

ONLINE ARBITRATION: A THREE JURISDICTIONAL COMPARISON

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Abstract

Arbitration is a popular method of dispute resolution for many parties who seek to avoid the costs, delays, and publicity of litigation. Of late, arbitration has moved online because of the penetration of technology into arbitral process. The outbreak of Covid – 19 has also skyrocketed the influx of technology in arbitral process. Online arbitration is a form of dispute resolution using the internet as the main medium in conjunction with other technology such as multipoint video conferencing. It is an effective dispute resolution mechanism which has come to stay. However, the extent and scope of online arbitration vary across different jurisdictions. This work, aimed at comparing online arbitration in three major arbitration hubs: Nigeria, USA, and India. The objective of the paper is to investigate whether under their legal system there are laws which specifically provide for online arbitration in those jurisdictions. The work adopted doctrinal research methodology through library based and internet materials. The work finds that their legal system accommodates online arbitration. It therefore recommends that online arbitration should be legally incorporated for a better application and practice globally.

KEY WORDS: ARBITRATION, ONLINE ARBITRATION, TECHNOLOGY, INTERNET, AND DISPUTE RESOLUTION

1.0 Introduction

Arbitration is a popular method of dispute resolution for many parties who seek to avoid the costs, delays, and publicity of litigation¹. Of late, arbitration has moved online because of the penetration of technology into arbitral process. Technological advancement has indeed brought about changes in all areas including the arbitral process. This catalysed the development of online arbitration mechanism to meet the demands of the present times and circumstances. Online arbitration is one of the online dispute resolution mechanisms and simply means the conduct of arbitration electronically using the gadgets of information technology. It has numerous advantages which include swiftness, easy accessibility, increased convenience, efficiency, and effectiveness². Online arbitration is the electronic version of offline arbitration. In other words, online arbitration is where the arbitration procedures are conducted wholly or partly on the internet, starting from the online agreement of the parties to the online arbitral procedures and ending with online arbitral award³. The practice and assimilation of online arbitration vary from jurisdiction to jurisdiction. For online arbitration to exist and succeed in a jurisdiction, there must be a regulatory framework which controls the legal status and effectiveness of online arbitration within the national environment. The regulatory framework must give effect to the agreement to arbitrate, the organization of the arbitration process and the finality and enforceability of the online arbitral award. To this effect, this work shall restrictively look at Nigeria, USA, and India with a view to investigate whether

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¹ F Rudi, 'Confidentiality in Arbitration; A Four Jurisdictional Comparison' available on <<https://viamediationcentre.org/readnews/MTUyNQ==/Confidentiality-in-Arbitration-A-Four-Jurisdiction-Comparison>> accessed on 25th January 2024.

² P A Okoro & O O Ogbole, 'Recondite Issues Revolving Around Online Arbitration in Nigeria' available on <https://www.researchgate.net/publication/375491392_RECONDITE_ISSUES_REVOLVING_AROUND_ONLINE_ARBITRATION_IN_NIGERIA> accessed on 25th January 2024.

³ *Ibid*

under their legal system there are laws which specifically provide for online arbitration. These countries arbitration laws shall be discussed seriatim.

1.1 Online Arbitration in Nigeria

The extant law on arbitration in Nigeria is the Arbitration and Mediation Act 2023. The Arbitration and Mediation Act was signed into law on 26th May 2023. This Act was enacted to repeal the Arbitration and Conciliation Act 2004⁴. To demonstrate Nigerian's commitment towards creating an arbitration friendly environment reflecting international best practices, the Arbitration and Mediation Act was enacted⁵. Nigeria as the giant of Africa is one of the leading arbitration hubs in Africa. Research has shown that there is no specific Law regulating online arbitration in Nigeria. The Arbitration and Mediation Act 2023 being the current principal arbitration law in Nigeria shall be examined to see if it provides for online arbitration. We shall appraise this by looking at the validity of online arbitration agreement and the validity of online arbitration award under the Act.

1.1.1 Validity of Online Arbitration Agreement in Nigeria

Under the Act, it provides that:

2. The arbitration agreement shall be in writing.
3. An arbitration agreement shall be in writing where its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by any other means.
4. The requirement for arbitration agreement to be in writing is met, where it is –
 - a. By an electronic communication⁶, as defined in section 91, and the information contained in it accessible so as to be useable for subsequent reference; and
 - b. It is contained in an exchanged of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other⁷.

From the above provision in subsection 4 (a), arbitration agreement in writing now includes electronic communications where such communications can be referred to subsequently. This means that where an arbitration agreement is entered electronically it is accepted to be in writing. This was further buttressed by the definition of electronic communication in the interpretation section of the Act. To the Act, electronic communication means:

Any communication that the parties make by means of data messages, that is, any information generated, sent, received, or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic mail, telegram, telex or telecopy⁸.

⁴ Cap A18 Laws of the Federation of Nigeria 2004.

⁵ Preamble to the Arbitration and Mediation Act 2023

⁶ Emphasis ours.

⁷ Arbitration and Mediation Act 2023, s. 2 (2), (3), (4).

⁸ *Ibid*, s. 91 (1).

With this definition electronic arbitration agreement is well covered. In essence, any arbitration agreement entered online is valid under the Act. This is a clear indication that the Act covers online arbitration and applies to online arbitration proceedings. This is indeed a welcome improvement in the history of Nigerian arbitration law. It presents a positive restructuring of arbitration in Nigeria⁹.

1.1.2 Validity of Online Arbitral Award in Nigeria

With respect to the form and validity of an arbitral award under the Arbitration and Mediation Act, it states that:

- (1) the award shall be in writing and signed by the arbitrator or arbitrators¹⁰.
- (2) in an arbitral proceeding with more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.¹¹

The above provision also makes it a requirement that for an arbitral award to be valid, the award shall be in writing and signed by the arbitrator or arbitrators and where there is more than one arbitrator the signature of the majority suffices. Mere looking at this provision on the face of it shows that award reached electronically is not within its contemplation. This is a big loophole in the Act. The Act appears to have provided for online arbitration, yet it seems not to have covered every aspect of online arbitration.

2.0 Online Arbitration in United States of America (USA)

As one of the countries that became benchmarks in economic and technological progress, this work chose United States of America to examine the arbitration law adopted in the country, especially regarding the application of online arbitration dispute resolution. The United States of America is also the first country to develop the internet in trading activities.

Arbitration law in the United States of America emanates from the Federal Arbitration Act (FAA), which was adopted in 1925 to support commercial and trade arbitration¹². Both domestic and international arbitration in the United States of America is governed principally by the Federal Arbitration Act¹³ (FAA), a federal law that applies throughout the USA. It is the Act that provides the basic legal principles applicable to arbitration in the USA.

Research has shown that United States of America does not have any specific law for online arbitration. For better appreciation of online arbitration in USA, this work shall look at the validity of online arbitration agreement and online arbitration award under the Federal Arbitration Act which is the extant law on arbitration in the United States of America.

⁹ S U Nweke, 'The Nigerian Arbitration and Mediation Bill 2022: The Dawn of a New Era?' Available on <<https://www.africaarbitration.org>> accessed on 30th January 2023.

¹⁰ Emphasis Ours

¹¹ Arbitration and Mediation Act 2023, s. 47 (1) & (2)

¹² A J Schmitz, 'Arbitration in the Age of Covid: Examining Arbitration's Move Online' (University of Missouri School of Law Scholarship Repository Cardozo J. of Conflict Resolution), (2021) (22) 245 – 296 available on <<https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1992&context=facpubs>> accessed on 24th July 2023.

¹³ Federal Arbitration Act 1925 Title 9 U. S. Code Ch. 1.

2.1 Validity of Online Arbitration Agreement in United States of America

The Federal Arbitration Act governs arbitration agreements in contracts involving interstate commerce and applies in both federal and state courts. It provides thus:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract¹⁴.

From the above provision of the FAA, it is crystal clear that the Act provides for enforcement of arbitration agreements and the only express requirement for enforceability under the FAA is that the arbitration agreement must be in writing¹⁵. It does not speak of online arbitration.¹⁶ The FAA was not built to address the complexities of the digital world, leaving questions for policymakers and courts regarding application of online arbitration¹⁷. It appears that the Federal Arbitration Act precludes the enforcement of electronic agreements since the letters of the law do not explicitly mention electronic methods of communication. It can conclusively be said that it does not speak of online arbitration. This seems to be the position until the USA enactment of the Electronic Signatures in Global and National Commerce Act 2000 (E-Sign Act) in its 106th congress.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act) was signed into law on June 30, 2000¹⁸. The Electronic Signatures in Global and National Commerce Act (E-Sign Act) is a U.S. federal law that specifies that, in the United States of America, the use of an electronic signature ([e-signature](#)) is as legally valid as a traditional signature written in ink on paper. In its provision for general validity of electronic records and signatures, it provides that:

(a) Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce—
(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation¹⁹.

¹⁴ Federal Arbitration Act (n. 13) s. 2

¹⁵ *Ibid*

¹⁶ A M Schmitz, 'Ordering Online Arbitration in age of Covid 19...and Beyond' in S Lalani & S G Shapiro (eds) *The Impact of Covid 19 on International Disputes*, (Netherlands: Koninklijke Brill N. V, 2022) pp. 182 -192.

¹⁷ A J Schmitz, 'Arbitration in the Age of Covid: Examining Arbitration's Move Online' (n. 1)

¹⁸ Public Law 106–229—June 30, 2000, 'Electronic Signatures in Global and National Commerce Act' available <<https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf>> accessed on 18th August 2023.

¹⁹ Electronic Signatures in Global and National Commerce Act 2000 (E-Sign Act), s.101

From the above provision, E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing. With the enactment of this Act, the requirement that an arbitration agreement must be in writing for it to be valid under the Federal Arbitration Act is satisfied where the arbitration agreement is in an electronic form. So, where an arbitration clause is included in electronic contracts it is valid²⁰.

The Act also gives legal effect and validity to electronic signed contracts or documents. With the provision of section 106, it shows that where any law or statute requires a document to be signed, that the electronic signing of that document will serve the same purpose as its ink on paper counterpart. To buttress this, the E-Sign Act in its definition section²¹ has defined terms such as electronic, electronic record and electronic signature.

With respect to online arbitration, most US courts have endorsed the enforcement of electronically created agreements and electronically submitted awards²². Indeed, parties continually click accept and become subject to arbitration agreements. In the case of *Meyer v. Uber Tech. Inc.*²³, US Court has said that “an electronic click can signify acceptance of a contract, and there is nothing inherently offensive about a web-based contract. An agreement to arbitrate exists in a web contract where the notice of the arbitration provision was reasonably conspicuous, which is not a very high bar”. This is fortified by the E-Sign Act, which “prohibits any interpretation of the FAA’s ‘written provision’ requirement that would preclude giving legal effect to an agreement solely on the basis that it was in electronic form.”

Also, in the case of *Campbell v. General Dynamics Government System Corp*²⁴, a company stuffed an arbitration agreement in a mass email, where the message did not put the employees on sufficient notice that they were bound by arbitration simply by receiving an email. The courts have held that an employer binds an employee to arbitration where there is evidence that the employee logged into an online HR system with a unique login/password and pressed “accept” on the agreement. Also, in the cases of *Holmes v. Air Liquide*²⁵ and in *re Holl*²⁶ the United States of America Courts enforced arbitration clauses in an electronic contract. These cases confirm caselaw enforcing “click-wrap” e-contracts that require one to affirmatively “click” on an “accept” button.

From the above analysis, it is obvious that the laws regulating online arbitration in United States of America are the Federal Arbitration Law and the E – Sign Act. It can also be stated that the law has developed in directions suggesting that electronically created arbitration agreements and awards are enforceable under the FAA and the E-Sign Act. The enactment of the E -Sign Act has to some extent sought to lift the dark cloud engulfing the practice of online arbitration by seeking to address some of the key issues affecting the acceptance and practice of online arbitration. The only challenge is that the E- Sign Act is very general and does not specifically address the issue of online arbitration,

In sum, it is quite clear that the laws governing online arbitration in United States of America are the Federal Arbitration Act and the E – Sign Act. This is quite different from Nigeria where only the Arbitration and Mediation Act governs online arbitration. While Nigeria Arbitration and Mediation Act seems to incorporate online arbitration by incorporating electronic

²⁰*Ibid*, s. 70

²¹ *Ibid*, s. 106

²² C Gerbitz, ‘Are Pre-Dispute Agreements to Arbitrate Online Enforceable?’, 7 ARB. BRIEF 1 (Jan. 25, 2020), <https://ssrn.com/abstract=3561674> cited in A J Schmitz, ‘Arbitration in the Age of Covid: Examining

Arbitration’s Move Online’ (n. 1)

²³ 868 F.3d 66, 67–71 (2d Cir. 2017).

²⁴ 407 F.3d 546, 547–79 (1st Cir. 2005).

²⁵ USA LLC, 2012 WL 267194, at 2–3

²⁶ 925 F.3d 1076 (9th Cir. 2019)

communications in its interpretation of “in writing” requirement, United States Federal Arbitration Act did not bring in electronic communication within its context. Although, strictly looking at the United States of American Federal Arbitration Act it appears not to have contemplated online arbitration, but United States of America has a comprehensive legislation purely dedicated to electronic transactions which is the Electronic Signatures in Global and National Commerce Act. Although one can argue that Nigeria has the Evidence Act which provides that where a rule of evidence requires a signature, an electronic signature satisfies that requirement²⁷. This means that under the new Evidence Act, documents in electronic formats containing electronic signatures are admissible. In the same manner, an arbitral award in an electronic format bearing an electronic signature suppose to be valid and acceptable under our legal system. But this is not the case as the Evidence Act by its provision does not apply to arbitration proceedings²⁸.

This puts United States of America at a more advantage because even investors will always opt to invest in a country that has a law dedicated to e-commerce. This therefore calls for Nigeria to borrow a leaf from United States of America and incorporate the validity and enforceability of electronic signature into their own law.

3.0 Online Arbitration in India

Online arbitration is still in its early stages in India, but it is rapidly growing. There is no specific law(s) governing online arbitration, but the practice is supported by functional equivalent or inference from several pieces of legislations.²⁹ Online arbitration in India at present is governed by the Indian Arbitration and Conciliation Act, 1996 and the Information Technology Act 2000³⁰. To fully appreciate online arbitration from India perspective there is need to view it from these two areas: the validity of online arbitration agreement and the form and validity of online arbitral award³¹.

3.1 Validity of Online Arbitration Agreement in India

Under the Arbitration and Conciliation Act 1996 which governs traditional arbitration in India, before its amendment, the Act provided that:

- 3 An arbitration agreement shall be in writing.
- 4 An arbitration agreement is in writing if it is contained in
 - a. a document signed by the parties;
 - b. an exchange of letters, telex, telegram, or other means of telecommunication which provide a record of the agreement;
or
 - c. an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
 - d. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the

²⁷ Evidence Act 2011 as amended s. 93(3)

²⁸ *Ibid*, s. 256

²⁹ Parteekgarg, 'Online Dispute Resolution in India' available on <<https://www.legalserviceindia.com/legalserviceIndia.com/legal/article-6080-online-dispute-resolution-in-india.html>> accessed on 3rd July 2023.

³⁰ Information and Technology Act, 2000 (No. 21 of 2000).

³¹ Y Muniraj, 'Validity of Online Arbitration in India' available on <<https://bnwjournals.com/2021/01/16/validity-of-online-arbitration-in-india/>> accessed on 5th July 2023.

contract is in writing and the reference is such as to make that arbitration clause part of the contract³².

Section 7(3) of the Arbitration and Conciliation Act, 1996 provides that an arbitration agreement shall be in writing³³. This means that for any agreement to have a valid arbitration clause, it must be in tune with section 7 of the Act. According to this provision, the arbitration agreement needs to be in 'writing' form, where 'writing' is equivalent to an exchange of letters, telex, telegrams or 'other means of telecommunication' which proves the assent of contracting parties³⁴.

Mere looking at the provision of section 7 (3) and (4) of the Indian Arbitration and Conciliation Act separately it seems not to have provided for online arbitration. But a compound reading of the provision of this section 7 of the Indian Arbitration and Conciliation Act 1996 and section 4 of the Indian Information and Technology Act 2000 will answer the poser and gives a better view of online arbitration in India.

Where any law provides that information, or any other matter shall be in writing or the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

- (a) rendered or made available in an electronic form; and
- (b) accessible so as to be usable for a subsequent reference³⁵.

From the above provision of Section 4 of the Information Technology Act, 2000 (IT Act), the requirement of "in writing" is deemed to be satisfied if the agreement is in electronic form and is accessible to be used for a subsequent reference³⁶. To drive this home the IT Act defines electronic form as:

- r) "electronic form" with reference to information means any information generated, sent, received, or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device³⁷

Online arbitration agreement being in electronic form fall within the above definition. In 2015, India took a step forward to amend some of the provisions of the Arbitration and Conciliation Act 1996 through its Arbitration and Conciliation (Amendment) Act 2015. Among the sections that were amended is section 7 (4) (b) of the Arbitration and Conciliation Act 1996 which is referred to as the principal Act in the 2015 Amendment Act. The Indian Arbitration and Conciliation (Amendment) Act 2015 in its section 3 provides that:

In section 7 of the principal Act, in subsection (4), in clause (b), after the words "or other means of telecommunication",

³² India Arbitration and Conciliation Act 1996, s. 7 (3) & (4)

³³ *Ibid*, s. 7

³⁴ A P Singh & L Kumar, 'Online Arbitration in India' available on < <https://rmlnlulawreview.com/2015/07/31/online-arbitration-in-india/>> accessed on 4th July 2023

³⁵ India Information and Technology Act, (n. 30) s. 4

³⁶ A P Singh & L Kumar, (n. 34)

³⁷ India Information and Technology Act, (n. 30) s. 2 (r).

the words “including communication through electronic means shall be inserted³⁸.

With the above provision which amended section 7(4)(b) of the principal Act, the obscurity in the section was cleared. The amendment now makes it clear that “the other means of communication” includes communication through electronic means. With the insertion of the phrase “including communication through electronic means” after the phrase “or other means of communication” it means that section 7(4) (b) now reads thus:

- b. an exchange of letters, telex, telegram, or other means of telecommunication including communication through electronic means which provide a record of the agreement; or...³⁹

This being the case, it is obvious that the Indian Arbitration and Conciliation Act 1996 as amended in 2015 has expanded the issue of “in writing” to now cover online arbitration agreement with the insertion of the expression “including communication through electronic means”⁴⁰.

The implication of this amendment is that an agreement containing arbitral clause shall be valid even if it is executed through an electronic mode. This shows that the existing statutory framework of India permits the authenticity of an arbitration agreement arrived or entered by electronic communication and can be made effective with further compliance with the necessary legal guidelines⁴¹. There was a further amendment of the India Arbitration and Conciliation Act 1996 in 2021 through the Arbitration and Conciliation Act (Amendment) Act, 2021. But good enough, section 7 (4) (b) was not affected. It still stands as was stated in the 2015 amendment. This position was buttressed in the case of *Shakti Bhog Foods Ltd v. Kola Shipping Ltd*.⁴² where the Apex Court for the first time upheld the validity of arbitration agreement entered into by exchange of emails though no formal agreement in writing signed by the parties had come into existence. Similarly, Hon’ble Supreme Court of India in yet another case of *Trimex International FZE Ltd v. Vedanta Aluminum Ltd*⁴³ has also held that:

if the intention of the parties to arbitrate any dispute has arisen in the offer and acceptance thereof, the dispute is to be settled by arbitration. The only requirement of the arbitration agreement is that the parties must clearly spell out the technology to be used in settlement of disputes, the place of arbitration, laws governing the contract entered between the two parties, the jurisdiction of courts.

The above decisions of the Honourable Supreme Court of India in the above two landmark judgements are a clear indication that arbitration agreement entered by exchange of emails has been accepted as a valid form of agreement in India. This is the same position in Nigeria with the recent enactment of the Nigerian Arbitration and Mediation Act 2023. The Arbitration and Mediation Act 2023 repealed the Arbitration and Conciliation Act 2004. The long-aged position that arbitration agreement must be in writing has now been expanded by the repeal. The

³⁸ India Arbitration and Conciliation (Amendment) Act, 2015 s. 3

³⁹ *Ibid*, 7 (4) (b)

⁴⁰ Arbitration and Conciliation Act (Amendment) 2015 NO. 3 of 2016, s. 3

⁴¹ A P Singh & L Kumar, (n. 34)

⁴² AIR (2009) SC 12

⁴³ (2010) 3 SCC 1.

requirement of an agreement being in writing is now stated to be met where it is ‘by an electronic communication’.⁴⁴

3.1.1 Validity of Online Arbitral Award in India

Section 31(1) of the Arbitration and Conciliation Act, 1996 lays down the form and content of an arbitral award by providing that:

- 1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- 2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for the omitted signature is stated.
- 3)
- 4) After the arbitral award is made, a signed copy shall be delivered to each party.⁴⁵

The above section made it a requirement that an arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal⁴⁶. Analyzing the above provision, it appears to have covered only offline arbitral award. This is because for an arbitral award to fall within the purview of the Act it must be in writing and signed by the arbitral tribunal. There are two issues in this provision which this work shall look at. The first issue is that the award shall be in writing and the second issue is that the award shall be signed.

Going with the first issue of the award being in writing, it seems that what the Act intends is that the award must be written in hard copy document under ink and pen. In this case the question arises whether online arbitration award would have the same legal sanctity as the offline award since it is in electronic form. The reading of the 1996 Act alone gives the impression that India Arbitration and Conciliation Act 1996 does not cover electronic form of arbitral award. But the compound reading of the stated section with the provision of section 4 of the India Information and Technology Act 2000 will give a better impression and gives legal sanctity to online arbitral award. Section 4 of the Information Technology Act as earlier stated in this segment of this work has included electronic form of writing as meeting the requirement of writing under any law. Therefore, when an arbitral award is entered in electronic form, it is given recognition by section 4 of the Information Technology Act. With this analysis, it is conclusive that online arbitral award being in electronic form is recognized as an award in writing under the Indian Arbitration and Conciliation Act 1996 and Information and Technology Act 2000.

The joint reading of the section 31 (1) of the India Arbitration and Conciliation Act 1996 and Section 4 of the Indian Information and Technology Act 2000 tends to give India a better position when compared with the position in Nigeria. Under section 47 of the Nigerian Arbitration and Mediation Act 2023, the issue of electronic form of an arbitral award seems not to have been recognized. Nigeria needs to borrow a leaf from section 4 of the Information and Technology Act and recognize electronic form of arbitral award.

The second issue of signing of arbitral award by the arbitrators or majority of the arbitrators and delivering a signed copy to the parties also poses the same problem. Taking the Arbitration and Conciliation Act singularly, it indicates that the only signature referred to is a

⁴⁴ Nigeria Arbitration and Mediation Act 2023, s. 2 (4) (b)

⁴⁵ India Arbitration and Conciliation Act, (n. 32) s. 31 (1) – (7)

⁴⁶ *Ibid*, s. 31 (1).

handwritten signature. But the Information and Technology Act rescued the situation. As far as the 'signature' requirement is concerned, Section 5 of the Information and Technology Act is applicable. It provides that-

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government⁴⁷.

This provision makes digital signature to be in the same capacity as its handwritten counterpart. So, where any law requires the signing of any information in a document that this section should be applied to the digital counterpart of the information, and it will serve the same purpose as its hardcopy counterpart. It went further to define digital signature as "any authentication of any electronic record by a subscriber by a means of an electronic method or procedure in accordance with the provision of the section⁴⁸".

Also, critically looking at the above section it further shows that the use of the phrase "notwithstanding anything contained in such law" gives the provision of the Act an overriding power over other laws of India. This implies that where any other law such as the Arbitration and Conciliation Act 1996 requires the signing of a document, that by virtue of the provision of section 5 of the Information and Technology Act, digital signature will have the same legal effect as its handwritten counterpart. Therefore, above provision under the Information and Technology Act gives legal effect to awards signed electronically or digitally. In this respect under discourse, it appears that India has a better legal framework for online arbitration than Nigeria. The Nigerian Arbitration and Mediation Act also provided for the signing of the arbitral award by the arbitrators or majority of the arbitrators but appears not to have taken cognizance of electronic arbitral award and electronic or digital signing of arbitral award. This work sees it as a lapse in the Arbitration and Mediation Act.

4.0 Conclusion

From the fore going, online arbitration is understood to be an arbitrating process, mainly carried out with the assistance of the information and communication technology. To this effect, to release the full potential of online arbitration, a legal framework must be designed to cover every aspect of it. It is discovered in this research that the existing framework of Nigeria has no proper room for online arbitration. The mere incorporation of 'electronic communication' under section 2 of the Arbitration and Mediation Act is not sufficient to promote online arbitration. It is recommended that Nigerian government should revisit the Act to incorporate digital methods that support the validity of online arbitration process and online awards.

⁴⁷ Information and Technology Act, (n. 32) s. 5

⁴⁸ *Ibid*, s. 2.