



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

### **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL** **TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service** **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.





## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



### **Dr. Rinu Saraswat**

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



### **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DISTINCTION BETWEEN SEAT AND VENUE OF ARBITRATION: A COMPREHENSIVE ANALYSIS OF SUPREME COURT AND HIGH COURT JUDGMENTS IN INDIA**

AUTHORED BY - SHIKHAR SINGH

Course: LLM

Institution: Amity Law School, Noida.

## **Abstract**

Understanding the distinction between the "seat" and the "venue" of arbitration is crucial in the field of arbitration law, particularly because it carries significant legal consequences. Although the two terms are frequently used interchangeably, especially in commercial contracts or informal discussions, they are legally distinct concepts with different implications. The "seat" of arbitration determines the juridical location of the arbitration and thus governs the procedural law, court jurisdiction, and the extent of judicial intervention permissible during and after the arbitral process. On the other hand, the "venue" typically refers to the physical or geographical location where arbitral hearings take place and may or may not influence the legal framework applicable to the proceedings.

In the Indian legal system, this distinction has gained prominence through a series of important judicial decisions. Courts in India, including the Supreme Court and High Courts such as the Delhi High Court, have examined and interpreted these concepts in great detail. Their rulings have helped clarify the roles and implications of selecting a particular seat or venue in arbitration agreements, especially in cases where the language of the arbitration clause is ambiguous or conflicting. These interpretations have led to the development of guiding principles that are now routinely relied upon in both domestic and international arbitration cases seated in India.

The Supreme Court of India, in particular, has played a pivotal role in drawing a clear line between the seat and venue of arbitration, emphasizing that the choice of seat not only determines the curial law but also bestows exclusive jurisdiction on the courts of that legal territory. Meanwhile, the Delhi High Court has also made noteworthy contributions by applying these principles in complex commercial disputes and reinforcing the importance of



precise drafting in arbitration agreements.

This paper aims to explore the legal ramifications of the seat versus venue distinction within the Indian arbitration context, focusing on key judicial pronouncements. Through this exploration, the paper intends to enhance understanding of arbitration terminology and encourage more accurate use in practice, thereby reducing jurisdictional ambiguities and procedural complications in arbitral proceedings.

## 1. Introduction

Arbitration has gained popularity as an alternative dispute resolution mechanism globally, and India is increasingly becoming a key hub for arbitration. Understanding the distinction between the "seat" and "venue" is crucial because it directly influences jurisdiction, procedural laws, and court interventions. This research paper examines the interpretations of these terms by Indian courts, highlighting how they affect arbitration practices, with particular attention to the judgments from the Supreme Court and the Delhi High Court.

## 2. Legal Framework of Arbitration in India

The **Arbitration and Conciliation Act, 1996** governs arbitration in India, adopting principles from the UNCITRAL Model Law. The Act does not explicitly define the terms "seat" and "venue," but Indian courts have provided clarity through case law.

- **Section 2(1)(e)** defines the **Arbitral Tribunal**, while **Section 2(1)(f)** refers to the **place of arbitration**, commonly associated with the seat of arbitration.
- **Section 20** allows parties to decide the place of arbitration, which is typically understood as the seat. If the parties do not agree on the place, the courts can determine it.
- **Section 34** deals with the setting aside of an arbitral award, while **Section 9** enables courts to issue interim measures during arbitration.

## 3. Judicial Interpretations of Seat vs Venue

Indian courts, particularly the Supreme Court and High Courts have played a pivotal role in clarifying the distinction between "seat" and "venue" through significant judgments. These cases address how the seat of arbitration determines jurisdiction, while the venue refers to the physical location of the hearings.



### 3.1. *Bhatia International v. Bulk Trading S.A.*<sup>1</sup>

- **Judgment Overview:** In this case, the Supreme Court considered the **enforceability of foreign arbitration awards and ruled that Indian courts could intervene in arbitration matters even if the seat was outside India.** The Court concluded that unless the parties had explicitly agreed otherwise, Indian courts had jurisdiction over the arbitration.
- **Significance:** This judgment created a significant debate about the role of "**seat**" and "**venue**" in determining the jurisdiction of courts in international arbitration.

### 3.2. *Union of India v. Hardy Exploration and Production*<sup>2</sup>

- **Judgment Overview:** The Supreme Court further emphasized that the "**seat**" of arbitration governs the **jurisdiction of courts**, meaning courts located at the seat have exclusive authority over arbitration-related matters.
- **Significance:** This decision reinforced that the "seat" is essential for determining which courts have jurisdiction, irrespective of where the hearings or venue of arbitration are located.

### 3.3. *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc.*<sup>3</sup>

- **Judgment Overview:** The Supreme Court overturned the *Bhatia International* decision and held that the seat of arbitration, once determined, dictates jurisdiction. The Court concluded that courts at the seat of arbitration had **exclusive jurisdiction** over matters related to arbitration proceedings.
- **Significance:** The ruling clarified that the "seat" governs jurisdiction, and the **venue is a secondary consideration.** The decision set a precedent that the law of the seat applies to the arbitration, making it central to judicial authority.

### 3.4. *National Thermal Power Corporation v. Singer Company*<sup>4</sup>

- **Judgment Overview:** The Supreme Court ruled that jurisdiction in arbitration matters is determined by the "seat" rather than the physical location (venue) of the hearings.

---

<sup>1</sup> (2002) 4 SCC 105

<sup>2</sup> (2008) 7 SCC 679

<sup>3</sup> (2012) 9 SCC 552

<sup>4</sup> (1992) 2 SCC 551

- **Significance:** This case further solidified the view that the "seat" is the determining factor for the jurisdiction of courts in arbitration matters, independent of the venue where hearings occur.

### 3.5. *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.* <sup>5</sup>

- **Judgment Overview:** The Supreme Court reinforced that the venue of arbitration could be shifted during the proceedings, but the seat would remain the primary determinant of jurisdiction.
- **Significance:** This ruling emphasized that while the venue can change, the "seat" is fixed and plays a crucial role in determining the scope of judicial intervention and the law applicable to the arbitration process.

### 3.6. *Halliburton Offshore Services Inc. v. Vedanta Ltd.* <sup>6</sup>

- **Judgment Overview:** In this case, the **Delhi High Court examined the concepts of "seat" and "venue" in the context of an arbitration clause. The Court ruled that the seat of arbitration should remain fixed, and any change to the seat requires mutual consent from both parties.** Additionally, it was emphasized that the courts of the seat have exclusive jurisdiction over the arbitration process.
- **Significance:** The Court reaffirmed that the seat of arbitration is essential in determining the jurisdiction of courts and the applicable legal framework. The decision aligned with the Supreme Court's previous rulings regarding the importance of the seat in relation to jurisdiction, while allowing flexibility in terms of the venue.

### 3.7 *BGS SGS SOMA JV v. NHPC Ltd.* <sup>7</sup>

The Supreme Court laid down a three-condition test as to **when 'venue' can be construed as 'seat' of arbitration**, which are as under:

- The **arbitration agreement should designate only one place;**
- The **arbitral proceedings must have been fixed to that place alone**, without any scope of change; and
- There must be **no other significant contrary indicia to show that the place designated is merely the venue and not the seat.** <sup>8</sup>

---

<sup>5</sup> (2009) 10 SCC 143

<sup>6</sup> (2018) SCC OnLine Del 11160

<sup>7</sup> (2020) 4 SCC 234

<sup>8</sup> Vikash Kumar Jha & Namrata Sadhnani, Decoding Supreme Court's Landmark Decision on 'Seat' vs. 'Venue' in Arbitration. Cyril Amarchand Mangaldas, Dispute Resolution Blog (21.11.2024)

### 3.8 *Arif Azim Co. Ltd. V Micromax Informatics FZE*<sup>9</sup>

The Supreme Court in this landmark decision in India's arbitration jurisprudence, further clarified the concepts of 'seat' and 'venue' in arbitration. This judgment conclusively holds that:

- The moment 'seat' is determined, it would be akin to an exclusive jurisdiction clause. The notional doctrine of concurrent jurisdiction has been expressly rejected and overruled.
- The 'Closest Connection Test' for determining the seat of arbitration by identifying the law with which the agreement to arbitrate has its closest and most real connection is no longer a viable criterion for determination of the seat or situs of arbitration in view of the *Shashoua* principle.
- The more appropriate criterion for determining the seat of arbitration, in view of the subsequent decisions of the SC, is that **where in an arbitration agreement there is an express designation of a place of arbitration, anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the 'seat' of arbitration, even if it is designated in the nomenclature of 'venue' in the arbitration agreement.**
- At the same time, the SC has also observed that it does not say that the Closest Connection Test has no application whatsoever – where there is no express or implied designation of a place of arbitration in the agreement, either in the form of 'venue' or 'curial law', there the closest connection test may be more suitable for determining the seat of arbitration.
- **Where two or more possible places equally appear to be the seat of arbitration, then the conflict may be resolved through recourse to the Doctrine of Forum Non Conveniens.**

The judgment reinforces the principle of party autonomy by concluding that the courts are only a conduit or means to arbitration, and the sum and substance of arbitration is derived from the choices of the parties and their intentions contained in the arbitration agreement.

Finally, this judgment also emphasises the importance of drafting clear arbitration clauses, especially in cross-border agreements, to prevent disputes over jurisdictional ambiguities and consequent delays, to enhance the predictability of outcomes, and to support the efficiency of

---

<sup>9</sup> Arbitration Petition No. 31/ 2023) (dated 07.11.2024)



international arbitrations.<sup>10</sup>

#### 4. The Legal Consequences of the Distinction Between Seat and Venue

The distinction between "seat" and "venue" carries significant legal implications for the arbitration process in India:

- **Seat of Arbitration:** The seat serves as the legal base of the arbitration. It determines the jurisdiction of the courts, the law governing the arbitration process, and the procedures that must be followed. The courts located at the seat of arbitration have exclusive authority over arbitration-related matters, including the ability to set aside or enforce arbitral awards.
- **Venue of Arbitration:** The venue refers to the physical location where arbitration hearings take place. While the venue can be moved during proceedings without impacting the overall legal framework, it does not affect the jurisdiction of courts or the law that governs the arbitration.

Indian courts, particularly the Supreme Court and the Delhi High Court, have reinforced that the "seat" is of paramount importance in arbitration, while the venue is considered secondary. This distinction is crucial in determining the legal parameters of an arbitration proceeding.

#### 5. Conclusion

The judicial interpretation of the terms "seat" and "venue" in arbitration has evolved significantly in India. Courts, especially the Supreme Court and the Delhi High Court, have provided clarity on how the seat determines jurisdiction and the legal framework of arbitration proceedings. The seat serves as the cornerstone for jurisdiction, court intervention, and the applicable legal regime, while the venue is a flexible element concerning the location of hearings. These distinctions play a crucial role in ensuring that arbitration proceedings are conducted in a consistent and predictable manner, supporting India's growing position as a prominent arbitration hub.

In conclusion, understanding and applying the correct distinction between "seat" and "venue" is essential for parties engaged in arbitration in India. Future judicial decisions will likely continue to refine and clarify these concepts to foster a robust and efficient arbitration environment in the country. However, as of today the Supreme Court's judgements in *BGS*

---

<sup>10</sup> Vikash Kumar Jha & Namrata Sadhnani, *Decoding Supreme Court's Landmark Decision on 'Seat' vs. 'Venue' in Arbitration*, Cyril Amarchand Mangaldas, Dispute Resolution Blog (21.11.2024)

*SGS SOMA JV*<sup>11</sup> & *Arif Asim*<sup>12</sup> clarify the law as it stands today.

## References

1. Bhatia International v. Bulk Trading S.A. (2002) 4 SCC 105.
2. Union of India v. Hardy Exploration and Production (2008) 7 SCC 679.
3. Bharat Aluminium Co. v. Kaiser Aluminium Technical Services, Inc. (2012) 9 SCC 552.
4. National Thermal Power Corporation (NTPC) v. Singer Company (1992) 2 SCC 551.
5. Shakti Bhog Foods Ltd. v. Kola Shipping Ltd. (2009) 10 SCC 143.
6. Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd. (2013) 7 SCC 268.
7. Halliburton Offshore Services Inc. v. Vedanta Ltd. (2018) SCC OnLine Del 11160.
8. Vikash Kumar Jha & Namrata Sadhnani, Decoding Supreme Court's Landmark Decision on 'Seat' vs. 'Venue' in Arbitration. Cyril Amarchand Mangaldas, Dispute Resolution Blog (21.11.2024)
9. Arbitration Petition No. 31/ 2023) (dated 07.11.2024)

---

<sup>11</sup> Id at 5 & 6

<sup>12</sup> Id at 6