Changing trends in commercial arbitration in India

India is gradually transforming into an arbitration-friendly jurisdiction influenced by several trends such as increased party autonomy, limited judicial interference with respect to the conduct of arbitration, and adoption of technology.

What does this mean for businesses?

1. Impact of technology adoption in disputes management

What has worked?

- Virtual hearings have expedited the resolution of cases, including enabling lawyers to deal with interim measures brought before arbitrators.
- Enhanced the capacity of lawyers to attend multiple arbitrations at once.
- Simplified the arbitration process with live transcription.
- Improved efficiencies, particularly during the discovery phase.

What needs improvement?

- Virtual proceedings do not allow for instructing counsel and reinforcing rules in relation to back ground prompting and evidence recording.

2. Impact of dispute funding on the future of arbitration in India

- Still in the nascent stages in India, dispute funding currently happens in the post-award scenario, such as while challenging an award or enforcing it.
- Dispute funding is likely to give third parties a say in the appointment of counsels, the conduct and strategy of arbitration, pleadings to be filed, and other critical decisions.
- This funding can also prevent the arbitration party from investing in running risky litigation, where it may agree to assign 50-60% of the award to the litigating fund.
- It adds an element of additional scrutiny and commitment to the arbitration process as the funding party is likely to be a sophisticated litigator.

3. Preparing for change: In the future, what can in-house counsel expect from external counsels during the arbitration process?

- Ability to own the matter instead of preparing a templatised advisory.
- Alignment with the client's thought process and understanding of the client's business requirements.
- Expertise in strategising arbitration with a mix of legal and business perspectives. This will include the ability to anticipate the trajectory of the procedure and plan proceedings accordingly.

To know more about the changing trends in arbitration and how they can impact business, watch the Trilegal X Legal 500 webinar on this topic here