



# LEGALLY SPEAKING

Justice Indu Malhotra  
In conversation with  
Sir Bernard Rix

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**Madhukeshwar Desai:** Good Afternoon ladies and gentleman. Thank you so much for joining us today for the MCIA's new series, Legally Speaking. The world at the moment is unfortunately, reeling under a crisis like one never faced before. However, I cannot stress enough, that it is institutions such as the MCIA and many others alike, who must continue pushing forward their stated agendas without getting bogged down. Since our inception in 2016, the MCIA has focused on building an ecosystem for arbitration in India. A key part of playing the role of a catalyst for this ecosystem is enabling greater access to knowledge. Through the legally speaking series, we hope to bring you, views and conversations from stalwarts at the bar, on the bench and members of the legal community. For our first segment we have two important individuals engaging in a dialogue. We have Justice Malhotra, Judge of Supreme Court of India and Sir Bernard Rix, former Lord Justice of the English Court of Appeal. On behalf of the MCIA community and all those joining us live, I welcome you. I will introduce both our speakers first, and then request Sir Bernard Rix to commence the conversation. Post which participants will be allowed to ask questions that they can submit on the zoom app. Justice Indu Malhotra is a sitting judge of the Supreme Court of India. In 2007 she became the second women to be designated as a Senior advocate by the Supreme Court after 30 years. As an advocate she specialised in the law of arbitration, and appeared as counsel in various domestic and international commercial arbitrations both in India and abroad. She was

appointed as a member of the High Level Committee constituted by the Ministry of Law & Justice, Government of India in 2017. She was appointed as a Supreme Court Judge in April 2018 becoming the first women judge to be directly elevated from the bar. Since her appointment she has many significant judgments to her credit. Welcome Justice Indu Malhotra to our first series.

**Justice Indu Malhotra:** Thank you.

**Madhukeshwar Desai:** Sir Bernard Rix is a retired Lord Justice of Appeal to twenty years experience in the English Commercial Court and the English Court of Appeal. He is a member of the HKIAC Panel of Arbitrators, a member of the MOOGAS Panel of International Arbitrators and Mediators, has been appointed to the Cayman Islands Court of Appeal and to the Singapore International Commercial Court. He is also an ADR Group accredited mediator. He has been appointed as Professor of International Commercial Law at Queen Mary, University of London. Sir we are honoured to have you as a member of the MCIA Council as well. Thank you so much Sir for joining us here today. I now hand over the reins of this conversation to Sir Bernard Rix, and request him to please start the first edition of legally speaking. Thank you so much.

**Sir Bernard Rix:** Thank you very much. Can I begin, Justice Malhotra by saying what a pleasure and honour it is for me to meet you even in this virtual form and to interview you.

**Justice Indu Malhotra:** Thank you. And it's a pleasure for me to speak with you too.

**Sir Bernard Rix:** Thank you. Now for those of our participants who may not be from India and that's why may not know your background as much as Indians do, although there has been the introduction which has just been carried out. Let me start at the beginning. I think you were, when I said beginning I mean beginning, you were born in New Delhi and educated in New Delhi and you were born into a legal family, I think.

**Justice Indu Malhotra:** Yes. That's right.

**Sir Bernard Rix:** Because your father was a senior counsel.

**Justice Indu Malhotra:** That's right.

**Sir Bernard Rix:** And you only the second woman to become the senior counsel and the first woman to go to the Supreme Court.

**Justice Indu Malhotra:** That's right. But after me many other women have got designated now. Several other women lawyers who have now got designated as senior lawyers.

**Sir Bernard Rix:** So trailblazer was exactly the expression which was in my mind what does it feel like to be a trailblazer of this kind.

**Justice Indu Malhotra:** It feels good because the path was arduous, it was not easy and when you make it, it feels good and you feel very happy and fulfilled that the path has opened for other women also to get designated and to make their way up. So it's a great sense of fulfillment.

**Sir Bernard Rix:** And this is particularly relevant because you have gone to the Supreme Court directly from the bar. Are you enjoying yourself at the Supreme Court?

**Justice Indu Malhotra:** I love it. I love judicial work. I think it is very very fulfilling. I find it far more fulfilling than being a Counsel. When you dispense justice I think that kind of fulfillment you don't get by winning a case in the Court as a Counsel. So I think that is what I really feel happy. I enjoy it every minute. And when you are laying down, working towards the progress of the jurisprudence of the country I think that is something very great. I find that very fulfilling in my career.

**Sir Bernard Rix:** May I say that I am warm very much to the answer you have just given me because I always have felt that my time on the bench, my 20 years there, was the most fulfilling work I have done as a lawyer. I love the bar, I love the competitiveness of the bar and the

idea that you are helping the Courts to analyse and create law with your submissions but the responsibility of doing it yourself as a judge I thought it was a wonderful thing. I warm very much to your answer. Now, you found time amongst all your work to bring to fruition a brand new fourth edition of the leading book on arbitration in India, whose origins I think date back to your father. It was his book in origin. Yes.

**Justice Indu Malhotra:** That's right. He wrote the first two editions, the 3rd edition I brought out a little after he passed and the 4th edition is actually a completely new version because it has been, I think the fastest growing area of jurisprudence in India. There have in fact, ever since this book has been published there are almost another 30 judgements which have been passed which are very important and I wanted to actually reflect the two major sets of amendments which have been brought about one was in 2015 and the other in 2019. So I thought it was very important that the book came out to clarify jurisprudentially what is the position in law and whatever free time I had I spent it in doing up the book. And I am very happy I was able to bring it out, but it was believe me a big challenge it was very very hard because the first few months after becoming a judge, given the enormous volume of work it was very hard to work on the book but I spent my summer vacations and whatever vacations I got and my Friday evenings trying to work on it so that I could bring it out as soon as possible.

**Sir Bernard Rix:** Well I am very impressed. I was once offered the chance to take over a major textbook, a textbook I greatly admired but I didn't dare.

**Justice Indu Malhotra:** It is very difficult. It is very difficult. It is very imposing on one's time. There was actually no time for leisure.

**Sir Bernard Rix:** Now, apart from paternal influence how did you first get involved and fascinated by arbitration work.

**Justice Indu Malhotra:** It was actually in my practice as it grew I did get engaged in a lot of arbitration work and then I really developed a passion for it. And I found it very, I got appointed as a sole arbitrator in a lot of matters by Institutions while I was a senior lawyer and I was appearing in some International arbitrations and after I brought out the third edition the Government had nominated me as a member of the High Level Committee and then I went into the Act in a lot of minute detail and make recommendations along with my colleagues on the panel for the 2019 amendments. So we had actually made the recommendations, most of which have been brought into the legislation of 2019. So the interest I think just grew and the book really became a passion for me that I wanted to make it the Redfern Hunter of India.

**Sir Bernard Rix:** Marvellous! Now, the 1996 Arbitration Act of India which is the subject matter of your new edition in the last few years has been under almost constant revision. It seems to me as an onlooker from afar. Now, what do you think is driving this constant revision?

**Justice Indu Malhotra:** What has driven it is the Government's commitment to bring about a progressive legislation which is in sync with contemporary International practices and they also wanted to promote the ease of doing business in India. That was Government's, so they wanted to bring the arbitration legislation at par with contemporary practices, so there was the Law Commission which was constituted in 2014, which made these substantive recommendations. I think the 2015 amendments were the major milestone in India's arbitration legislation and the World Bank rating of India it considerably and significantly stepped up. It's significantly, I think we are at number 63 today, so we have climbed up because of these legislation on one side and the judicial decisions because I think the Courts are very clearly in the past over 10 to 15 years, you will rarely find that a foreign award has come to this country which has not got enforced. The only problem which I will admit is that it takes time for these matters to get concluded in the Courts given the huge amount of litigation that we have to deal with. So when the enforcement comes to the courts it does take some time but believe me you will hardly find one case of the Supreme Court which was passed 3-4

days back that was with respect, it was under the old Act, Foreign Awards Act of 1961 where an award has been set aside but you will not find any other. India has done extremely well both the judiciary and legislature have been making this effort of being an arbitration friendly jurisdiction.

**Sir Bernard Rix:** Well this seems to be very important. India is such an important economy in the modern world that its coming aboard the world of international arbitration it seems to me is the most important thing and I am not at all surprised to hear that the World Bank has been impressed. Now, one of the most recent revisions is the creation of an Arbitration Council of India. One of whose task I understand, but you will correct me if I am wrong, will be to regulate arbitrators in Indian arbitration. And I know that such arbitrators under the new, possibly still to be notified, I am not sure Eighth Schedule to the Act will have to have prescribed qualifications. Such as 10 years practice, which one understands but also will have to be conversant with the Constitution of India, and Labour Law as well as of course with commercial law, and contract law and tort law. I just wonder how many international arbitrators like myself will manage to familiarise themselves with the Constitution of India fascinating as that is.

**Justice Indu Malhotra:** Ok. I will explain the backdrop to you. First let me say at the outset that the Eighth

Schedule does not apply to foreign arbitration practitioners who come to India. I mean please don't have that misconception because I know the 2019 amendments came in for a lot of criticism by arbitration practitioners in other jurisdictions but it was based on a misconception. These qualifications which have been prescribed by the Eighth Schedule are for Indian practitioners that they should have either of these qualifications, basically a qualification plus 10 years experience so that the arbitration which is conducted, domestic arbitration is of definitely a good level. So that was basically only for domestic practitioner's, it is in Part I of Act and Part I deals only with domestic arbitrations. This is the first point. I will give you a background of this provision which has been incorporated, this provision came pursuant to the High Level Committee's recommendation. It is not a regulatory body it does not have any power to blacklist an arbitral institution or do any such thing. The reason why this Council has been conceived is, it is a statutory body to promote arbitration. It is to enable arbitration practitioners, Indian arbitration practitioners to obtain accreditation from institutions. It's only to improve that. To make recommendations with respect to legislative amendment. Another purpose for which it has been set up is that a depository has been created and the reason for this is that till now, most 90% of the arbitrations in India were ad-hoc arbitrations so when we were on the High Level Committee, a recommendation was made by a lot of senior Supreme Court and High Court

Judges and arbitration practitioners, saying that when the award comes to the Court, how do we get an authentic copy, who maintains the record. Because both parties go their own way. And arbitrators say that we cannot maintain your records please clear our office. So it became a big challenge and that is the background of creating an electronic depository. So these were the functions which were ascribed to it. And the major function was to grade arbitral Institutions and that was for a specific purpose. The purpose was that the legislature wanted the default power of appointment to be shifted from the Court to arbitral institutions. They wanted to move from ad-hoc to institutional, so now which of the institutions, which would make the appointments. So the legislature found that this body will do the grading and on the basis of graded institutions the Courts will delegate the power to make the appointment. So that you rest control from the Courts, minimal judicial intervention and you move it to the institutions from the beginning. So that is actually the role of the Arbitration Council. It does not have any regulatory or penal role, where it can blacklist an institution, none of that. It is only to upgrade the entire arbitration system in the country. That is basically the focus and there are no regulatory powers. It's a promotional institution.

**Sir Bernard Rix:** Thank you very much. That was very clear. It put to rest misconceptions which were in my question. All right, what about the timelines for arbi-

tration? That's also something which has been revised in recent years, so I believe that just a few years ago a new amendment to the Act prescribed a one year broadly speaking, a one year timeline for all arbitrations in India, with a possibility of an agreed 6 months extension. But after that, 6 months extension, if you needed more time you had to go to the Court and get permission from the Court. And I understand that the latest revision has now limited that timeline to domestic arbitrations whereas for international commercial arbitration the one year timeline plus 6 months extension and I think the timeline goes from completion of pleadings is a matter of endeavour only. For international arbitration the timeline is a matter of endeavour only. You are under the expectation of acting as expeditiously as possible. There is an exhortation to endeavour to meet the one year timeline but that's as far as it goes. Now what's the thinking here both in the original form of the statute, a few years ago and now in the amendment to exclude International commercial arbitration from the most forceful part of the prescription.

**Justice Indu Malhotra:** I will give you the background to it. As I just said a moment ago, that the majority of arbitrations in India were ad-hoc, so they were completely unregulated and there were no timelines, there was a delay in conducting the proceedings and in the delivery of the award. So the legislator, when we were on the High-Level Committee we made a recommendation that put a

statutory time limit and that had its expression in section 29 A, this was a new provision which was inserted in the 2015 amendments which said 12 month is the period from the date the tribunal enters a reference. Now after that this Committee was constituted, which I was just talking about the High Level Committee and they were representations made by leading practitioners that is arbitrators as also by institutions, like most of the international institutions like SIAC and others, their representatives had come before us and they said please treat international commercial arbitrations at a different level because we monitor and we conduct the proceedings, so you don't need to give us a statutory time limit, we see if it is necessary, so please don't impose these time limits on us. Insofar as domestic is concerned, the arbitrators felt that twelve months, more than half the period would go away in the completion of pleadings so they would not be left with adequate time to conclude the proceedings, the hearings, the evidence and pass the award. So their suggestion was why don't you give an initial 6 months period for completion of pleadings and let the 12 month period start ticking after that. So it was six months for pleadings initially after that the tribunal takes on and for 12 months they complete the pleadings. That was the backdrop in which the amendments were brought about. In so far as international is concerned, it was decided to make it they said put it as an endeavour to try and complete it within this period. So it was mandatory for domestic. It was an endeavour

for international. That was the background of these amendments.

**Sir Bernard Rix:** Thank you. Thank you very much. Let's talk about the enforcement of foreign awards. I want to talk about that. Now enforcement of course is governed by the New York Convention to which India has long been a signatory. In the past the odd criticism has been made that the Supreme Court of India was too ready to refuse enforcement on the ground of public policy, which of course is one of the stated defences to enforcement under Article 5 of the New York Convention. Now what would you say about the current culture of enforcement of foreign awards in India is?

**Justice Indu Malhotra:** Ok. I will first give you the legislative amendment which was brought in by the 2015 amendment on public policy. The Act, the 1996 Act, Part II which pertains to the enforcement of New York Convention awards is verbatim the grounds which are contained in Article 5. So it is identical. The only change which we had made is with respect to the public policy exception. In that now the only three grounds under public policy are, one is that if an award is procured through corruption or fraud, the second is that it is contrary to the fundamental policy of law, not merely a violation of some statute but fundamental policy of law and the third is that it is in conflict with the most basic notions of morality or justice. So the public policy exception has

been made very precise, it's a narrow construction and there is a second explanation which has been inserted, which clearly says that no review on the merits of the award. So a narrow construction is given and I think you will not find a single judgement in the last decade at least, if not more, where enforcement of an award has been refused. They have all been implemented except one judgement which was passed 3 days ago and that was with respect to, it was under the foreigners Award Act of 1961 and that was with respect to a case where the arbitrator of the Claimants had gone and acted as a counsel before the Court of appeal and this interpretation was given on the basis of the provisions of the contract itself. They said that if the Government comes out with the prohibition of exports then further exports cannot happen, so it was on an interpretation of that, that enforcement was refused. But otherwise you will not find it and I think almost every judgement of the Supreme Court, the latest one being Vijay Karia, where the Supreme Court has been granting enforcement without exception. The Supreme Court, the High Courts, Bombay High Court, Delhi High Court, I think without exception have been granting enforcement of foreign award. So that is not really I don't think one can have a complaint now insofar as the legislation is concerned or judicial interpretation. The only problem is the time it takes for matters to get concluded. But we have tried to fast track it. Infact these matters in the Supreme Court have got concluded also within a few months. It was a Special Leave Petition which came

in 2019 and March 2020 the judgement was delivered in Vijay Karia so things have got expedited considerably in the Courts also.

**Sir Bernard Rix:** Well I think, it must hardly be another nation in the world which has made it so plain in its statute that public policy is really talking about international public policy. Matters of concern in every country of the world rather than only Indian public policy and I don't think there can be many countries in the world which have made it as plain as the 2015 amendment has. Thank you very much for that explanation.

**Justice Indu Malhotra:** There is one other thing which I will tell you. Even with respect to a domestic arbitration the same narrow interpretation is given in our statute for public policy even for a domestic award. So we brought it at par making it an extremely narrow exception. It has to be the fundamental policy of Indian law, Morality and Justice, most basic questions of morality or justice.

**Sir Bernard Rix:** Thank you very much. Professor Born must be pleased with this. Now what about the supervision of foreign seated awards, is there any danger nowadays that the Indian Courts would seek to interfere with or set aside such foreign seated awards.

**Justice Indu Malhotra:** Post the BALCO judgement which came in 2012 there is no such interference and the 2015 amendments have made one important amendment which is in Section 2(2) making a provision for the grant of interim relief of foreign seated awards, an appellate provision for that, and third is Court assistance in taking evidence for foreign seated arbitrations, but no interference with it at all. Because I think seat Courts, there is a lot of jurisprudence in India with respect to the seat Court and hands off if its a foreign seated. So that is the approach.

**Sir Bernard Rix:** Well, thank you very much. You have answered all my questions most helpfully and clearly. I wonder if you have any questions for me Justice Malhotra. Because I thought you might.

**Justice Indu Malhotra:** I was wondering how you all are dealing with the COVID issue and you know being a force majeure situation with enforcement of contracts how would you be dealing with it.

**Sir Bernard Rix:** Well now I don't think anything, you don't mean procedurally, you mean on substance in law, I assume.

**Justice Indu Malhotra:** Yes.

**Sir Bernard Rix:** The Courts are more or less shutdown for the moment but I can see that COVID-19 is going to create for the next few years a new rational group of frustration cases. So you may recall that the first world war created a lot of frustration cases because of the requisition of ships and things like that. The cancellation of the Regatta that was planned for, I can't remember whether it was King Edward or new King George V, just before the first world war there was cancellation of Great Regatta that caused a group of frustration cases. The closure of the Suez Canal caused some frustration cases. More recently not so very many. I had to deal when I was in the Court of appeal with a case called Edwinson, which was concerned with a possible frustration of a very short charter party, salvage charter party, when a local port authority interfered and detained the vessel. We held that that charter party was not frustrated. But I can quite see that COVID-19 is going to cause a great deal of litigation undoubtedly a great deal of litigation is going to cause the whole of new cases on frustration and it will be very interesting to see how those cases develop. One of the difficult things about frustration is how long the sum impediment last. And of course you can't deal with it as a matter of hindsight, you are always forward looking. What would the reasonable person say about the situation as it is at this moment given what has happened in the past and given what the best view of the future will be. And these judgements are very difficult to make and much is going to be have to make them and so much

will depend upon how long the present restrictions on lockdowns continue and what our best testament of that is. And these things will be worked out in hindsight but the test is always forward looking. Now that is the doctrine of frustration, which of course is a common law test but many contracts contain prohibition clauses or force majeure clauses and those contract will all have to be adjudicated upon their own particular wording. So we know that oil exploration and production contracts frequently have force majeure clauses within them, sale of goods contract for food commodities and soft commodities and also minerals and metals will contain force majeure and prohibition clauses within them and they will depend very much upon the individual wording of those contracts and the particular provisions of each countries statues. To some extent lockdowns have operated, to some extent countries have begun lockdowns by guidance rather than by statute but have quite quickly gone from guidance to statues and the statues have been enacted very quickly and slightly rough and ready way. We don't really know much about them other than what we are told, unless we are lawyers who have to study it and even in public discourse in Britain for instance there has been some confusion of language when politicians speak to us on the television in their daily broadcast as to what is law and as to what is sometimes called guidance or advice. And on the whole the politicians although they have had to go to law to tell us what to do, have preferred still to talk about it on the television as though it was guidance or

advice because they have slightly flinched from telling us just to what extent are limited in these extra ordinary circumstances have been curtailed by law and not just as it were by Government request, advice or guideline. So all these things are going to have to be worked out in due course. What is law, what is guidance and in certain areas of law such as insurance law for instance, it may be that guidance as well as law will have its effect on bringing cover for insurance under insurance policies, business interruption policies and so forth. There is going to be unfortunately lot of litigation, lot of arbitration on these questions. It will be interesting to see.

**Justice Indu Malhotra:** What do you think will be the impact on investment claims in developing countries?

**Sir Bernard Rix:** Gosh! Well all I can say is that we are all suffering, we are all suffering from the same problems and I think that will teach us to have a better understanding of the difficulties which countries face in what is a worldwide problem in which the safety of our populations and indeed the structure of our economies have become the emergency problem of our state legislatures. So I would like to think that we will reach rational and fair and reasonable conclusions about this. It does seem to me to be a case where we have had to act in emergency situations in matters of health, which is as strong an area for public policy as one could think of.

What one must hope however, is that we get on top of our difficulties sooner rather than later. It remains uncertain, will we obtain therapies which will enable us to relax some of the more stringent lockdown provisions, will we ultimately get a vaccine which will be a solution, some people say we will have no ultimate solution without a vaccine and people of my generation are saying we are stuck at home until we have the vaccine. And I have heard some people of my generation saying we won't move and we won't start travel again without a vaccine. So I hope the vaccine will come for all our sakes. But a lot will depend on how quickly we can get things moving again and a lot will depend upon how quickly States will relax the enormous powers that they have given to them in this emergency situation. One must hope that democratic States who are very reluctant to impose these restrictions upon our limit is will give up their new powers as soon as they safely can. States which are less democratic of the most democratic of the states may be tempted to keep some of their newly enacted powers even as the health emergency recedes and one must hope that as little of that happens as possible if it does happen then one can see that there will in due course be greater conflict in the investment state arbitration area between investors who say well we understand the emergency taking of these powers to deal with the emergency but why are they still in force bucking up my investment so their may be dispute of that kind coming down the line potentially. But we will have to see.

**Justice Indu Malhotra:** I think apart from loosening the control and the power, the impact it's going to have on the economy is what is I think, is going to be determinative of whether these investments, how far they could have been taken and how far they have to cut back, because the economy has been affected drastically so for the economy to also hop back to normalcy will also take a long time. That is going to have its impact on the enforcement of these contracts.

**Sir Bernard Rix:** Well I do see that fascinating questions the lawyers are going to arise out of this. I think all lawyers and Courts are going to very busy with the problems which COVID-19 has created and as lawyers one perhaps can look forward to some, exciting some of these interesting questions, I have however the greatest sympathy for leaders whether they are political leaders in Government or business leaders or the heads of charities or religious institutions, anyone in the position of leadership in this situation. I really do have the greatest respect for because they have all had to take very difficult decisions very very very quickly. I have just glanced at my watch I see that we have been going 40 minutes and perhaps I should ask whether now is the time to ask whether we are ourselves going to be asking questions by our audience or not. So, what shall we do?

**Justice Indu Malhotra:** We can ask Neeti or Madhukeshwar as to whether there are questions for the panelists.

**Sir Bernard Rix:** Neeti are you there? What position are we in? Hello Neeti, I have just pressed on Q&A, and I see there are some questions. Shall I read them off the screen? How much time have we got?

**Neeti Sachdeva:** Sir Bernard and Ma'am, we have about five minutes. We could take two questions which have come in now, which is on the confidentiality of arbitral award what is the position in India and what is the position in England on the confidentiality of awards? And I think second question one of the attendees has asked is, if a tribunal rejects a virtual hearing during the COVID-19 situation, then do you think that would amount to a breach of an opportunity to present your case so if you would like to comment on these two questions please.

**Sir Bernard Rix:** Just repeating, one is our view on confidentiality of awards.

**Neeti Sachdeva:** That's right, Sir Bernard. And the second question is, if a tribunal rejects a virtual hearing at this time of COVID-19 situation, would that amount to a breach of principle of natural justice and an award can be set aside on that?

**Sir Bernard Rix:** Well, would you like to go first Justice Malhotra on either of those questions.

**Justice Indu Malhotra:** I will answer the confidentiality clause. In India we did not have a confidentiality clause till the 2019 amendments, it has now been specifically incorporated that all proceedings, arbitration proceedings there will be a confidentiality clause and that can be enforced. So we have made this amendment in 2019 in so far as the Indian Act is concerned.

**Sir Bernard Rix:** Yes. Well in England we don't have a confidentiality provision in our statute. In 1996 we decided to leave that out. Jurisprudence has confirmed that arbitration is confidential and that extends to an award but there is I am glad to say some jurisprudence which says that we ought to distinguish between confidentiality of hearings and the process of arbitration and the confidentiality of awards which is a different matter. I myself, I am less than a hundred percent keen on confidentiality of awards. I think that we ought to try to investigate the possibility with the help of important arbitration institutions around the world to see if we cannot hopefully, of course with the consent of the parties, move towards a situation where we can publish, in an anonymised form perhaps 6 months or a year after the issue of the award, more awards. There are ofcourse implications of certain awards, in investment treaty arbitration they are all published, doesn't do any harm. Because

I am slightly fearful that despite the great success of arbitration, in the long-run too much confidentiality will cause two vices, one is what goes on in the dark may not prosper in the dark and the other thing is that with the success of arbitration in international commercial work we are depriving jurisprudence, a public jurisprudence, cutting edge development of our commercial law, which is very important. Now, should I get on the second question? Would a denial of a virtual hearing lead to problems? Well now, if you deny a virtual hearing, then you have to have, an in person hearing and you cannot have in person hearing, and so you are not going to get an award. I think the real problem is, if you allow a virtual hearing and say we are not going to adjourn till a time when we can have an in-person hearing and you force the parties to have a virtual hearing, might it be said by one of the parties that, oh thats unfair, because it is only by person to person cross examination that you can really get to the bottom of this case and it is been too difficult to manipulate the documents, vis-a-vis the tribunal, vis-a-vis the witnesses and so forth and this has led to an unfair hearing and that the award following the virtual hearing is not sustainable. So I think that's the way the question would arise and we are going to have to see how that works. One hears that virtual hearings can be a success, I don't know what the people are talking about? Shorter smaller virtual hearings, one doesn't know whether one's talking about virtual hearings in which the tribunal has had the ability to have hard copy

trial bundles to assist them with the hearings because there is a difficulty because you need one screen for the faces, you need one screen for the transcript, you need one screen for the documents. Are we all in the position to have 3 screens or can we as we are working now together three faces and questions on the screen can we all put it on one screen. Well I am not sure. Justice Malhotra what do you think about it?

**Justice Indu Malhotra:** I would agree with what you say on the second issue. It's not an easy question. I think probably the tribunals would adjourn the hearings for a little while because one doesn't know how long this is going to last, how long this virus and the lockdown etc situation will last, but the satisfaction which one has over personal hearing and cross examination in person, ofcourse it's difficult to replace it with virtual hearings.

**Sir Bernard Rix:** Yeah. Well, we will see. We will live and learn.

**Justice Indu Malhotra:** That's right.

**Neeti Sachdeva:** Thank you very much Sir Bernard and Justice Malhotra. We do have a lot of questions which are pouring in but we do realise that we have to come to an end of this exciting first series of our interaction. On behalf of MCIA we thank you for joining us, we thank all

the attendees for joining us. Keep tuned we have our next session coming up on Thursday, at 4:00 pm India time. where we will have two more distinguished guests joining us. We have Mr John Beechey who will be interviewing Mr Harish Salve. Once again thank you very much Justice Malhotra and Sir Bernard for joining us today. Thank you.

**Justice Indu Malhotra:** Thank you.

**Sir Bernard Rix:** Thank you very much. Thank you Justice Malhotra, its been a great pleasure. Bye.

**Justice Indu Malhotra:** Thank you.