initiate a fresh arbitration proceedings under DIAC rules can use e-filing facility of DIAC⁵⁰. In ongoing arbitrations, documents and applications can be sent to the arbitrator through e-mail along with the copy of the opposite party and to the DIAC⁵¹. The arbitrators are empowered to conduct the arbitration hearings through video conference. The order passed by the arbitrators in these hearings can be sent to the DIAC through e-mail⁵². The deputy counsels of DIAC shall connect with the arbitrators, lawyers and parties and can conduct hearings by organising scheduled meetings on Cisco WebEx or any other similar platform, decided by the parties. Cisco WebEx platform as well as stenographers are

³⁹Id.at Para 3D.

⁴⁰Id.at Para 5.

⁴¹Id.at Para 6.

⁴²The Arbitration and Conciliation Act, 1996, § 29B, No.26, Acts of Parliament, 1996 (India).

⁴³Id.at § 29B(3)(d).

⁴⁴Krishan Singhania, Founder and Managing Partner, Srishti Singhania, Senior Associate, and Alok Vajpeyi, Associate, K Singhania & Co, Virtual hearings in arbitrations in India, Lexology, July 08, 2020, <https://www.lexology.com/library/detail.aspx?g=1c85d10b-e340-4dc7-8dfa-72ec3832bd04>.

⁴⁵Ibid.

⁴⁶Supra Note 42 at § 19(3).

⁴⁷Id.at § 20(3).

⁴⁸Supra note 44.

⁴⁹Supra Note 42 at § 24.

⁵⁰Delhi High Court, Guidance Note for conducting Arbitration proceedings by Video conference, 2020, Para 1.1, Manupatra, (Jun. 18, 2024 8:20 PM),

https://manupatra.com/covid_19/Delhi/Court/2020/June/08/Guidance%20Note%20Conducting%20Arbitration.PDF.

⁵¹Id.at Para 1.2.

⁵²Id.at Para 2.1.

limited. The parties can make any alternative arrangements on their own⁵³. The order passed the arbitrator shall be signed by him digitally and a scanned copy of the original signed order is sent to the parties through e-mail⁵⁴. The arbitrators shall direct the parties to file their brief submissions along with the video clip of their oral arguments within the specified time. The parties can respond to the submissions of the opposite party by filing an additional note along with a video clip of the additional oral arguments⁵⁵. This guidance also speaks about the recording of evidence through VC⁵⁶. The queries of the arbitrators, lawyers and parties can be resolved by the DIAC telephonically or by e-mail⁵⁷. The fee is calculated by the DIAC and is communicated to the parties by e-mail. The payment should be made through online medium⁵⁸.

2.3.3. IAF PROTOCOL ON VIRTUAL HEARINGS FOR ARBITRATIONS

Virtual hearings can be conducted at any stage of the arbitral proceedings. In order to conduct virtual hearing, the parties should enter into an agreement that should contain all the essentials that are addressed in the IAF Protocol. Ordinarily, if a party opposes to conduct virtual hearings, then arbitral tribunal does not proceed with virtual hearings. This protocols speaks about the scheduling of virtual hearings, suggest recommendations regarding basic equipment and technology that parties and arbitral tribunal should consider while conducting virtual hearings such as using a desktop, laptop or some other electronic devices, using a good quality webcam and a printer where necessary, avoid using the public Wi-Fi and using Ethernet instead of using Wi-Fi or hotspot, preferably a headset with integrated microphone, using fully charged equipment or devices, an uninterrupted power supply and to make any alternatives in case of any failure in the equipment or devices. It also suggests using a dual screen or a desktop and a laptop, to arrange for their own video and audio equipment and consider using third party premises (e.g., arbitral institution, a law firm or any other such third party) for smooth conduct of proceedings. The parties shall agree to third party integrated virtual hearing or videoconferencing platform/ software to be used to conduct the virtual hearings and certain video conferencing platforms/ software WebEx (Cisco), Skype (Microsoft), Microsoft Teams (Microsoft), Google Meets, Zoom or any such other platforms/software that are easily available to them. The parties may consider agreeing to use a specific document sharing platform/software so as to enable quick and efficient transfer and receipt of documents and pleadings and suggest using s Dropbox, Google Drive or virtual data rooms like Ansarada, Ethos Data, Box or any other platform that may be mutually agreed to between the parties⁵⁹. Moreover it talks about appointing technical assistant to assist the arbitral tribunal, recording arbitral proceedings with the consent of the parties, transcribing the virtual proceedings by stenographer or by using any other transcription facilities and cyber security and confidentiality measures such as use of access-controlled videoconferencing platform/software with an authentication process, Use of end to end encrypted communication channels and networks, Secure storage, retrieval and archival of documents that applies to data both at rest and in transit, data processing and storage in servers whose locations are clearly identified, and whose location follows applicable laws and robust governance mechanisms that ensure appropriate administrative controls that maintain security and integrity of the data and suggest that the cost of the virtual hearings shall be borne by the parties equally⁶⁰. This protocol also makes provision for pre-hearing preparation and test session. All the participants' at least 48 hours prior to the virtual hearing must conduct a full-fledged trial-run of all the equipment/platform/software that is being used by them to conduct the virtual hearing. The presiding arbitrator/sole arbitrator (or a person designated by him/her) shall act as the host and the moderator to the test session⁶¹. It further speaks about conducting virtual hearings through videoconferencing. All participants must be available and ready at their respective locations of videoconferencing at least 15 minutes prior to the scheduled time of the virtual hearing. The presiding arbitrator/sole arbitrator (or a person designated by him/her) shall act as the host and the moderator of the video conferencing session. It also speaks about the setting up of location for videoconferencing and good etiquettes to be followed during the trial⁶². It also talks about the examination of witnesses through videoconferencing⁶³.

⁵³Id.at Para 2.2.

⁵⁴Id.at Para 2.3.

⁵⁵Id.at Para 3.1.

⁵⁶Id.at Para 4.

⁵⁷Id.at Para 6.

⁵⁸Id.at Para 7.

⁵⁹IAF Protocol on Virtual Hearings for Arbitrations, 2020, (India), Para 2.

⁶⁰Ibid.

⁶¹Id.at Para 3.

⁶²Id.at Para 4

⁶³Id.at Para 5

2.4. COMPARISON

	UK	US	INDIA
Legislation	No specific legislation	No specific legislation	No specific legislation
Guidance issued by the Arbitration community	Covers both Arbitration and mediation.	Comprehensive and detailed. Covers various ADR methods like arbitration and mediation	Covers only arbitration.
Platform	No specific platform is suggested	AAA-ICDR suggest using Zoom platform in virtual arbitration and mediation processes	Delhi High Court Guidelines suggests using Cisco WebEx platform or any other platform. The IAF Protocol on virtual hearings for arbitrations suggests using WebEx (Cisco), Skype (Microsoft), Microsoft Teams (Microsoft), Google Meets, Zoom or any such other platforms/software
Document sharing Platform	No specific platform is suggested	No specific platform is suggested	The IAF Protocol on Virtual Hearings for Arbitrations suggests using Dropbox, Google Drive virtual data rooms like Ansarada, Ethos Data, Box or any other platform.

3. BENEFITS AND ACCEPTANCE OF VIRTUAL ADR HEARINGS

3.1 PERSPECTIVE OF UK

The benefits of virtual ADR hearings in UK include

- a. **LOWER COSTS:** Virtual ADR hearings are considered to be more economical when compared to in person hearings. Traditional mediation sessions and arbitration hearings require the parties to be in same room at same time. It becomes impractical when parties are hundreds of miles apart. Arranging ADR proceedings in an online platform reduces travel time, easy scheduling of events and cost savings⁶⁴.
- b. **LESS EMOTION:** Some mediators have discovered that virtual meetings can facilitate negotiations. By participating in virtual meetings from their own surroundings both the parties may feel comfortable and it also removes some of the emotion from the meeting and may also result in measured and productive discussion⁶⁵.
- c. **FLEXIBILITY:** Virtual hearings provide greater flexibility in scheduling as it does not require the parties, the presiding officer and the counsel to physically present at the same location.
- d. **IMPROVED EFFICIENCY:** Virtual ADR hearings can be conducted more quickly and efficiently, reducing the time and resources required for dispute resolution. Virtual ADR hearings also facilitates faster communication and decision-making⁶⁶.

⁶⁴Resolver Group , <https://www.resolvergroup.com/2022/11/13/online-dispute-resolution-in-the-uk/>, (last visited Jun 23, 2024, 6:30PM).

⁶⁵Ibid.

⁶⁶The Impact of ODR Technology on Dispute resolution in the UK, Thomson Reuters, (last visited Jul 01, 2024 , 8:50PM).
https://blogs.thomsonreuters.com/legal-uk/wp-content/uploads/sites/14/2016/10/BLC_ODRwhitepaper.pdf.

Video mediation has several advantages. It helps participants to participate in mediation session from safety and comfort of their homes, to take part in mediation session even if they are in different geographical locations or if they live in remote areas and it reduces the cost and saves time⁶⁷.

The London Court of International Arbitration has significantly adapted to the use of virtual ADR hearings in UK. The LCIA has seen a major acceptance of virtual ADR hearings, with the institution's rules now providing for electronic communication, virtual hearings and electronic awards. 42% of the respondents believe that changes will be required to the civil procedure rules in the UK and arbitration rules generally if virtual hearings are to be widely used⁶⁸. Only 21% of respondents actually participated in a virtual mediation and of those 21% the majority reported having a positive experience.

For the question have you had first-hand experience of participating in a virtual mediation? 20.8% reported yes and 79.2% reported no. And for the question How would you rate overall experience of mediations conducted virtually from 1 to 5? 24% reported excellent, 36% reported very good, 20% good, 16% reported unsatisfactory and 4% reported very unsatisfactory. Only 18.6% reported online mediation is just as effective as in-person mediation. 48.5% reported an online mediation is a more cost effective way of conducting mediations. 63.9% reported that they prefer to conduct a mediation face to face rather than online if given the option. 39.8% reported that currently feel adequately equipped to advise on/take part in an online mediation⁶⁹.

3.2 PERSPECTIVE OF US

- a. **COST SAVINGS:** Virtual ADR hearings provide significant time and cost savings by eliminating the need for travel and accommodation expenses⁷⁰. This has been particularly beneficial for parties with limited financial resources, who might have struggled to participate in ADR proceedings due to the financial burden of travel.
- b. **FLEXIBILITY:** Virtual hearings have made it possible for parties from all over the US to participate in ADR proceedings, thereby leading to higher attendance rates⁷¹. This has been particularly beneficial and convenient for remote parties.
- c. **ABSENCE OF GEOGRAPHICAL LIMITS:** Virtual hearings enables the parties and the neutral to connect with the proceedings or sessions without any geographical limits. The availability of virtual proceedings has indeed expanded the options for parties seeking an appropriate neutral, such as a mediator or arbitrator, for their dispute resolution. Without any constraints of in-person hearings, parties can now consider neutrals located anywhere in the country or even internationally⁷².

The United States has seen significant advancements in the adoption and acceptance of Virtual Alternative Dispute Resolution hearings. The AAA and ICDR have developed guidelines and protocols for virtual hearings, including the AAA-ICDR Virtual Hearing Guide for Arbitrators and Parties. Virtual Hearings are not a new concept. The AAA-ICDR has supported the option to parties for years. Moreover, the AAA-ICDR has implemented pre-determined settings to promote privacy, security and ease of use and best practices training guides for AAA-ICDR staff, arbitrators, counsel and parties.

As reported by the AAA-ICDR in its survey held from March 1, 2020 to May 16, 2022, 11,372 out of 19,911 events were held virtually⁷³.

In 2019, Pew Research Centre reported that 90% of the US adults used the internet which includes 73% of adults over 65, versus 97% of adults 30-49 and 100% of adults 18-29⁷⁴.

3.3. PERSPECTIVE OF INDIA

⁶⁷Timea Tallodi, Love of Video Mediation in the Time of Covid-19: An Initial Insight into Benefits and Challenges. In: Covid-19, Law and Human Rights : Essex Dialogues. A Project of the School of Law and Human Rights Centre. University of Essex, Colchester, pp. 247, 251-252. ISBN 978-1-5272-6632-2, (2020).

⁶⁸Baker Mckenzie, https://www.bakermckenzie.com/-/media/files/insight/publications/2021/02/are-virtual-hearings-here-to-stay--baker-mckenzie-and-kpmg-report_010221.pdf, (last visited Jun 23, 2024, 11:30 PM).

⁶⁹Ibid.

⁷⁰E. Casey Lide, ADR and Cyberspace: The Role of Alternative Dispute Resolution In Online Commerce, Intellectual Property and Defamation, 12 Oluo ST. J. o.; Disp REsOL 193. 193 (1996) at 220.

⁷¹National Conference of State Legislatures, <https://www.ncsl.org/state-legislatures-news/details/4-things-you-need-to-know-about-virtual-court-hearings>, (last visited 27 Jun 8:20 AM).

⁷² Cassandra Franklin, ADR in a Virtual World: Here Today and likely for the Foreseeable Future, ADR Times, JAMS, (last visited Jun 15, 2024, 6:30 AM), <https://www.jamsadr.com/files/uploads/documents/articles/franklin-cassandra-adr-times-adr-in-a-virtual-world-06-2021.pdf>.

⁷³American Arbitration Association, <https://go.adr.org/virtual-hearing-statistics>, (last visited Jun 20, 2024, 10:30PM).

⁷⁴Internet/Broadband Fact Sheet, PEW RSCH. CTR. (June 12, 2019), Pew Research Center, (last visited Jul 02, 9:20PM), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.

Virtual ADR hearings offers several key benefits in India

- a. **BUSINESS FRIENDLY:** Virtual hearings helps the parties to resolve disputes without sacrificing any business relationship⁷⁵.
- b. **COST-EFFICIENT:** Virtual hearings provides speedy resolution. Rather than spending time and money on dispute resolution, the parties can focus on their business⁷⁶.
- c. **FAST:** E-Arbitration and E-Mediation can be completed within the specified time⁷⁷.
- d. **PAPERLESS:** The entire process is completed without using a piece of paper⁷⁸.

Virtual ADR hearings are gaining acceptance in India. Hum Lab, an organisation together with Vayam and ICICI bank has launched the E-Alternate Dispute Resolution Challenge 2019 (E-ADR Challenge)⁷⁹. The main objective of this is to resolve disputes through ADR with the help of advanced technologies⁸⁰.

The Indian government launched the VIVAAD SE VISHWAS scheme in February 2020, with a view to resolve tax disputes through ODR⁸¹. The High Court of Delhi issued a Guidance Note for conducting Arbitration proceedings by Video conference, thereby giving acceptance to virtual hearings.

The Supreme Court in the case of M/s Shakti Bhog Foods limited Vs Kola Shipping Limited⁸², ruled that “as far as the provisions of Section & of the Arbitration and Conciliation Act, 1996 is concerned, an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and furthermore an arbitration is considered to be in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means telecommunication which provide a record of the agreement or an exchange of statement of claim and defence in which the existence of an agreement is alleged by one party and not denied by other party. So from the provisions of Section 7, it is clear that an agreement need not be in writing signed by both parties and this could as well be made out from the acts of the parties to the agreement by way of their exchange of letters and information through fax, e-mails, etc.”

In the case of Trimex International Fze Ltd. Dubai Vs Vedanta Aluminium Limited, India⁸³, the Supreme Court held that “it is clear that in the absence of signed agreements between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of e-mails, letter, telex, telegrams or other means of telecommunication, which provide a record of the agreement.

In a survey conducted by FICL in collaboration with CTIL⁸⁴, the most common response (i.e., 14%) was the need for administrative and logistical support for virtual hearings, indicating that users value the use of technology in arbitration⁸⁵. As per this survey the main advantages of virtual arbitration hearings are 21% of the respondents reported greater efficiency through the use of technology, 18% reported greater procedural and logistical flexibility, 15% reported potential for greater availability of dates for hearing, 13% reported that fewer distractions for advocates and arbitrators, 9% reported that a better view of people’s faces than at in-person hearings, 9% reported that less environmental impact than in-person hearings and 15% reported that greater accessibility for participants in remote parts of the country⁸⁶.

⁷⁵theidrc.com, <https://theidrc.com/content/e-adr/idrc---virtual-adr-hearing>, (last visited Jun 26, 2024, 9:45 PM).

⁷⁶Ibid.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹Bar and Bench, <https://www.barandbench.com/news/humlab-vayam-icici-bank-announce-e-adr-challenge-2019>, (last visited Jun 27, 2024, 2:45 PM).

⁸⁰Rahul Kumar Gaur, tech-Driven Justice: Unraveling The dynamics of Online Dispute resolution, www.livelaw.in, (last visited Jun 27, 2024, 1:30 PM), <https://www.livelaw.in/lawschool/articles/future-of-justice-technology-alternative-dispute-resolution-260027>.

⁸¹Ibid.

⁸²M/s Shakti Bhog Foods limited Vs Kola Shipping Limited, AIR 2009, SC12,2009 (2) SCC 134.

⁸³Trimex International Fze Ltd. Dubai Vs Vedanta Aluminium Limited, India, Arb. Petition No. 10 of 2009.

⁸⁴Survey of Dispute resolution in India, 2023: Growth and future of Alternate Dispute Resolution in India, images.assettype.com, (last visited Jun 27, 2024, 11:45 PM), https://images.assettype.com/ficl/2023-05/1ad5446e-8d5b-4fc7-99fb-ea07ce09daf9/FICL_Survey_of_Dispute_Resolution_in_India.pdf.

⁸⁵Id.at 23.

⁸⁶Id.at 27.

3.4 COMPARISON

	UK	US	INDIA
Effectiveness	Effective in certain type of cases such as case management hearings and commercial cases	Effective in improving accessibility and efficiency	The Delhi High Court issued guidelines for videoconferencing, but there are concerns about the effectiveness and security
Accessibility	Improved accessibility for witnesses, parties and the public	Increased accessibility for parties with mobility issues, those living in remote areas and those with busy schedules	Virtual hearings have the potential to increase accessibility, especially for those in remote or rural areas.
Cost	Saved significant cost for the parties including transportation.	Reduce costs for parties, including travel and accommodation expenses	Reduce cost for parties.
Security	Security measures including secure internet connection and data protection	Security measures including encryption and secure internet connections	Faces security concerns including data privacy and cyber security risks

On comparing the benefits of Virtual ADR hearings in UK, US and India, all these countries have advantages such as cost-effectiveness, accessibility, flexibility and improved efficiency. The arbitral institutions in UK are readily adopting the Virtual ADR procedures. The US is more cautious in embracing Virtual ADR. In India, acceptance of Virtual ADR is gradually increasing and initiatives like E-ADR, VIVAAD SE VISHWAS scheme, etc., have also been launched in recent years. The Courts in India are also recognising the virtual ADR proceedings by issuing guidelines. The surveys in UK, US and India shows that United States has higher acceptance of virtual ADR hearings when compared with UK and India.

4. CHALLENGES IN VIRTUAL ADR HEARINGS

4.1. IN UK

- a. **UNEVEN ACCESS TO TECHNOLOGY:** Participants may have varying levels of access to high-internet speed, video conferencing equipment and technical support, making it difficult to ensure an equal playing field⁸⁷. Over 11 million adults in UK lack essential digital skills⁸⁸. In 2019, there were 4 million people who had not even used the internet. Even though the age gap is narrowing, a significant portion (2.5 million) were senior citizens aged about 75 and above⁸⁹. 7% of the household had no internet access in UK in 2019⁹⁰.
- b. **SECURITY AND CONFIDENTIALITY CONCERNS:** Virtual hearings increases the risk of security breaches and potential disruptions that could compromise the privacy and confidentiality of the proceedings⁹¹.
- c. **DIFFICULTY IN ASSESSING WITNESS CREDIBILITY:** It can be more challenging for arbitrators to evaluate witness testimony and body language when conducted virtually, potentially impacting their ability to assess credibility⁹².
- d. **TECHNICAL DIFFICUTIES:** Technical glitches like disruptions in internet connectivity or malfunctioning equipment can disrupt the flow of the hearing and cause delays⁹³.

Since there is need for clear and comprehensive legislative frameworks, guidelines and protocols regarding virtual ADR hearings to overcome these challenges.

4.2 IN US

- a. **SLOW ADOPTION:** The adoption of virtual hearings is slow. However, the necessity of virtual hearings to resolve disputes became undeniable, there will be significant increase in the use of virtual hearings⁹⁴.
- b. **LACK OF IN-PERSON INTERACTIONS:** While virtual ADR has become more widespread, there are downsides. In mediations, in-person interactions can be crucial for reaching agreements. Unlike physical settings, virtual environments lack those unplanned hallway discussions that can lead to breakthroughs. Frustrated participants can simply disconnect without the chance for a last-minute conversation. Additionally, distractions at home or work can disrupt focus and parties aren't physically present in the same space to contemplate the issues together⁹⁵.
- c. **CREDIBILITY:** In-person hearings offer advantages for arbitrators in managing participants. Arbitrators have a clear view of witness demeanour and in-person interactions, which can be crucial for credibility assessment. This visibility might be limited in virtual hearings⁹⁶.
- d. **CONFIDENTIALITY AND SECURITY:** Ensuring the confidentiality and security of sensitive information exchanged during the hearing can be more complex in a virtual setting⁹⁷.

The virtual setting may lead to a more informal atmosphere, which could be perceived as disrespectful or undermine the seriousness of the dispute.

⁸⁷LegalVision UK, <https://legalvision.co.uk/disputes-litigation/challenges-arbitration-commercial-disputes/>, (last visited Jun 27, 2024, 11:30 AM).

⁸⁸JUSTICE, 'Preventing Digital Exclusion from Online Justice', April 2018,4, Justice, (last visited Jun 27, 2024, 2:00 PM), <https://justice.org.uk/our-work/assisted-digital/>.

⁸⁹'Internet Users in the UK: 2019', Statistics from office of National Statistics (ONS), May 2019, Office for National Statistics, (last visited Jun 27, 2024, 3:00 PM) <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>.

⁹⁰'Internet access: Households and Individuals- Great Britain, 2019', Statistics from ONS, May 2019, Office for National Statistics, (last visited Jun 27, 2024, 3:30PM) <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialm>.

⁹¹ Supra Note 86.

⁹²Ibid.

⁹³Ibid.

⁹⁴JAMS, <https://www.jamsadr.com/blog/2021/virtual-hearings-and-mediations-are-here-to-stay>, (last visited Jun 27, 2024, 7:29 PM).

⁹⁵Ibid.

⁹⁶Ibid.

⁹⁷Daniel Garrie, Confronting the Challenges of Virtual Mediation, JAMS, (last visited Jun 27, 2024, 4:55 PM), <https://www.jamsadr.com/publications/2020/garrie-law360-confronting-the-challenges-of-virtual-mediation-2020-04-01>.

4.3. IN INDIA

- a. **VIRTUAL WITNESS EXAMINATION:** Virtual hearings can make it difficult to assess witness credibility, especially when witness testimony is essential. This is because it can be hard to gauge a witness's body language and demeanour on virtual platforms. However, this may be less of a concern in commercial arbitrations that rely more on documents than witness testimony⁹⁸.
- b. **WITNESS COACHING:** Video conferencing in witness examination can introduce the risk of coaching or improper assistance. It can create a loophole for coaching, as witnesses can potentially receive hidden instructions⁹⁹.
- c. **TECHNOLOGICAL INTERRUPTIONS AND INEQUALITY:** When conducting video conferencing for witness examinations, it is important to consider if both parties have equal access to reliable technology and a stable internet connection. This is because technological disparities can impact due process during the enforcement of award or any decision that have been taken by the presiding officer in ADR proceedings¹⁰⁰.
- d. **CONFIDENTIALITY:** Section 42A of the Arbitration and Conciliation Act, 1996 states that the arbitral institution and the parties should maintain confidentiality throughout the arbitration proceedings. Maintaining confidentiality becomes a significant challenge in virtual ADR proceedings.

According to the survey taken by the FICL in collaboration with CTIL, 20% of the respondents reported that virtual arbitration hearings has confidentiality and data security concerns, 20% of the respondents reported that it is harder for arbitrators to confer during sessions and 18% reported that it is harder for counsel teams and clients to confer during sessions. 15% reported that it is difficult for some to participate in virtual hearings due to inequality in internet access, 13% reported technical malfunctions as a disadvantage, 7% reported that potential due process concerns may impact the enforceability of any award and 7% reported that it is potential for ethical or procedural abuses¹⁰¹.

The key challenges across the three countries include the accessibility, varying level of digital literacy, privacy and confidentiality concerns and the overall acceptance and trust in virtual ADR processes. While the UK and US have made more progress in addressing these issues, India still faces significant challenges, particularly in bridging the urban-rural divide and building trust in virtual ADR.

CONCLUSION

The COVID-19 pandemic has accelerated the adoption of virtual hearings and remote participation in alternative dispute resolution (ADR) proceedings across the UK, US, and India. Each country has made progress in incorporating video conferencing into their ADR frameworks, the level of acceptance and implementation varies. While virtual ADR hearings have the potential to revolutionize dispute resolution, their success depends on overcoming technological, legal, and cultural barriers. One key area for further development is the harmonization of guidelines and protocols across jurisdictions. The UK has seen significant advancements, with the LCIA rules explicitly allowing for virtual hearings and the LMAA issuing detailed guidelines on conducting virtual and semi-virtual hearings. The US has also made strides, with the AAA-ICDR providing a virtual hearing guide and model procedures for conducting mediations via videoconference. India has taken steps as well, with the High Court of Delhi issuing guidance on conducting arbitration proceedings virtually and the IAF protocol providing a framework for virtual hearings. The benefits of virtual ADR hearings are clear across all three countries. They offer significant cost savings by eliminating travel expenses, increased accessibility for parties in remote locations, and greater flexibility in scheduling. Virtual hearings have also shown potential for improving efficiency and reducing the time required for dispute resolution. India is gradually increasing acceptance of virtual ADR, with initiatives like E-ADR, VIVAAD SE VISHWAS, and court guidelines.

As the world continues to grapple with the challenges posed by the pandemic, the adoption of virtual ADR hearings will likely accelerate. However, it is crucial that these advancements do not come at the expense of due process, confidentiality, and the integrity of the ADR system. Striking the right balance between

⁹⁸ Supra note 44.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Supra note 85 at 28.

innovations and safeguarding the principles of justice will be the key to unlocking the full potential of virtual ADR hearings in the years to come.

However, challenges remain in ensuring equal access to technology, maintaining confidentiality and security, and assessing witness credibility in a virtual setting. The UK and US have made more progress in addressing these issues through comprehensive guidelines and protocols. Addressing the unique challenges faced by India, such as the digital divide and concerns about confidentiality, will be crucial for the country to fully embrace the benefits of virtual ADR hearings and ensure the effective resolution of disputes in the years ahead. India still faces significant challenges, particularly in bridging the digital divide between urban and rural areas and building trust in virtual ADR processes. Surveys in the UK, US, and India suggest that the US has the highest acceptance of virtual ADR hearings, with the majority of respondents reporting positive experiences. In the UK, while virtual hearings are gaining traction, a significant portion of respondents still prefer in-person mediation. In India, initiatives like E-ADR and the VIVAAD SE VISHWAS scheme have helped increase acceptance, but concerns remain about confidentiality, technological interruptions, and witness coaching.

