INDIA ADR WEEK DAY 1: BANGALORE

9th Oct-2023

SESSION 5

BEYOND BLOCKCHAIN: RESOLVING CRYPTO DISPUTES THROUGH INTERNATIONAL ARBITRATION

6:00 PM To 7:00 PM

Speakers:

Mr Sachin Malhan, Co-founder, Agami

Mr Ashish Chandra, General Counsel, CoinSwitch

Mr Christoph Kauffman, Counsel, Osborne Clarke

Mr Dhyan Chinappa, Senior Advocate

Mr Siraj Omar S.C., Co-Managing Director, Dispute Resolution, Drew & Napier LLC

SACHIN MALHAN: Okay. I think we're going to get started. Hi, everybody, maybe a few folks drifting in can take your seat, thank you. When I got the invite to moderate this panel, I honestly thought there's been a mistake because I'm not an arbitrator.

SACHIN MALHAN: I'm not one of the 17 people in the world who understand Blockchain, along with the six people who understand theory of relativity. And my cryptocurrency accountant is really in bad shape. But I then looked at the panellists and I said, I think I can do this. Because I looked at the panellists and I said, if there's one thing I can do, is that I can work with really amazing people and then take all the credit. So, I'm really counting on doing that with this wonderful group of people out here. Our hope is that where the topic gets a little

1 cryptic, we will try to demystify that. We'll try to break it down. Both in terms of the technology
2 part as well as the legal part. I can't promise that we will do it perfectly, but definitely got a
3 mix of people here that can take a good shot at it. So, I wanted to start by, and maybe this has
4 been done before, but to do a kind of 1 o 1, just to help people understand, when we look at a
5 topic like this. When we look at going beyond the blockchain, arbitration for cryptocurrency
6 disputes, what does that mean? And some of you, it might be repetition, but I think we'll still
7 do this. And then we can dive into the more detailed stuff, the good stuff. Right. So, let's start
8 off with that. And I have requested Ashish, who definitely can cover all the 1 on 1 topics.
9 Probably teach a course on it. But Ashish, if you can just start off with some context to break
10 this down so that when we do get into the questions, that discussion becomes really inclusive.

11 **ASHISH CHANDRA:** Thanks, so break down, like how this technology is…

12 **SACHIN MALHAN:** Yeah. Maybe you could touch on the blockchain and 18th person in the
13 world will be there who understands blockchain. You could also talk maybe a little bit about
14 how cryptocurrency work on the blockchain. And I think the really big question, which is when
15 we say disputes, cryptocurrency disputes, what are these disputes that are coming up?
16 Arbitration, I trust everybody knows. But I think these areas would be reduced.

17 **ASHISH CHANDRA:** Yeah. I think I might end up taking more time. But I will leave the
18 disputes to the expert lawyers. Maybe I will just give some…

19 **SACHIN MALHAN:** Maybe you can ask Siraj or…

20 **ASHISH CHANDRA:** Business perspective because I am very close to the real life business
21 on blockchain.

22 **SACHIN MALHAN:** Real life? This is real life.

23 **ASHISH CHANDRA:** Real life, yeah. Absolutely for the last two years. So Okay. I think the
24 best way to explain something new is to equate with something old. So, let's talk about
25 Internet. Right. So how Internet evolves? So, Internet is nothing but transfer of data packet
26 from your phone to my phone. If you are sending some sort of message to me, "Ashish, I'm
27 going to take you out for dinner". So that will get converted into some data packet. It will travel
28 throughout the world and from your phone, it will come to my phone. So that works on a TCPIP
29 protocol, which is about 45 years old. So, it is just like a data transfer transaction recorded on
30 a protocol. This is how the Internet has been working for last about 45-50 years. Now same
31 thing is now getting on the blockchain, wherein the transaction from one computer, from one
32 node to the other node, there is some transaction. And that transaction could be a financial

transition, that transaction could be recording of data, that transaction could be, let's say, recording of electricity grid output, anything which has an element of a transaction can get recorded on this new technology called as a blockchain. So TCPIP, which is the backbone of Internet, is now being replaced, not say, I mean replaced but augmented by blockchain as a technology to record that transaction. And transaction could be anything. Now that's like a short PLDR of what a blockchain is. And if you understand Hindi, especially, we use the word *bahikhata,* like a ledger we use in the word of accountancy. So, it is like the most authentic and most solid, non-reputable, non-hackable, okay ledger, which exists in a decentralized mode. That's more of a philosophical answer, but technical answer is the previous one. One myth which is there, and it has also come out a lot from the Indian government, especially and also from various government who are still resisting adoption of, let's say crypto as such, they say, "hey, blockchain is good, but crypto is bad". It is like saying that "hey, Infosys company is great, but Infosys stock listed on National Stock Exchange is bad". No, they have to coexist. Right? So crypto is an incentive mechanism of that particular blockchain. Now why do I... let's say I'm a very funky engineer. I'm a very expensive engineer, Sundar Pichai, right. Why do I spend my time to build a use case on a blockchain? It could be some sort of, let's say, some fan engagement for ICC World Cup. Why do I spend my time to build that use case on a blockchain? What do I get in return? So crypto assets, loosely called as cryptocurrency, are the incentive mechanism for the developers, validators and participants in the blockchain to make that blockchain successful. If I am employed with Coin Switch and if they do not give me stock options of the company, why do I burn my midnight oil to make the company successful? Okay? If they don't pay me my compensation, I am not a fool to really work hard even for 1 minute to make the company successful. Similarly, if I have to make one particular blockchain successful, I need to have incentive. I'm a selfish person. Everybody in the world is selfish. They want something in return. That return comes in the form of a native crypto asset, loosely called as a cryptocurrency. That's the short TLDR, more over drinks and dinner, along with some bitcoins.

SACHIN MALHAN: That was pretty good actually. So, Ashish, just one quick follow up because I'm putting myself in the shoes of somebody who's heard what you said, one is that... one thing that strikes me is, if you're talking about recording transactions, then you can imagine value... a lot of value in different ways, for instance because it's useful to create records, that something happened. And the lawyers will know something happened is like 80% of litigations, right? Like affidavit, *yeh hua tha, yeh bola*, that person has seen like something happened. Here, I trust that here is verifiable proof that something happened.

ASHISH CHANDRA: Yeah, it is.

1 **SACHIN MALHAN:** One is that there is this huge opportunity to have a record mechanism.
2 Highly trusted record mechanism that says something happened. So, am I imagining it or...?

3 **ASHISH CHANDRA:** No, it is correct.

4 **SACHIN MALHAN:** It is striking me as being quite widespread in terms of evidence and
5 transaction security.

6 **ASHISH CHANDRA:** Well, from a lawyer's lens, it's a messed-up world. But from a tech
7 guy's lens or from a business guy's lens, it is like a great thing. Because why do people say that
8 blockchain, transactions are more authentic and immutable because they are decentralized.
9 The meaning of decentralized here is that the same transaction the same record will exist in
10 multiple nodes, in thousands of computers, millions of computers depending upon what is the
11 baseline protocol of the...

12 **SACHIN MALHAN:** So, nobody has to stand as an authority. It is present...

13 **ASHISH CHANDRA:** Correct. So, if I fudge my phone right. Then if you are also participant
14 in the validation of the transition of the blockchain, your record will be different. That is why
15 I mean a transaction which is validated and recorded on a blockchain would have a lot more
16 certainty and admissibility as evidence. Yes, we may have to make some tweaks in the evidence
17 law, but it would be at extremely high threshold as compared to some sort of police server and
18 they are recording some sort of evidence.

19 **SACHIN MALHAN:** That's super clear. One last clarifying question. You said that
20 cryptocurrency is an incentive. It's what you get as a kind of reward or incentive for some for
21 building these use cases on the blockchain. Why couldn't you be paid regular cash to build
22 those incentives? Why not build something on the blockchain? But the money is coming is
23 regular cash to your bank account?

24 **ASHISH CHANDRA:** Well, look, I'm saying ultimately these cryptocurrencies get converted
25 into cash. Let's say especially in India, you will not go to Starbucks and say, "hey, I want to buy
26 a coffee by paying some sort of Bitcoin". You have to get cash. Now why the cash is not used as
27 a currency because when Infosys issue shares, they issue shares. So, it is a native kind of
28 currency of a company listed on a stock exchange. So similarly, when you are creating a
29 blockchain, the incentive by the design comes in the native crypto token. Now you can sell the
30 shares, get cash into your bank account. You can sell the crypto assets, get cash into your
31 Bank account.

1 **SACHIN MALHAN:** That's super useful. Siraj, I want to just that last part of that 1 0 1. What
2 do these disputes that happen, these cryptocurrency disputes? By now, we've had a track
3 record of a few years where we've seen these disputes. It's no longer something that is alien to
4 us. What these disputes look like?

5 **SIRAJ OMAR S.C.:** Thank you. So first of all, thank you to MCIA, for the invitation to be
6 here. And thank you all for staying so late to be part of this so that we have someone to speak
7 to. So, the disputes just like disputes in the non-crypto world there's a whole range of disputes
8 that you can talk about. So, I'll give you some examples. There are disputes between the users
9 and the operators of the Cryptocurrency exchanges. Disputes between investors and future
10 issuers of tokens. For example, disputes from interaction in smart contracts and we'll get into
11 these terms as we go. And then many of you would have heard of the metaverse. So, there are
12 disputes arising out of users of the metaverse suffering grievances. So, there are whole range
13 of disputes. And I think what we are going to discuss in the course of this panel is some of the
14 issues that arise we're trying to resolve these disputes using arbitration.

15 **SACHIN MALHAN:** Got it. And the moment you started talking about these disputes, I
16 started thinking back to other network situations where you have disputes, right? So much
17 conversation has been happening about ONDC and the fact that there's going to be lots of
18 players that are connected via the network. The first thing that comes to my mind is one of the
19 issues biggest issues that keeps coming up is the governing contract, like, is there a governing
20 contract? For instance, even if you look at networks like ONDC, there's a range of contracts.
21 There are different, different contracts between different people. Some networks have a
22 governing contract. Some networks have bipartite contracts amongst different parties. In my
23 research on this space, this is a big issue here, the nature of the contract that is covering this
24 crypto currency transaction.

25 **SIRAJ OMAR S.C.:** Yeah. So, the contract is important because it gives you an answer to
26 questions such as jurisdiction where you go to resolve your dispute and governing law which
27 law you use to govern your dispute. And to use a simple contract where A contracts with B,
28 you know who you're contracting with. You know where the dispute arises. You know who to
29 sue? Where to sue? What law to apply? When we're talking the crypto world where there is a
30 master agreement, then those issues are generally governed in the contract itself. The problem
31 arises where there isn't that master agreement. And because crypto assets, for example, exist
32 as records on a decentralised network, you can't point to a particular jurisdiction whether the
33 assets exist, or whether assets are held. And so, as a Claimant, if you have a dispute, the
34 question is, who do you sue or where do you sue? And for a defendant, the issue is you may
35 then be dragged into a jurisdiction that you don't want to be in or where you have no

familiarity. And that gives rise to disputes as to jurisdiction and courts try and resolve that by reference to conflicts of laws principles and that gives rise to another problem because conflicts arise, sorry, conflict of laws principles differ from country to country. And so you have a different set of rules depending on where you look.

SACHIN MALHAN: If I may just jump in there, I think even some very well-respected systems, I think the UK system there's been judgments that have said that we have to look for the lex situs and where and they've come to the conclusion that the home of the person who has purchased the asset is the site of the transaction. And apparently this is something widely disagreed with by other jurisdictions. So, it seems that the common understanding... is there a lack of common understanding around these jurisdictional issues? Is there a crippling lack of common understanding?

SIRAJ OMAR S.C.: I think it's not so much a lack of understanding, but a lack of uniformity. I think different jurisdictions are looking at it differently. You mentioned the UK interpretation, but another jurisdiction may look at it different and therein lies the problem because different people are approaching the problem with different solutions. That lack of uniformity is a problem that's beginning to be addressed now. So, for example, in the UK, there's the Digital Dispute Resolution Rules, which are now trying to come up with some uniformity that parties can use but therein lies the problem.

ASHISH CHANDRA: I will just add that he's absolutely right. There's no uniformity. And if you see that the core agenda of the G 20 under the India presidency where crypto was one of the important points of the table. It was how to align the world towards a common platform, one, to regulate second, to recognize and importantly, how to resolve cross border, because it's not a cross border. This is borderless. There's no cross border here. This is actually borderless. So, he's absolutely right.

CHRISTOPH KAUFFMAN: Yeah. I wanted to add, and it is indeed a problem. And for example, in Germany, if you want to have a valid arbitration agreement with a consumer then the arbitration agreement is not enough to have an arbitration agreement in your contract. You have to have a separate agreement. A separate contract. So, the majority of cases I know, and the majority of terms and conditions of let's say marketplaces where you can sell and buy coins do not comply with these requirements. Right? So, the questions is and the question is how can you handle that as a marketplace? How can you offer coins to a consumer in Germany?

1 **SACHIN MALHAN:** And what would be if you require a separate agreement specifically for
2 the arbitration. That means that you can't really have one, say, Smart contract because how
3 would that be constitute a separate agreement?

4 **CHRISTOPH KAUFFMAN:** Exactly. How can you implement that or kind of have that in
5 your smart contract if it's not considered as a separate contract, right? I think it's a problem,
6 but I'm pretty sure that the IT world can handle it. And that if the law and IT work together,
7 then it's something. And also, I mean, there are initiatives in Germany and in Europe, too,
8 especially in Germany. I think the government has published its ideas for changes to the
9 Arbitration Act to resolve that issue.

10 **SACHIN MALHAN:** I see, Pawan?

11 **PAWAN LADDHA:** So, on that agreement piece, I wanted to add one thing. There's another
12 issue... so on that agreement issue I think that one of the factors which I want to add is that,
13 this is also questionable that whether such kind of contracts, the smart contract or whatever
14 type of contracts to the blockchain we are seeing, those will be considered by the court as
15 written contracts or not? And at some point, in time those will be challenged on that ground
16 also that these are not the return contracts

17 **SACHIN MALHAN:** I see. Sorry Smita yours.

18 **SMITA JHA:** There is only one point that I wanted to add with regard to conflict of laws
19 principle. The baseline assumption for that is that every jurisdiction even if conflicting will
20 have some law around that. There are jurisdictions who have not addressed crypto assets at
21 all. In India, we do have certain aspects of it being regulated in the sense there's something on
22 KYC front, there's some bit around taxation, there's some requirement for disclosure. But do
23 we recognize it as an asset class, as currency, as commodity. All of that discussion itself is all
24 kind of up in the air. So that's why even if you choose a jurisdiction which is outside the
25 country, how are you going to...what's your touchstone or reference point for resolving that.
26 So, that becomes very, very important. And you know relaying it back to Ashish's point that
27 we need a common platform. We need that harmonization and sort of some sort of uniformity
28 in addressing, how do you see, or how do you categorize virtual digital assets across the globe?
29 That's going to be important.

30 **SACHIN MALHAN:** And you know, one thing that immediately jumps up is that where you
31 have this sort of uncertainty, this lack of uniformity, this variance in terms of what constitutes
32 a valid arbitration agreement or even a clause. I presume that's also where people try to
33 innovate. I think there would be a range of providers, platforms that would come up with

1 solution that sort of say we can secure against this. Is that fair to say that this is a way in which

2 entrepreneur sort of respond to the uncertainty that comes up when you have things like this?

3 **ASHISH CHANDRA:** Well, entrepreneurs don't care about legal uncertainties, sorry, I'm a

4 bad man in the house, but I think they do care about the business and economic and social

5 uncertainty. But I think let's divide this entire issue of dispute resolution in the blockchain

6 world. And again, I'm a fan of trying to help understand your concept with the older example.

7 Let's say you want to transfer Rs. 100 from your UPI to my UPI handle. Now you are entering

8 into a payment settlement system. You may be on Google Pay. I may be on WhatsApp pay. So,

9 when you the entry gate of the backend payment system would have terms and conditions. But

10 when you have clicked Pay rs100 to Ashish@whatsapp.com and whatever, then you are not

11 operating on a written contract, you're operating on a code which is called a self-executable

12 code. Once you have pressed in the button, unless the technology fails you will be transferring

13 rs100 to me. Similarly, when we talk about smart contracts, right? Smart contract is just a mis

14 normal. These are self-executable code that once you give the instructions to a code, the code

15 will behave the way it has been coded by a developer. You cannot intervene in that unless you

16 block electricity. Now the dispute I don't think will happen when the code has started to

17 execute or validate or record a transaction. The dispute will always happen between you and

18 the gatekeeper of that code. That is why you would never see any commercial dispute or

19 arbitration between the user and a decentralized exchange. Most of the disputes happen

20 between a user and a centralized exchange wherein the centralized exchange is run by human

21 being, they are the custodian of your crypto like FDX. They will misuse it. They will be cyber

22 hacking and stuff like that. You will have a grievance, you will have an entity, maybe in

23 Bermuda, maybe in Seychelles, wherever to sue. Then you will go to expensive lawyers to find

24 your... that is where this arbitration will happen. But when the courts start to execute there is

25 no arbitration.

26 **SACHIN MALHAN:** But there are so many people buying off centralized exchanges. That is

27 the reality today.

28 **ASHISH CHANDRA:** Well, I think more people are buying on decentralized than I mean

29 centralized. That's the reality. I mean those who are novice like you and me, we need to have

30 some human curated like, no, I can't even go and buy a sweet shop unless my wife accompanies

31 me. So, we need some curation from human being to take some decision on which crypto to

32 buy? How to buy? Who to call? Who to abuse? But I believe that 80% of the worldwide

33 transaction in the crypto domain is happening on decentralized exchange and not on

34 centralized.

1 **SIRAJ OMAR S.C.:** Can I just follow up on that? So, I agree completely and just take a step

2 back. The problem here is we have a new way of doing things. A new concept, a new paradigm

3 but we're still operating on the old way of resolving disputes. We're still talking about New

4 York Conventions and the requirements under the New York Convention. And that is the

5 problem. And I don't think to follow on from Ashisha's Point, I don't think the entrepreneurs

6 are going to be bothered about structuring their product to fit the legal structure. I think it's

7 the onus is on the legal framework to innovate and to take into consideration these new

8 developments. So, I'll give you an example. If you are talking about a smart contract which is

9 executable code, a self-executing code. And let's say there's an arbitration agreement that's

10 embedded in that code. Is that a written arbitration agreement for the purposes of the New

11 York Convention. And that may have implications if you need to resort to a court to enforce

12 the outcome of that arbitration. It's less of an issue if the arbitration is or rather the execution

13 or enforcement is done on chain, but that is nub of the problem. You're trying to fit a new

14 concept within all paradigms.

15 **SACHIN MALHAN:** But these old paradigms are still very much in play. So, I'm sure as

16 lawyers you would see time and time again issues coming up which unfortunately our issue is

17 brought to the old paradigm, the courts. And how do you... this transitional stage that we are

18 in. How are you navigating that in your practice? Christoph, you?

19 **CHRISTOPH KAUFFMAN:** I had an interesting hearing. I think it was a month ago it's a

20 German litigation. And in that case, we are the Claimant and my party's claiming that the other

21 party... we're not claiming he's a criminal, but let's say he promised a lot of things that he

22 couldn't perform. So, I think what I've experienced is we don't have any special specialized

23 judges in those cases, and you really have to structure your briefs and really in an easy way

24 explain how the entire crypto world is working. And I think it's not that easy, but however, the

25 judge's kind of tend to and then that's for us, as lawyers, to make it easy for the Judge to decide

26 on the case. I think we can get there. And that is where arbitration comes in. Because you can

27 have judges who are well educated in that area and who knows, who know what a blockchain

28 is, and who know what cryptocurrency is, and what that means and what comes with it. And I

29 think that's an advantage that should be used because explaining that to a judge, it was

30 possible but a challenge.

31 **SACHIN MALHAN:** Have you seen it, have you seen examples of people coming up with

32 solutions. I've been hearing about people who build networks where the arbitrators on the

33 chain, they can edit the chain as well so they can ensure enforcement. I have been seeing some

34 examples of this popping up where people are trying to create solutions that are within the

35 future paradigm. Anyone who can share perspective on that?

PAWAN LADDHA: I would share another example where in the system fails when everything is possible but what will happen and there is smart contract or the arbitration to the smart contract when the decision will be overturned because the notice was not sent like Ashish was saying it is a code. Once code is written the system will perform. It may be a non[UNCLEAR] arbitrator who will make a decision and return the cryptocurrencies or complete the transaction or reverse the transaction. But when it will be taken up to the arbitration then that time maybe one small ground that the notice was not served. The decision was immediately taken without serving the notice to the other side. So, I think somewhere the process has to evolve.

CHRISTOPH KAUFFMAN: Yeah. I have to say that I agree. I think there are some solutions out there, design chain arbitration solutions. I wouldn't call it... I mean, in the sense of New York Convention, I think it's not a real arbitration if the New York Convention kind of gives you the real arbitration. So, in the state sense, arbitration right. Because the right to be heard is a problem that the parties do not know what exhibits were submitted at least from my understanding to the arbitrators. You don't know who the arbitrator is, and there won't be any judgment that you can read you just see the outcome which might be that some coins get deducted from your account. And that is something which is not enforceable, and you cannot apply neither the UNCITRAL Model Law rules or the New York Convention to it. So, I think there are certain things that these startups have to work on in order to make it more workable, more legal.

ASHISH CHANDRA: Actually, there is a startup, not in India course so I haven't really tested them, but I was listening to a podcast, and I can share that with Niti, and she can share with others. So, this guy has actually built a decentralized dispute resolution protocol. So, it's like you can submit your dispute on a decentralized blockchain. I forgot the name, but it was very interesting 1 hour podcast and I'm happy to share that with MCIA. And then she can share with everybody. That's like one of the innovations which lawyers partnering with engineers are bringing in solving dispute resolution by using blockchain as a technology.

SACHIN MALHAN: Can you elaborate on that when you say we are solving using blockchain itself? You are solving on the blockchains. Can you just explain what does that look like, as opposed to dispute on the blockchain going to traditional arbitration?

ASHISH CHANDRA: Look, I haven't really used any platform. So, my discussion would be more academic as a curious guy as such. So, I believe let's I mean simulate, let's say you and I are fighting that who owns this particular pencil, right? We have a contract. And we have some exchange of emails and all. And now we want to... now we are very funky lawyers, funky guys

and we want to go to the blockchain based arbitration. So, what we do is that we will knock the
door of that kind of blockchain protocol. Hey, say, we want to use your… okay say your case
has started a,b,c,d 1234 is a docket number. Start submitting documentation. So, I submit my
proof. You submit your proof. Because your arbitration is more the evidence has to be in
writing. It's not about trial court as such. So, I submit my document. You submit your
documents. So, each of the document would get a cryptographic code. Now, once I have
submitted that document, I can't tamper that with. You can't tamper that with. And then they
have plenty of arbitrators who are let's say for a Bitcoin you need validators. You would need
people who mine Bitcoin who are valid in transaction. Similarly, you would have multiple
arbitrators empanelled on the blockchain and they would be totally anonymous. They'll say
your facts will be sent to let's say 50 arbitrators. Anonymous. You will not even know whether
they are in India or they in Germany or US and all. So, if you get 26 votes out of 24 from those
arbitrators who have the same fact non tempered. You win the case. So that is something which
I believe they are building, or they have built already. I will share that.

SACHIN MALHAN: Yeah, there's some very interesting models around this sort of jury, or
digital juries where anonymously things are sent to group of people. They have been using the
system for machine learning in terms of trading data. And now they are looking at these sorts
of Voting Systems for disputes and dispute settlement. Super interesting. So here you have a
space which is changing almost every day and you're trying to keep up. You're trying to
respond to that. But let me ask you to put on your hat as just a futurist, looking out at how is
this field changing. When you look at it maybe I will ask you Smita, when you see these changes
which are happening so fast. How does regulation respond to this?

SMITA JHA: I think straightforward response right now is that we are seeing positive
changes. Speaking of it from the Indian context under the G 20 Summit that happened, the
Reserve Bank of India was completely against crypto assets and all that. There was a very clear-
cut statement, which was made by them saying that this is not something that we approve of.
They did try to go ahead to the extent of banning it and of course the Supreme Court revering
it. But after that no real concrete steps were taken. And then suddenly in August and
September we see the Indian Government taking the initiative and calling out to the world that
let's put in uniform framework for dealing with crypto assets and all. So, we are seeing Winds
of Change. We are seeing some form of a recognition that has been provided to these virtual
digital assets and all. The key point that I still see, which remains to be sort of discussed,
debated or resolved is the difference between… so, wherever their human intervention,
whether it's a centralized mechanism or if you are talking about stable coins or anything that
operates within that regime, I believe touch points for regulations are easier. But the moment

1   we get into a decentralized regime or dealing with crypto assets which is nothing but you and

2   I creating those blocks one by one and a third party authenticating it. That really goes out of

3   the domain for any regulator to regulate and that part becomes tricky. I am sure, there will be

4   innovation which will take care of it but purely putting it in terms of what's happening and

5   how do we see this evolving in the centralized space and in the stable coin space, we would see

6   a few aspects that will come together. We can expect the FATF coming up with very uniform

7   set of KYC standards that need to be followed by all the jurisdictions which are parties to FATF.

8   Second thing is going to be around, and this is a reference that we can also draw from some of

9   the other international institutions what they've done in the banking domain. For instance,

10 the Basel Committee, the BIS, putting forward the standards for some of the prudential norms'

11 settlement standards and all of that. So, we can expect some of that uniform set of standards

12 coming out. And then the industry taking cognizance of that and trying to sort of self-

13 implement it. Because as much as it is important for the product to flourish sometimes, we've

14 seen entities or participants in the ecosystem also take a step back, try to be more regulatory

15 kosher so that is not abruptly stopped. So, that's also something that we have been seeing and

16 there is a need for an industry body I believe. There's Web3 Bharat which has come in for

17 some of the Indian exchanges and I believe Ashish would be a better person to talk about that

18 for on the advocacy front and things like that. So these are some of the points which we see

19 and...

20 **SACHIN MALHAN:** Just one thing to Siraj. You're coming from a jurisdiction. I think you're

21 from Singapore, right? And in Singapore, Singapore's, try to position itself as being at the

22 cutting edge of the arbitration movement. Are you seeing jurisdictions like Singapore saying

23 we can address this issue? We can be the preferred place for.... because it is a significant leap.

24 It's not like extending the same service that you had to something, because things are so

25 different. The innovation demand is so high. But how do you see jurisdictions responding? Are

26 there some that you're inspired by?

27 **SIRAJ OMAR S.C.:** So first of all, Singapore wants to be the cutting edge for everything some

28 with some success, some with not much success. But in terms of this well, you're looking at

29 arbitration and you're looking at the courts. And in arbitration what we've done is SIAC, the

30 Singapore Institute of International Arbitration Centre we've gotten certain crypto entities to

31 incorporate our rules into their standard contracts. But where I think there has been

32 innovation is in the courts, because what the courts have done is they've tried to introduce or

33 try to apply the existing framework to this new norm. So, I'll give you two cases. There was a

34 case in 2022. Two cases in 2022 in fact. One where there was a party who had crypto assets

35 stolen by someone outside the jurisdiction. And the courts allowed for the court papers to be

1 served outside of jurisdiction on crypto exchanges and payment service companies. But they
2 used very traditional principle, which is that these entities had assets in Singapore or had
3 business in Singapore. There was a subsequent case where we talked about theft of NFT,
4 nonfungible tokens, and the wrongdoer was known only by his online handles. We didn't know
5 who this entity was, and the Court allowed service by way of the Twitter account, Discord
6 account and also on the Crypto Wallet address. And they also recognize the NFTs were capable
7 of giving rights to proprietary rights, and that those rights could be enforced or protected by
8 way of injunction. So again, you see this phenomenon of using existing legal principles and
9 existing legal relief to help parties navigate this new landscape.

10 **SACHIN MALHAN:** And I presume that even if and I think that this is coming back to the
11 point that Ashish, was making about the fact that how do you have a resolution framework
12 that's actually future facing as opposed to taking the old paradigm. Even if you take that, I
13 think this increases the tolerance or the understanding of the jurisdiction of the system so that
14 even if you do start to see really next Gen dispute resolution built right into these systems even
15 distributed systems, the courts are likely to understand it better, navigate it better. So even if
16 they're not taking on the substantive disputes themselves, they are sort of not at least crushing
17 something, because by then they will have evolved principles to deal with.

18 **SIRAJ OMAR S.C.:** So, there are two aspects to this. One is the actual dispute resolution.
19 And the second is the enforcement of the result of that process. Now if both those aspects are
20 done on chain as it were. Then there isn't an issue, right? The issue arises where you have the
21 dispute resolution in the crypto sphere, but you then need to come out into and try and access
22 the courts for enforcement that interplay has not been worked out. And that's where you have
23 problems.

24 **SMITA JHA:** So, on the enforcement bit. I just want to take a minute on that. One of the
25 things that's coming out as part of the proposed financial regulation is that the IMF has
26 recommended that digital virtual digital assets will not have the validity of a legal tender. So
27 that really takes us back to who do you enforce it against? And that becomes a real mood point.
28 So, if we are looking at regulation, the regulation is mostly going to be around setting some
29 standards on monitoring and how to go about operating it. Some form of dispute resolutions,
30 not in terms of the ability to enforce a claim, but mostly contractual claims against the
31 ecosystem participants.

32 **SACHIN MALHAN:** Understood. So, let me just... Christoph you want to add something to
33 that?

1

CHRISTOPH KAUFFMAN: I just wanted to add to your point. And I think even if you have an on-chain dispute resolution tool, including enforcement. The question still is, is there a *res judicata* effect, right? Does it kind of hinder you from filing a claim in court? Is it binding? And maybe you have a contract. I think it's contractually binding, but not with a *res judicata* effect.

SACHIN MALHAN: So, before I come to some closing remarks, this is a question I wanted ask, which is I think, one thing that is happening and I'm going to borrow something that was mentioned earlier is that even to be a practitioner in this space requires a certain level of literacy, technology literacy, system literacy, along with the legal literacy, right? Like you need to have that, I mean you don't necessarily need to understand the code, but you need to have that level of literacy. To be an innovator requires an even higher standard. In terms of you really need to be existing at the intersection of these worlds to actually understand what's possible. So, there are these new demands on practitioners and innovators. How do you and this is for everybody here, which is how do you just want to hear from you, how do you develop your own capacity? How do you maintain your capacity? I'm going to start off with the practitioners then come to you. But how do you, maybe I will start with Smita, how do you stay at that cutting edge? Especially because there's so many craft demands so many different skill set demands?

SMITA JHA: I think you need to work towards becoming that 18th person who understands blockchain. How do you do that? There are tools which kind of take you to the very basics of what blockchain is. And then you build on that as a lawyer in terms of applying your first principles. So, for me, how do I try to understand blockchain or think about what's decentralised, what is centralised, what is stable coin and all? I go to the basics. For me, it's kind of impossible to sit through a podcast of an hour-long podcast, look at videos and listen to experts telling me. So, I would rather prefer some sort of an animation just showing me the fund flow. And I would follow that, followed with some sort of reading on topics and that kind of helps me. And most importantly, I try to apply first principles and follow my instinct in terms of what is happening.

SACHIN MALHAN: Thank you.

PAWAN LADDHA: So let me add it here. Let's understand the cycle the way I understand the cycle. The story starts from a quote, which Ashish said that it's an irreversible concept, once written then it has to be executed. But once code is written by some software developer.

Then it comes to when you want to... in blockchain it happens when you want to alter it, modify it then you need consensus. Which means that if half people have agreed and half people have not agreed then you are in dispute. Now why the alteration and modification is required? That's the reason I'm just answering the question. That how I do this study. I just try to understand the flow. So how the dispute? Why the dispute is coming via alteration and modification is happening? The reason could be different. In blockchain the reason could be that somebody wants to upgrade the system, wants to change the functionality, add the functionality. The reason could be that there are some scaling debates. Scaling means like bitcoins are in shortage or somebody wants to reduce the block size then there is an adoption problem. Because if you reduce the size the adaptivity will be impacted. Then there could be some other disputes like the arbitrator is trying to reverse the transaction and the others are objecting that this is a code's law which means it is irreversible. You can't alter it, modify it. Whatever is there has to be executed. So here the dispute is starting. Now you need to solve the dispute. There are two mechanisms or multiple mechanisms on chain off chain. So, if you go to on chain, then there are legal issues. In on chain somebody can solve the problem. The speed it can be expedited. The dispute can be solved with some speed maybe instantly. The arbitrator may be given the powers to solve it. Like you and I are in dispute and the arbitrator must be given the power so that he can complete the transaction or reverse the transaction. He can issue the cryptocurrencies if those are the subject matter of dispute. But again, it will be challenged in the court. On chain has two major issues. One, Christopher said is *res judicator* which means, you have applied for the resolution in on chain and at the same time you can go to off chain also in court of law. And second one, is that the order should be reasoned one. In one chain it is not reasoned one. It is just... there's no reason, there's no explanation. And in off chain, off chain there are number of problems. Certain jurisdictions are not accepting and citing the public policy issues, and they're not giving the orders in favour or maybe not giving the right orders wherever the orders are being given. Just as I cited one example that if the arbitrator is given a rightful order, but still the order will be overturned because the notice has not been served, the order is issued. So, this is how the dispute will be coming and getting solved and getting challenged in number of ways. That's how I complete my way of understanding. To understand the entire flow automatically, I'll get my inputs about my legal arbitral...

SACHIN MALHAN: Got it, got it.

SIRAJ OMAR S.C.: I think the first thing I'll do is ask Pawan for a transcript of what he just said. Because I think that was extremely clear and logical. But it comes back to what Smita

1 said as well, you read up and you try and break it down to first principles and understand
2 it. But where that fails, you hire someone young who understands the concept.

3 **SACHIN MALHAN:** That usually works.

4 **CHRISTOPH KAUFFMAN:** I just want to add, you said, "Code is law" and it is a statement
5 made by a Harvard Professor. His name is Lawrence Lessig. That's correct, yes. And I think
6 it's an interesting statement that was made in, I think it's based on his book written in 1999
7 and the article was published in the Harvard Business Magazine, "Code is Law" in 2000. And
8 that was the time when the Internet was still something new and NEPSTA was there. You could
9 get music illegally and everything was unregulated. And he drafted this article, which has an
10 interesting idea and a couple of interesting ideas. And he says, "the regulator of the Internet is
11 the code". And I think that's true. And he also said that the legal profession and the code must
12 work in tandem. And if you kind of look back at the situation, what he said, I think you can
13 apply that to blockchain and crypto, it's new to us. And it's a new technology. But I think when
14 the regulators, they are picking up in Europe, they just introduce the MIKA regulation, which
15 is a regulation for cryptocurrencies. And I think then we kind of lose the fear of the new things
16 in our life.

17 **ASHISH CHANDRA:** Yeah, three things. Number One, lose money in crypto, that pain will
18 really force you to learn a bit more. Okay, continue losing. But that's one. Number two, is that
19 make friends in the tech domain, right? Because our life is only just dining and drinking with
20 lawyers that's not going to help you. Make friends with some good techie guys, understand
21 their language. They will help you learn this subject matter more than anyone. And third, I
22 think just be present in the world. Attend all these conferences, be on Twitter, follow, write,
23 Twitter handles. I mean, I would say that 90% of my understanding of let's say crypto, what's
24 happening in India, out of the world has come actually from Twitter, following tweets and
25 following some Gurus, following some institution, then on the streets. So, three things, lose
26 money, make friends with tech, be on Twitter.

27 **SACHIN MALHAN:** That's really helpful. And I remember being in a conversation with
28 Pramod Verma. You might know Pramod Verma who is the architect of Aadhaar. And he was
29 saying that he said, there's a really big shift and I don't think lawyers have understood this
30 shift. And maybe lawyers have. But what he said was that... there was a time when everything
31 used to happen offline, and then you had to prove it happened or didn't happen, and who did
32 it and who did not do it. And so much of the practice of the law became around doing that.
33 And now when so much is happening digitally, what happens to all of that? Why can't you re-
34 engineer the entire system to produce verified information, to produce credentialed

1 information? Why can't you build new systems based on that credentialed information right
2 there and then instead of taking it offline and then having to deal with that? So, I want to end
3 by just getting some last one thought, 30 second hot take from everyone and the question I
4 want to ask you is, one aspect how is this going to most profoundly change your own practice?
5 When you look at your own work, the work that you've been doing, and you think of the next
6 three years, what do you think in your practice is going to be the biggest change because of the
7 evolution of this space? I'm going to start off maybe with whoever wants to go, we'll popcorn
8 it.

9 **ASHISH CHANDRA:** I can just start by saying three years I want my stock option to be 100
10 X.

11 **SACHIN MALHAN:** That's pretty straightforward. That's what you want. I think it's the
12 practitioners who are like what's going to happen.

13 **SIRAJ OMAR S.C.:** I don't think there's... this might be controversial, but I don't think
14 there's going to be revolutionary change in the dispute resolution sphere over the next three
15 years. I think it will be incremental. I think people are still trying to find their way around this,
16 but I don't think it's going to be revolutionary. I think it's going to be a process that will take
17 some time.

18 **SACHIN MALHAN:** Got it. And you think, it's that second part that you mentioned it's the
19 enforcement where it's still going to have to be navigated, have to be negotiated?

20 **SIRAJ OMAR S.C.:** Yeah. I think people need to work out how you transition back and forth
21 between these two worlds.

22 **SACHIN MALHAN:** Yeah. Online, offline, but also resolution and enforcement.

23 **SIRAJ OMAR S.C.:** Well, Resolution and enforcement, online offline and how they interact.

24 **SACHIN MALHAN:** Got it. Thank you.

25 **PAWAN LADDHA:** So, I was listening in the previous session also about the downside of
26 AI. So, adding to that and continuing with here. What I am going to do is that somewhere I
27 need to work on responsible AI. Second is that I need to understand some level of coding. So
28 that I can help the smart contract to be drafted the way I want. That could be the next level
29 of skill.

1 **SACHIN MALHAN:** Understood. So, going from the practitioner to the innovator. Right?
2 Were those worlds sort of get compressed, right, which is now you're drafting the contract in
3 a way that it actually becomes the enabler of the system?

4 **PAWAN LADDHA:** If people like Ashish are there and somewhere without me knowing as
5 an arbitrator, I need to have the smart contract drafted in such a way that I can win the
6 arbitration.

7 **ASHISH CHANDRA:** He is saying that in future contracts will not be written, contracts will
8 be coded. So, unless it's like understanding the coding would be as essential as you
9 understanding how to operate Microsoft Word.

10 **SMITA JHA:** Correct. For me, I'm a fintech and banking finance lawyer. So, it doesn't really
11 change a lot for me. What it does change for me, is that it makes my life easier in terms of use
12 of DLT or blockchain for some of the property related documentation that will go on. I don't
13 need to do those cumbersome type due diligences any more or look at those reports because
14 to the extent there is authenticated self-verification, that's there, which is good enough
15 evidence. It just makes my life easier. It helps financial services a lot in terms of KYC related
16 efforts which go on and how cost sensitive they are. So, I see financial services booming. I see
17 V&F booming, and that makes my life great. More work.

18 **CHRISTOPH KAUFFMAN:** I think the main problem that human beings have is when
19 there's new technology or something new in their life, the question is how do they I mean, how
20 do they get along with it? Right? And so, I think the technology is there, but we have to work
21 with it, and I agree with what you said. I think when it comes to the profession of law, we have
22 to accept that there's a lot of development within a short period of time, and we can work with
23 that and actually make our life easier. But still, there's a lot of people who are kind of reluctant
24 to use the new technology and also how kind of the dispute resolution world will change
25 depends on how people are willing and that is something that we could also listen to in the
26 panel before, is how they apply the new technology?

27 **ASHISH CHANDRA:** Say from an India perspective and it's a news as recent as I think a
28 couple of days back. I think there's a good, bright future and the testimony that things will
29 change for good. And testimony is that the National Financial Think Tank, I think
30 NFPFP...NIPFP, right which is under the pages of Ministry of finance. So, they have recently
31 opened up a job requirement. They're hiring lawyers with background of crypto assets and
32 blockchain. So, this shows that two years back it was a taboo. It was to be banned. But now
33 they're hiring lawyers. Whoever is interested can go to their portal, apply and just make sure

that you do the right thing for the country, make right regulation, educate the government well, so that this industry grows. So, this is the first small step which I, as a lawyer, could foresee...because government is hiring lawyers. With those skill sets.

SACHIN MALHAN: The joke is that I know the hiring manager who put that up, and she was complaining that she wishes she hadn't put it up because the applications she's got, and she has no idea what to do with them. They have no connections to cryptocurrency, law...

ASHISH CHANDRA: Just give her a tip that you say that along with that, send me your crypto wallet address and not in 64. I mean digit bit, in a domain name kind of stuff. So, I think the application will get reduced by 98%.

SACHIN MALHAN: That's why I think we also be worried. But I think to close we'll say that we are entering into a space, into a time when multidisciplinary intersectional work becomes absolutely essential. To really operate, you have to have the ability to go into the technical side. And the technical side doesn't only have to be digital technology, whatever it represents. And you have to cultivate that mind that bridges and is able to bridge. And I think that's going to challenge our education system and our universities systems in a very big way because you've got the separate law universities that aren't sitting in the middle of a broader, multidisciplinary University. That was good, fun time. And now maybe that's outlived it's purpose. So just want to thank you so much, everybody. And we'll quickly do, take a couple of questions? Yes, right back.

AUDIENCE 1: Thank you for such an interesting session where its keeping me here and not drinks so kudos to you all. I have a comment cum question as an... not as an innovator but as an arbitration practitioner who loves to innovate in the space of our arbitration clause, right. Siraj will relate to it for crypto disputes the trend that I have seen with some of my clients is what they are trying to do is to resolve issues of conflict of laws. To resolve issues of jurisdiction, resolve issues of seat and governing law by sort of over engineering their arbitration laws that often obviously cannot does not resolve all problems. But the problem that I have is isn't there a need somewhere to have taking on from this discussion, to have homogenized system of figuring out crypto issues. Because you have a situation where, for example Ashish... to manage the risks of a particular company crypto issues would have, there'll be issues of mass claims, there will be issues in respect of there'll be one blockchain, and there might be sort of jurisdiction or some kind of disputes along the chain. And then that will pass to different jurisdictions. And then you have different laws in respect of arbitration clauses. For example, in India, you need to stamp your arbitration clauses. In Germany, you mentioned that you need to have a separate arbitration clause. So, while we, as arbitration

1 practitioners sitting in these conferences are trying to figure out how to draft an arbitration

2 clause, and then think of conflict of law issues and how to resolve issues in metaverse. There

3 is a need to for actually the regulators across jurisdictions to come together and specifically

4 address how to manage crypto disputes of blockchain? I don't know.

5 **ASHISH CHANDRA:** So, spot on example to what you are saying because crypto disputes

6 come in various form and shape. But I think to your point one example is let's say, when you

7 are validating a transaction, let's say on Ethereum blockchain or a polygon blockchain. So, you

8 have the validators right. If you successfully validate a transaction, you get rewarded with the

9 new Ethereum tokens. But when you have to enter into the validation pool, you have to do

10 called a proof of stake. So, let's take example of Ethereum protocol. You need to stake 32

11 Ethereum before you can enter into the validation of the Ethereum transaction. If you mess

12 up, you will lose 32 Ethereum but if you do well, you may gain let's say five Ethereum. There

13 could be dispute whether the way you have validated the transaction is accurate or not? If

14 Ethereum are burned 32 Ethereum, one Ethereum costing 1.5 lakh. So, you are down 50 lakh

15 rupees. 50 lakh rupees in five minutes you are down. So those disputes are very difficult to be

16 addressed in the traditional form of arbitration. Like Pawan said, the dispute resolution itself

17 is coded. It is the validator community who would decide whether you have done the right

18 validation or not. I don't think it will be solved in the current form of arbitration because the

19 dispute happens when the code starts to run. So that's the live example. You can Google it and

20 you will find out lot of debates happening on the same dispute because in five minutes you are

21 losing 50 lakhs rupees.

22 **SMITA JHA:** Sorry, Ashish, I had a fundamental question on that, and it could be ignorance

23 as well or a nice question. But I would ask so, you know when we are talking about arbitration

24 it necessitates two parties right. If I as a user of cryptocurrency, if my code... if the

25 authentication was not or the validation was not properly, who exactly is my counterparty in

26 a decentralized?

27 **ASHISH CHANDRA:** I wish I would have the question because this is decentralized. You

28 have the word decentralized and anonymous. See it's not decentralized and de anonymous. It

29 is decentralized and anonymous. I... see the only thing which you could have is that

30 somebody... you can't file arbitration. You can file a civil suit. You can file a criminal suit. Ask

31 for discovery. The courts will find out with some investigation, Hey Ashish Chandra is the one

32 who coded for the Ethereum protocol, or he was in some party he said that he is a validator

33 oh, catch him. It's how you catch the Money Trail in the money laundering. So that is how I

34 think things will surface out. But you will not know who is a counterparty, unless through

35 investigative techniques, you get to know. Because this is decentralized and anonymous.

1 **AUDIENCE 1:** Ashish, on that point there wouldn't be consent to arbitration right? Even if
2 you investigate and find that and he was a validator after he comes down to consent of party.
3 So, there you have a basic issue in terms of resolving.

4 **ASHISH CHANDRA:** Like I said when you are in the code then the traditional arbitration
5 doesn't work. When you're outside the code, you are talking to the gatekeeper of the code the
6 arbitration were between you and the gatekeeper like between you and Google Pay. But once
7 you say I want to transfer rs100 from my UPI to Ashish Chandra UPI, it's in the code. Then
8 arbitration won't work. Maybe RBI guidelines for payment settlement protocols may work.
9 But that's centralized.

10 **SACHIN MALHAN:** We are at time, but any last questions? Thank you so much. Thank you,
11 everybody.

12

13

14 **~~~END OF SESSION 5~~~**

15