

SE- 09: STANDING INTERNATIONAL FORUM OF COMMERCIAL COURTS (SIFOCC) AND THE NATIONAL JUSTICE ACADEMY (NJA) OF INDIA ON “E-DISPUTE RESOLUTION – A JUDICIAL CONVERSATION”

27th November 2021

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NJA in collaboration with the Standing International Forum of Commercial Courts (SIFoCC) conducted an online round table discussion on *E- dispute resolution – A judicial conversation* held on 27th November 2021. Judges from India, United Kingdom, Brazil, Singapore, Australia and Malaysia participated in the deliberations hosted by SIFoCC. The judicial conversation emphasized on the use of technology and Artificial Intelligence [AI] in courts and commerce, management of complex cases, backlogs etc. The discussion also underlined the ways in which a technologically cohesive system of courts, arbitration and mediation may assist in handling these concerns.

The discussion commenced by underlining that the Indian judiciary has adapted to technological reforms while ensuring equitable access to justice. It was emphasized that transition must be complemented by a vision of access and inclusion. The holistic potential of technology can be comprehended only if it is accompanied by a change in culture and approach. While addressing the use of technology and AI in courts and in business, the discussion highlighted several ways in which courts have been expanding the use of technology during the pandemic, and the allied systems that have the potentiality to continue assisting the courts post-pandemic. Relevance of AI especially in dispute resolution was elaborated by highlighting the associated pros and cons. Substantial part of the discussion focused on the essentials required by courts to incorporate technology and AI in their systems, the type of procedural rules and safeguards required for integrated court setup, how all stakeholders of the court can be involved in using technology, and most importantly, the means to keep judges abreast of technology in commerce, so that they have the technical proficiency when such matters are placed before them.

The discussion on backlog and complexification of cases provided a synopsis of the problem of complexity in cases with allied challenges. Subsequently, pragmatic elucidations to these defies and complexities were reflected upon. Convolutions with respect to the factual, technical and procedural aspects of cases was highlighted. For instance, complexification of construction disputes is driven by three factors *viz.* stake size and scale of the projects themselves; the higher the stakes involved, the larger the propensity to espouse extremely adversarial approaches towards dispute resolution and lastly, technology impends to fodder

complexities inherent in construction disputes. These complexities can be mitigated by wary and workable case management which should be progressive. The discussion further highlighted two broad strategies to handle the problem of managing complex disputes- one prophylactic, the other reactive. The former strategy involves handling of disputes before they get too complex to manage. This preventive strategy is particularly suitable when applied to apparently complex disputes which have developed more than the entirety of their numerous but separately far reduced parts. The other strategy applies where a dispute has already become too complex to be manageable. Hence, drastic measures may be needed to downsize the dispute. This will require active and robust case management that may include- setting limits on the length of written submissions, time limit on oral hearings, and strict adherence to procedural orders regarding the admissibility of fresh evidence or arguments. The role of International Commercial Courts [ICCs] in the management of complex disputes was also elaborated upon.

Additionally, the deliberation contemplated on the potentials of having technology and AI in an integrated system of courts, arbitration and mediation. The concept of AI, its allied advantages and drawbacks were also discussed. The use of AI in the Brazilian Supreme Court was also highlighted.

The speakers and the attendees were:

- Hon'ble Dr. Justice D.Y. Chandrachud, Supreme Court of India, Chair of E-Committee
- Hon'ble Mr. Justice Rajiv Shakhder, High Court of Delhi
- Hon'ble Mr. Justice G.S. Patel, High Court of Bombay
- Hon'ble Mr. Justice Atul Sreedharan, High Court of Madhya Pradesh
- Hon'ble Dr. Justice Anita Sumanth, High Court of Madras
- Lord Thomas, Chair of SIFoCC Steering Group
- Chief Justice Sundaresh Menon of Singapore
- Lord Justice Birss, Deputy Head of Civil Justice, England and Wales
- Justice Julie Ward, Chief Judge in Equity, New South Wales, Australia
- Federal Justice Nallini Pathmanathan, Malaysia
- Federal Judge Marcus Livio, Director of Programmes at the National Council of Justice of Brazil
- Federal Judge Isabela Ferrari, Brazil
- Daniel Becker, Director of New Technologies of the Brazilian Center for Mediation and Arbitration (CBMA)
- Hon'ble Mr. Justice A. P. Sahi, Director, National Judicial Academy