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SEAT VS. VENUE OF ARBITRATION: JURISDICTIONAL CONFUSION IN INTERNATIONAL COMMERCIAL ARBITRATION

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Abstract

Arbitration has become more and more popular as a method to settle international commercial disputes due to the fact that it is neutral, has flexible procedures and the enforcement of the arbitral awards in various jurisdictions is less complicated.[1] In this context, the seat and venue of arbitration is a vital factor used in determining the legal basis of arbitral proceedings. The seat is the seat of the juridical seat of arbitration which defines the procedural law of the arbitration process along with the national courts that provide a supervisory jurisdiction to the proceedings. In comparison, venue only concerns the actual location the arbitral tribunal can hear or meet. Though the concepts are theoretically different, the terms are often used interchangeably though arbitration agreements do not explain the meaning of the terms, a fact that brings a lot of ambiguity as to which court could hear the case and which court has the jurisdiction to control the case.

The paper discusses the legal and conceptual variation of the seat and venue of arbitration with reference to the act of Arbitration and Conciliation, 1996 and the interpretations that have been established by the Indian courts. The research paper will discuss some of the key court cases, such as *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd., and BGS SGS Soma JV v. NHPC Ltd*. To augment the domestic jurisprudence analysis, the paper also cites the current trends in the international arbitration practice. It also takes into account the new tendencies, including the increasing popularity of virtual hearings and the controversy about whether or not a virtual seat can be recognised during arbitration proceedings. The paper identifies the uncertainties in the doctrine, practical problems, and drafting gaps in arbitration agreement in an attempt to offer

[1] Gary B Born, International Commercial Arbitration (2nd edn, Kluwer Law International 2014) 74

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recommendations that will enhance the clarifications regarding the choice of the seat of arbitration and the efficiency of arbitration as a conflict resolution mechanism across borders in commercial matters.[2]

Introduction

International commercial arbitration has emerged to be one of the most popular mechanisms of dispute resolution that emerge as a result of business relationship across national boundaries. Its increased acceptance is mainly attributed to such benefits as flexibility of procedures, confidentiality, freedom of the parties, forum neutrality, and enforceability of the arbitral awards internationally through such instruments like the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Although there are these benefits, the arbitration law still experiences some conceptual and doctrinal challenges. One of the most controversial topics is the difference between the seat and the venue of arbitration as it defines the procedural law to be applied as well as the authority of the national courts. The seat of arbitration is defined as the seat that arbitration takes place and the legal seat of arbitration that determines the legal basis that the arbitral process is based on. It equally establishes the national courts that have the supervisory powers with regard to the proceedings. Conversely, the venue is simply a pointer of the physical place where hearings or meetings can occur in the arbitral tribunal.

However, this difference seems obvious at the theoretical level, yet practical complications are present since in many cases arbitration clauses do not mention the seat very clearly. In cases where there is ambiguity in the arbitration agreements, the courts are supposed to read the language in the contracts to establish whether a certain place identified in the contract is to serve as the juridical seat or to serve as a convenient venue to hold the hearings. This conclusion has significant implications in that the seat determines the relevant procedural law, the degree of judicial review and at which arbitral awards are enforceable. In the Indian law system courts have been found to contribute substantially in demarcating this difference through the Arbitration and Conciliation Act, 1996. The Supreme Court of India has adopted various landmark cases that addressed the matter such as *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd., Union of India v. Hardy Exploration and Production (India) Inc. v. BGS SGS Soma JV. NHPC Ltd.* These decisions have tried to establish the connection between venue and seat though

[2] Julian D M Lew, Loukas A Mistelis and Stefan Kröll, Comparative International Commercial Arbitration (Kluwer Law International 2003) 179.

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inconsistencies in judicial interpretation have occasionally created interpretative ambiguity.

The idea of seat is of great importance in the practice of international arbitration since it defines the lex arbitri, or the legal framework upon which the arbitral process will be conducted. Seat based courts usually have the power of supervision, such as the right of review or setting aside of arbitral awards. In comparison, the venue is mainly logistical in nature and may not necessarily influence the legal regime on arbitration.

The mistaking of these terms may hence lead to pertinent issues of jurisdiction and may pose questions of the degree of judicial intervention into arbitral proceedings. This uncertainty compromises the predictability and efficiency which arbitration aims to bring into the international business, as law systems of various countries rely on neutral and trusted systems of dispute resolution. Based on this, the study will critically examine the doctrine of the seat and venue of arbitration with a special focus on the Indian judicial application, as well as to explore the issues that have been issues due to badly drafted arbitration clauses, and propose suggestions to enhance clarity between the parties in the arbitration agreement.

Statement of the Problem

Commercial arbitration is being employed greatly in solving the dispute that occur between countries because of commercial activities. Nevertheless, a single challenge that is still present in the practice of arbitration is the confusion with regards to the distinction between the seat of arbitration and the venue of arbitration. Numerous arbitration clauses define a seat where arbitration shall be conducted but does not give clear indication whether the seat is the juridical seat of arbitration or it is a seat where the hearings are done. Such inaccuracy may create serious jurisdictional problems. The residence of arbitration has legal implications in that it enforces the law of procedure that regulates arbitration and the courts of the country that have supervisory powers of the proceedings. In cases where an arbitration clause fails to specify the seat, the court will in most instances have to make an interpretation of the text of the agreement to find out the intention of the contracting parties.

The judicial interpretation in this kind of case has not been so unanimous. Under Indian legal system courts have taken divergent policies on whether a particular venue was to be regarded as the juridical seat of arbitration. Courts in a number of cases have assumed that the seat is likewise represented by the designated venue under the assumption that it does so until evidence to the contrary is produced, whereas in others the decision-making courts have insisted that the seat be identified expressly and then given legal effect. Such inconsistent

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interpretations have brought about confusion to the contracting parties, and to the arbitration practitioners. The main problem as a result is that there is no common way of identifying the seat of arbitration when agreements are formulated in an ambiguous manner. This ambiguity has a direct impact on key areas of law including jurisdiction, procedural model that regulates arbitration, and enforceability of arbitral awards. Due to this fact, the seat-venue distinction remains a great dilemma in international commercial arbitration practice.[3]

Research Methodology

The research design of the study is the doctrinal and analytical research approach that will address the legal concerns of the difference between the seat and venue of arbitration. The study mainly uses secondary sources such as court rulings, the legislation, academic articles, and international arbitration systems. These are the sources with the help of which the law of arbitration interprets and puts into practice the notions of seat and venue. The study examines the evolution of the law of reasoning on this matter in reviewing significant judicial declarations as made by India and other jurisdictions. Special consideration is given to the provisions of the Arbitration and Conciliation Act 1996 and the principles as captured in the UNCITRAL Model Law on International Commercial Arbitration to get the legal framework in which arbitration proceedings are conducted. Moreover, the scholarly and institutional arbitration regulations are discussed to assess the modern understanding of the seat-venue distinction and detect in areas where doctrine still lack coherence. These are the doctrinal analyses that enable the research to evaluate the jurisdictional implications that may arise when there is no clear distinction between the two concepts in arbitration agreements.

The comparative analytical approach is also present in the study as the jurisprudence of the leading arbitration jurisdictions like United Kingdom and Singapore is taken into consideration. The analysis of such jurisdictions can be used to explain how various legal systems consider the connection between seat and venue and how the connection affects the jurisdiction determination in international arbitration. Through judicial reasoning analysis, the arbitration rules of major institutions and academic commentary, the study aims to determine the wider trends and new trends of the arbitration practice. The methodology will allow critically evaluating the Indian legal system against the international best practices and give recommendations to enhance clarity and consistency in establishing the seat of arbitration.

[3] Nigel Blackaby and others, Redfern and Hunter on International Arbitration (6th edn, OUP 2015) 176.

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a) Objectives of the Study

A. To test the conceptual difference between the seat and venue of arbitration in international commercial arbitration.
B. To examine the legal ramification of the seat in establishing jurisdiction and the procedure law to be applied.
C. To examine the jurisprudence that has evolved at the Indian courts regarding the distinction on seat versus venue.
D. To assess the issues that emerge as a result of vague arbitration provisions.
E. In order to recommend suggestions that will guarantee the clarity of arbitration agreements and lessen the number of cases where jurisdiction is a problem.

b) Research Questions

1. What is the lawful difference between the seat of arbitration and the venue of arbitration?
2. What is so important about the seat determination in international arbitration?
3. What has been the judiciary interpretation of arbitration clauses about venue or location in India?
4. Which are the jurisdictional issues that can be encountered in case arbitration agreements fail to indicate the seat?
5. Which steps can be implemented to reduce the disagreements on the seat and place of arbitration?

c) Scope and Limitations

The present study is a narrow focus on the difference between the seat and venue of arbitration in the context of international commercial arbitration. The research mainly concerns the jurisprudence of the Indian Arbitration and Conciliation Act, 1996 together with referring to the applicable international principles as well as cases of international comparisons. The study does not make the entire analysis of all arbitration jurisdictions, but selectively explores the most prominent judicial rulings that have played a significant role in establishing the seat-venue doctrine.

Moreover, in contrast to the arbitration agreements and drafting practices, the paper does not attempt to conduct any empirical test of arbitration clauses that are applied to commercial contracts. Also, the study mostly addresses the law and doctrine of the distinction between the

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seat and the venue without conducting an empirical study of the arbitration practices or quantitative analysis of arbitration agreements adopted in trade agreements. The research is primarily based on jurisprudence, legislations, and academic resources, which analyse the legal rules of determining the seat of arbitration. Although attempts have been undertaken to include the comparative views of the key arbitration jurisdictions, this study has failed to give a comprehensive analysis of all the international arbitration regimes.

Conceptual Framework: Seat of Arbitration

The law of international arbitration has made the seat of arbitration hold a place of utmost significance. It is also known as the juridical seat and it is the legal residence of the arbitration.[4] The seat dictates the legal regime upon which the arbitral process is governed and this identifies the domestic courts that have the supervisory power over the process of arbitration.[5] This seat can have a number of very essential functions in arbitration theory and practice. First of all, it establishes the *lex arbitri*, or procedural law, governing the manner in which the arbitration is to be carried out. Although parties in a dispute usually are free to select the law they wish to address the content of their contractual relationship, procedural details of arbitration are usually directed by the law of the seat. Secondly, it is the seat that defines which national courts have a supervisory or curial jurisdiction over the arbitral process.

The intervention of these courts is constrained, and arises in such situations as appointment of arbitrators where parties cannot agree, interim relief or set-off an arbitral award in special circumstances. The other crucial role of the seat is connected with the legal identity or the nationality of the arbitral award. Under the law an arbitral award is said to be made at the seat of arbitration. Such relationship is significant due to recognition and enforcement under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Due to these reasons, the seat is the focal point of the legal basis of the arbitration process, the connection between the arbitration and some specific national legal system. In addition to these positions, the seat has a critical role of guaranteeing procedural legitimacy of arbitral proceedings. The law of the seat offers the legal basis through which the arbitration is validated under the national law systems and it is on this basis that arbitration gains its power.

The courts at the seat have limited control, including interim protection, which helps in

[4] Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc [2012] 9 SCC 552 SC
[5] Enercon (India) Ltd v Enercon GmbH [2014] 5 SCC 1 SC

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appointing or replacing arbitrators, and also arbitral awards in setting-aside proceedings. By this process, arbitration is linked to a national legal order and at the same time retains what international arbitration is characterized by independence. The choice of the seat is hence a tactical move towards international commercial dealings. Businesses usually want to deal in those jurisdictions that provide a legislature that is conducive to arbitration, a judicial system that is well-organized, and least judicial intervention in the arbitral process. London, Singapore, and Paris are some of the examples of cities that have become well-known arbitration centers due to their favorable legal framework and trustworthy courts. As a result, the seat may greatly affect the justice, effectiveness, and binding nature of the arbitration procedure, and it is one of the most significant concerns that should be taken into account when writing arbitration clauses.

Venue of Arbitration Concept

The venue of arbitration, unlike the seat, merely describes the place where the physical meetings of the arbitral hearings or meetings are conducted.[6] The venue does not tend to dictate either the law of procedure applicable to the arbitration process or the jurisdiction of national courts in that regard, as opposed to the seat. Arbitration hearings usually take place at places that are conveniently selected. The fact that a party, an arbitrator, witnesses, and experts can be located on different countries, often arbitral tribunal will choose the location to minimize traveling and logistical complexity. This is seen in the international arbitration rules and law. Indicatively, the UNCITRAL Model Law on International Commercial Arbitration (Article 20(2)) allows an arbitral tribunal to convene anywhere it feels is suitable to undertake its duties like consultations between the arbitrators, witness testimonies or review of documents. Therefore, the seat is symbolic as the basis of arbitration in legal terms, whereas the venue is mostly about the practical matters of proceedings. In spite of the fact the venue is primarily related to the physical hearings or meetings, it may also serve to facilitate the efficient arbitration. Choosing a convenient place may save on traveling expenses, accessing witnesses and ease presentation of documentary evidence.

Where a dispute involving two parties in international dispute is complex with one party being located in one area and the other in a different area, tribunals can select neutral and convenient places so as to have equal and efficiency in the hearings. Also becoming common is the

[6] Nigel Blackaby and others (n 3) 178

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situation where arbitration proceedings take place in more than one venue, which does not have the consequence of switching the seat. The procedure of arbitral tribunals can be held in various cities through procedural meetings, evidentiary hearings, or examination of witnesses based on the demands of the case. In other cases, litigations are carried out fully online. Although the hearing may take place in another location, it does not change the juridical seat and the law governing the procedure. This difference solidifies the fact that the location is associated with convenience, and the seat is the legal basis of the arbitration.

Significance of the Seat in ascertaining Jurisdiction

The seat identification has serious jurisdictional implications. At the seat, the courts have the sole power to supervise the proceedings of arbitration. This structure provides a limited judicial intervention in the arbitration process, although it is still accorded the legal assistance needed by the courts of the seat. The designation of the seat has been recognized internationally as an indication of the intention of the parties to bring the arbitration within the jurisdiction system of the jurisdiction. The selection of seat thus defines what courts can assume the power of supervising the arbitration process. This precept was entrenched in the judicial system of India as the Supreme Court of India identified it in the case *of Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, otherwise known as the BALCO decision. The Court explained that it is the seat of arbitration that defines what courts have jurisdiction over arbitral proceedings. The ruling also stressed the aspect of territoriality, that is, arbitration is pegged to the seat legal system. In this doctrine, the jurisdiction of Indian courts of arbitrations in cases that are not located in India can only accrue when such a situation is explicitly authorized in statute.

The BALCO decision was thus a watershed in the Indian arbitration jurisprudence as it brought it closer to the international arbitration standards. The other significant jurisdictional concern associated with the seat is how the courts have the right to exercise judicial support when arbitration is underway. The courts sitting at the seat may serve arbitral processes by ordering provisional measures, freezing evidence or seizure of possession of property that might be the subject of an ultimate arbitral award. This judicial support is especially useful in the cases when a significant immediate action is needed to safeguard the efficiency of the process of arbitration. The level of such backing is usually determined by the domestic legal framework of the seat and the receptiveness of the courts to the arbitration-friendly approach.

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Judicial Development of Seat–Venue Distinction in India

The Indian courts have been instrumental in the legal interpretation of the seat versus the venue of the arbitration. In a sequence of seminal cases, the judicial system has progressively formulated rules to expound arbitration clauses that allude to locations where arbitration should take place. Such rulings indicate the changing judicial trend in deciding whether a particular place in an arbitration contract is the juridical seat or simply the seat to hold hearings.

Notable ruling under this subject is an ***Indus Mobile Distribution Pvt. Ltd. versus Datawind Innovations Pvt. Ltd.***[7] In this instance, the Supreme Court of India pointed out that courts which are located within the seat of arbitration have the overall supervisory power over the arbitral processes. The case strengthened the theory that seat designation in an arbitration agreement is an effective exclusive jurisdiction clause. Through the absorption of this interpretation, the Court had put Indian arbitration jurisprudence in line with the generally recognized international arbitration principles, which view the seat as the jurisprudential basis of arbitration. Simultaneously, the ruling also pointed out the significance of specifying the seat in arbitration contracts, as ambiguity on the location as a reference in the contract might nonetheless result in some uncertainty as to whether the reference is to a seat or simply to a venue.

The second prominent case that caused much controversy is the ***Union of India v. Hardy Exploration and Production (India) Inc***.[8] The Supreme Court was more restrictive in this instance in reading the seat-venue distinction. The Court decided that the fact that a place is referred to as the venue of the arbitration does not necessarily mean that the place is the seat of the juridical seat. Rather the Court emphasized that the arbitration agreement should have clear signals that the parties wanted the location to be the seat. This interpretation, though it was an effort to honor what has been said in the arbitration clause, was generally criticized to bring about an sense of uncertainty in that it was diverging with the widely held presumption that the venue selected could be the seat unless otherwise indicated. Therefore, the decision created issues concerning the interpretation of ambiguous language in the seat in arbitration agreements.

The Hardy Exploration decision created the uncertainty that was subsequently dealt with by the Supreme Court in the case ***BGS SGS Soma JV v. NHPC Ltd***.[9] The Court, in this instance,

[7] Indus Mobile Distribution Pvt Ltd v Datawind Innovations Pvt Ltd [2017] 7 SCC 678 SC
[8] Union of India v Hardy Exploration and Production (India) Inc [2019] 13 SCC 472
[9] BGS SGS Soma JV v NHPC Ltd [2020] 4 SCC 234

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engaged in an elaborate analysis of the previous judicial precedents and explained how to ascertain the seat of arbitration. It noted that in cases where an arbitration agreement provides a specific location as the venue of arbitration and no other indications exist implying otherwise, the specified location can be regarded as the juridical seat of arbitration. By the interpretation, the Court aimed to bring the Indian arbitration law back to its senses and minimize the redundant litigation surrounding the issue of jurisdiction. It was thus confirmed that the intention of the parties as expressed in the arbitration agreement should be the primary determinant of the seat. In the BGS SGS Soma, the Court also stated that where an arbitration clause designates a specific location and the venue and does not designate any alternative seat, the venue could be treated as the seat unless the contract said otherwise.

To arrive at this decision, the Court placed much importance on the line of reasoning that was taken by English courts in ***Roger Shashoua v. Mukesh Sharma***, which bequeathed what was to be known as the Shashoua principle.[10] This line of thought allowed the Supreme Court to point out that arbitration provisions could not be applied in a strictly literal way but rationally in a sense that was indicative of the overall intent of the parties. Another issue that is brought out by the Court is that arbitration agreements should be construed in such a way that gives certainty and avoids the unneeded jurisdictional wrangles. In this regard, the identified venue can be considered the reasonable seat of the juridical seat unless it was explicitly stated in the agreement that the specified location is only a convenient place to hold hearings. This practice enhances predictability in arbitration and the jurisprudence of Indian arbitration is in tandem with the current international convention ions in terms of awarding the seat.

Comparative Jurisprudence on Seat and Venue

The seat and venue of arbitration has also been highly discussed in the international arbitration jurisprudence. A number of major arbitration seats such as the United Kingdom and Singapore, have come up with a sound legal doctrine that describes the importance of the seat and its connection with the seat of arbitration. The juridical location of arbitration has been constantly reiterated by the courts in the United Kingdom to indicate that the seat is the seat of arbitration. By the Arbitration Act 1996, the seat forms the procedural law applicable to the arbitration and determines the courts with the supervisory jurisdiction as regards the arbitral process itself.[11]

A precedential case on this topic is *Naviera Amazonica Peruana SA v. Peru. Compania*

[10] Roger Shashoua v Mukesh Sharma [2009] EWHC 957 (Comm)
[11] Arbitration Act 1996, s 3.

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Internacional De Seguros Del Peru.[12] In the current case, the English Court of Appeal acknowledged that arbitration is essentially seat oriented, in the sense that a legal framework that regulated the arbitration is tied directly to the seat that is selected. The Court also indicated that the choice of a seat depicts that the parties are intent to subject the arbitration to the procedural law of a given jurisdiction. One more significant one is *Roger Shashoua v. Mukesh Sharma*. In that conflict, the arbitration clause provided that arbitration was to be held in London, under the regulations of the ICC, without stating explicitly that it was to be held in London.[13] The English High Court decided that where an arbitration agreement expressly states that the arbitration fulfilment will be through a specific location and that there is no specific seat to be used, the location thus used should generally be considered the seat. This argument led to what is normally referred to as the *Shashoua principle*.

Under this rule, in the event that an arbitration clause has designated a particular location as the seat and the arbitration is to be held under institutional terms, it will be treated as the seat of jurisdiction unless the contract does present evidence showing otherwise. Courts have adopted a similar approach in Singapore which has become one of the major arbitration centres in the world. The Singapore jurisprudence puts much emphasis on the autonomy of parties and the clarity of agreement in arbitration agreements. Singaporean courts tend to assume that the seat embodied in an arbitration provision will be the seat, unless the contract shows that the location is used merely as the seat on which to hold hearings. All these comparative developments have played a significant role in arbitration jurisprudence development in India.

Doctrinal Conflicts in Indian Jurisprudence

The Indian law of arbitration on the distinction between seat and venue of arbitration has mostly occurred via judicial interpretation. Courts have over time sought to demystify these concepts but the evolution of the doctrines has not necessarily been on the same trajectory. Variations in the judicial reasoning of cases have sometimes created confusion as to the way in which arbitration clauses referring to locations were to be construed. The case of *Enercon (India) Ltd. v. Enercon GmbH*, in which the Supreme Court of India had to decide on the seat of the arbitration in a contract having conflicting provisions is also worthy of note. The contract stated that the arbitration was going to be governed by the Indian law; however, it also stated that the arbitration was going to take place in London, the specified place of arbitration.

[12] Naviera Amazonica Peruana SA v Compania Internacional de Seguros del Peru [1988] 1 Lloyd's Rep 116 (CA)
[13] International Chamber of Commerce, ICC Arbitration Rules (2021).

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To eliminate this discrepancy, the Court looked at the agreement of arbitration as a unit and tried to find out the actual intention of the parties. It ended up determining that the seat of arbitration was India. The case has emphasized the need to interpret the arbitration clauses as a whole, as opposed to individual words or expressions. Later on, the Supreme Court in case of *Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd*. made attentive a significant rule pertaining to the impact of the designation of a seat. The Court decided that determining the seat of arbitration is an effective way of creating an exclusive jurisdiction clause. After the seat is determined, the rest of the courts in the same place have the supervisory power over the arbitration proceedings. But the ruling in the case of *Union of India v. Hardy Exploration and Production (India) Inc.* had brought some uncertainty in this emerging jurisprudence. At that, the arbitration clauses mentioned that hearings were to be held in Kuala Lumpur.

According to the Supreme Court, the fact of identification of a venue does not necessarily constitute the designation of the judicial seat unless the agreement expressly shows that it was so intended. The Court stated that without clear wording in an arbitration clause, the reference to a venue cannot result in an inference about whether there is a seat or not. This logic was considerably mocked in the arbitration circles as it seemed to be going against the generally accepted international assumption that a given venue can be the seat unless otherwise indicated by agreement. Consequently, the ruling brought about confusion in the sense that both the venue and the seat should be explicitly differentiated in the contract. The case of Hardy Exploration ruling generated an uncertainty that was later resolved by the Supreme Court in the case of *BGS SGS Soma JV v. NHPC Ltd*. In this case, the Court did a very thorough examination of national and international arbitration jurisprudence. It held that in case an agreement on arbitration mentions a specific location as the venue and there is no reference to another seat, that location could be considered the juridical seat of arbitration.

To arrive at this conclusion, the Court also did much based on the argument which was adopted in *Roger Shashoua v. Mukesh Sharma* that formulated what is generally referred to as the *Shashoua principle*. Citing this principle, the Supreme Court made it clear that the venue identification may act as the seat in case the agreement fails to name any other venue jurisdiction. The Court also showed that the rationale in Hardy Exploration was not to be generalized and implicated in other cases. The other decision that is relevant is the one where the Supreme Court reiterated that determination of the seat should also largely rest on the intention of the parties as expressed in the arbitration agreement. A different Court also

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acknowledged that the law which governs the arbitration could be of good guidance in the process of determining the juridicial seat.

Role of Institutional Arbitration Rules

Arbitration institutions frequently have a significant role to play in dictating the seat or the seat of arbitration especially in cases where the arbitration agreement itself does not expressly indicate such aspects. Most major arbitration institutions have introduced procedural systems of deciding on the seat where the parties have failed to do so specifically. As an illustration, according to the principles of the International Chamber of Commerce, the arbitral tribunal may decide on the seat of arbitration in case the agreement between the two parties fails to specify the seat of arbitration. Likewise, the London court of international arbitration rules commonly categorize that the default seat of arbitration will be London, except when the parties have agreed otherwise. These are some of the provisions that facilitate procedural certainty in instances where arbitration clauses are either incomplete or silent regarding the issue of the seat.

Tribunals also have the freedom to hold hearings outside the seat which is offered by institutional arbitrations rules. Such flexibility is an indication of the difference between the physical location of hearings and the juridical seat.[14] The seat of law may therefore be held anywhere in an arbitration process due to reasons of convenience. The provisions demonstrate that the notion of the seat is more of a legal than a geographical one. Although the arbitration hearings can be held in various places, the seat of jurisdiction should be the same. Institutional rules are therefore a source of procedural stability in that they bring about mechanism of solving uncertainty about the seat of arbitration. In the cases when arbitration clauses include vagueness or incompleteness in their provisions, an administering institution can be significant to ensure order in the proceedings.

In numerous cases, the administrative power or the arbitration courts grant the administrative authorities of the institutions to decide on the seat in cases where the partying has not done so independently. This makes sure that there is no delay in arbitration due to a lack of jurisdiction and that the processes of dispute resolution can occur with efficiency. The institutional regulations also set out elaborate procedural schemes of different issues of arbitration such as appointment of arbitrators, procedural schedules, and the protection of the parties. Singapore

[14] London Court of International Arbitration, LCIA Arbitration Rules (2020).

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International arbitration centre and Hong Kong international arbitration centre are some of the institutions whose successful administrative support and arbiter friendly procedures have earned international recognition. Institutional arbitration systems can also ensure that the jurisdictional problems are minimized through the provision of procedural guidance in order to support the credibility and reliability of arbitration as an international commercial dispute resolution mechanism.

Arbitration Agreement Issues -Drafting

Most of the jurisdictional issues in arbitration are due to poorly written arbitration clauses. Parties involved in a commercial contract will look at the substantive commercial terms and pay the least attention to the language used in a dispute resolution clause in most commercial contracts. Among the most common errors in drafting is the inability to define clearly where the seat of arbitration is. In place of indicating the seat of the jurisdiction, contracts merely say that arbitration shall occur in a certain city. This kind of wording invites the possibility of confusion as to whether the location is the legal seat or just the place that will hearings take place. The other pitfall possible is when arbitration clauses do not have internally consistent provisions. As an example, an agreement can specify a particular city as the seat of arbitration hearings and at the same time specify that the procedural law of some other jurisdiction will control the arbitration. These contradictions cause challenges to courts and international arbitral tribunals in their effort to establish the actual seat of arbitration.

In order to prevent these issues, several important aspects should be well stipulated in arbitration clauses and they include:

- the seat of arbitration
- the law of procedure of the arbitration.
- The arbitration rules or administering body to be applied.
- the language of proceedings that will be used.
- the arbitration number and the procedure of appointment.

Well planned arbitration agreements will go a long way in minimizing the chances of jurisdictional strife and assists in ensuring that arbitration proceedings can be undertaken effectively. The other drafting issue that is reoccurring is the use of alternative terms like place, location, seat, and venue without specifying their legal meaning. To the extent that these terms are inconsistently applied, courts and arbitral tribunals can experience challenges with interpretation to identify the juridicial seat of arbitration. The seat and the physical location of

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hearings is frequently a confusion in contracts that are made without the comprehensive legal advice.

This ambiguity is capable of generating a conflict of jurisdiction especially when the parties seek to appeal or enforce an arbitral award in a new jurisdiction. The formulation of the clauses can also be inadequately done, thereby omitting important procedural information required to run the arbitration process smoothly. As an illustration, lacking a clear stipulation of the rules of arbitration to apply, the number of tribunal and how such tribunal should be appointed may make initiating and proceeding in arbitration complicated. In case such procedural aspects have not been properly outlined in international commercial contracts between parties in which one party is a member of a different legal system, it may create conflicts that will slow down the arbitration process. With this reason, the inclusion of arbitration clauses must be done with regard to clarity and accuracy in order to reduce jurisdictional conflicts and maintain the efficiency and predictability that arbitration is supposed to offer.

Jurisdictional Challenges and Practical Implications

The seat/ venue confusion may lead to a number of practical and legal issues regarding arbitration. The first cost is the risk of parallel proceedings in several jurisdictions. In case the arbitration agreement lacks the clear designation of the seat, the parties can address the interim measures to other national courts or address the decision of the arbiter. This may lead to the concurrent jurisdiction of a single dispute by various courts, which is against the purpose of arbitration, as it is supposed to offer a simple dispute resolution system. The recognition and enforcement of arbitral awards might also be influenced by the uncertainty about which seat should apply. In the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the seat of arbitration is connected with the nationality of an arbitral award.[15] Where the seat is ambiguous or disputed, courts tasked with its enforcement might have problems with deciding whether the award is to be considered as local or foreign.

This may enhance ambiguity which may complicate the enforcement process and stall implementation of cross-border arbitral awards. The other practical issue is connected with time and cost of arbitration proceeding. Common litigation in national courts is usually related to seats jurisdiction. Such controversies affect the effectiveness and cost-effectiveness that arbitration is expected to offer as an alternative dispute resolution process.

[15] Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 art V

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Finally, the risk of uncertainty about the seat can deter the parties by causing them to dislike arbitration in the initial place. Once the legal framework relating to arbitration is not clear, the parties can no longer trust the reliability of the process. It is against this reason that it is necessary to conspicuously determine the seat of arbitration in any commercial contract to ensure that there is no conflict of jurisdiction, to limit litigation as a strategic move that could result in more effective arbitration.

Emerging Challenges: Virtual Hearings and the Idea of a Digital Seat in Arbitration.

New challenges of the traditional idea of arbitration have also been posed by new technological advancements, especially the growing popularity of virtual hearings and online dispute resolution websites. Historically, the arbitration process was in person and at a particular geographical place hence finding the seat of arbitration and the courts that enjoyed supervisory jurisdiction was easy. Nevertheless, the increased use of digital platforms, particularly since the shocks of the COVID-19 pandemic, has drastically changed the arbitration practice. In the contemporary world, arbitrators, attorneys, and witnesses can even attend hearings in various jurisdictions at the same time via an online platform. In these situations, the physical seat of hearings is less significant and the issue on the traditional distinction between seat and venue is also in doubt. These trends have rekindled scholarly debate on the idea of delocalised arbitration, where arbitration is argued as being independent of any national body of law. Based on this theory, arbitration could be operating in a transnational legal system, and not linked to a territorial jurisdiction. In spite of such theoretical arguments, the concept of a juridical seat remains of paramount importance in the modern law of arbitration.

Other instruments like the UNCITRAL Model Law on International Commercial Arbitration are still employing the seat to define the applicable procedure law and the jurisdiction of national courts.[16] In the same accord, the implementation mechanism that was put in place with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards obligates that the country in which the award is legally deemed to have been given be identified. However, the growing distance between the physical behavior of hearings and the juridical seat provokes some practical doubts. In case of arbitration proceedings that are all conducted online and the parties are in various nations, the territorial relationship between arbitration and the seat is not

[16] UNCITRAL Model Law on International Commercial Arbitration 1985 art 20..

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as apparent. The role of the seat in these cases is more on legal construct which binds arbitration to a national law system.

Seat of Arbitration as an Instrument of Regulatory Competition between Jurisdictions.

The concept of the seat of arbitration is also being discussed more often in the current body of scholarship in international arbitration as an aspect that fosters regulatory competition among various legal systems. Since arbitration has gained a new form of preference in the settlement of commercial disputes between countries, nations strive to make themselves attractive as the arbitration centers. As a result, the choice of the seat is ceased to be considered as a formality that is a part of the procedure and a strategic choice that enables parties to enjoy effective legal systems, favorable arbitration regulations, and credible legal systems. In reaction to this, a number of jurisdictions have made reforms to update their arbitration laws and implement policies that promote minimal court intervention in the arbitral process.

This competitive nature has led to emergence of major arbitration centres like Paris, London and Singapore. Such places have created advanced arbitration facilities, specialized jurisdiction and arbitration-friendly legal regimes that are aimed at attracting international parties. The desire to be the preferred seats of arbitration has also led to the push to reform laws improving enforcement measures and decreasing the excessive intervention of judges. Consequently, the seat of arbitration is becoming an important factor in the development of the wider global arbitration context instead of a mere label of procedure. Simultaneously, the regulatory competition may create issues with respect to unequal bargaining power in arbitration agreement.

Decreasingly, large multinational corporations tend to have more influence on contractual negotiations and can choose to sit on seats that could be providing procedural or strategic benefits. Smaller companies, however, might not enjoy the bargaining power and might be forced to arbitration in jurisdictions that are not familiar or even expensive. Nonetheless, the net effect of such competition has been that, in general, it has led to jurisdictions enhancing their legal systems and expanding the judicial expertise on arbitration issues and enhancing institutional arbitration services. Through this, the strategic value of the seat has helped in improving efficiency and credibility of international commercial arbitration in the global arena.

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Recommendations

Regulatory competition in the context of the seat selection also has become part of the current practice of international arbitration. Since arbitration has become the new trend to solving international commercial disputes, most countries are aiming to position themselves as arbitration friendly countries. The choice of the seat is thus a strategic one. International arbitration cases have been attracting jurisdictions like London, Singapore and Paris, which have come up with sophisticated arbitration work frameworks, special courts and new legislation. This rivalry has prompted states to revise the arbitration laws, enhance judicial expertise in arbitration cases and implement policies to reduce unwarranted court interventions. Till now there remains no statutory obligation upon the parties that mandates them to clearly define the seat as well as venue of arbitration, as a result of which one often has to go to court to clarify this confusion first and it defies the whole purpose of arbitration which is to reduce the burden upon the courts. Such a statutory mandate will help the act serve its purpose better. Moreover, despite the fact that the seat and venue distinction holds so much value, yet the act fails to define these concepts, without a proper definition there will always be a scope of ambiguity.

Conclusion

Whether the seat or the venue of arbitration is different is also an inherent nature of international arbitration law. Whereas the venue is the physical site in which hearings can take place, the seat defines the legal system that will be used in arbitration. The significance of the seat is that it affects the procedural law, jurisdiction of the national courts and the enforcement of the arbitral awards. In case of a vague seat, jurisdictional wrangles can result and this negates the efficiency and predictability that arbitration is expected to bring. There is a tendency of Indian arbitration jurisprudence to evolve the seat-venue distinction by a launch of consecutive judicial decisions. Despite the previous rulings generating contrasting meanings, rulings made more recently have tried to reconcile the Indian law with generally accepted international arbitration principles. Regardless of these developments, controversies about the seat still occur especially where the arbitration clauses have been written vaguely.

This is the reason why commercial parties should be sure that arbitration contracts explicitly identify the seat of arbitration to avoid the unwarranted jurisdictional litigation. An increased transparency in the drafting of contracts, a uniform judicial interpretation and compliance with

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international best practice will eventually enhance arbitration as a successful way of settling international commercial disputes. With the increase in international business and the ongoing technological advancements in dispute resolution strategies, the definition of the seat and venue should be taken with a lot of finer details. It will continue to be crucial that the legal importance of the seat and the practical malleability of the seat be balanced to ensure the effectiveness and credibility of international arbitration.

BIBLIOGRAPHY

a) Books

1. Anglo-Bolivian Commercial Arbitration (International Commercial Arbitration (2nd edn, Kluwer Law International 2014).
2. Blackaby N, Partasides C, Redfern A and Hunter M, Redfern and Hunter on International Arbitration (6th edn, Oxford University Press 2015).
3. Lew JDM, Mistelis LA and Kroll SM, Comparative International Commercial Arbitration (Kluwer Law International 2003).
4. Moses ML, The Principles and Practice of International Commercial Arbitration (3 rd edn, Cambridge University Press 2017).

b) Journal Articles

1. Holt GB, 'The Law Governing International Arbitration Agreements' (2014) 26 Singapore Academy of law Journal 814.
2. Mistelis LA, Seat of Arbitration and Forum Shopping (2018) 34 Arbitration International 123.

c) Institutional Rules

1. ICC Arbitration Rules, International Chamber of Commerce (2021).
2. London Court of International Arbitration, LCIA Arbitration rules (2020).