



**Arbitration clauses excluding jurisdiction of Courts need not have words like
“only”, “alone” etc.,**

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Drafting of Arbitration clauses require expertise to avoid unnecessary litigations relating to interpretation of those clauses when disputes arise between parties. While drafting domestic Arbitration clauses it is necessary to include the place/seat of Arbitration, number of Arbitrators, Qualifications of Arbitrators (if any), procedure to appoint Arbitrators, language of Arbitration and Arbitral Institution etc., When we draft an International Arbitration clause we need to include seat of Arbitration/ procedural law, Law Governing the arbitration agreement, Law Governing the contract, language of Arbitration, number of Arbitrators, Special qualifications of Arbitrators (if any), appointment procedure of arbitrators, Administering arbitral institution if any etc.,.

In Addition to that, parties also incorporate the jurisdiction clause to specify the city and its courts, having supervisory jurisdiction. Even after choosing a seat, you may require to choose the city, since seat will only specify the country, where arbitration will take place. In domestic arbitration clauses to select a particular city and to exclude the other cities from getting the jurisdiction, these clauses are incorporated. In general sense, Jurisdiction of a court cannot be decided by consent but in contract/arbitration matters, parties can decide the jurisdiction of the court, to certain extent. Even though the said right is not absolute, in general sense it is possible. For example, you can say “Courts in Delhi will have the jurisdiction” but you cannot say “Supreme Court of India in Delhi will have jurisdiction”. Because jurisdiction of a Specific court is decided as per the laws of the country.

Not need for “Only” or “Alone”: There is always a confusion in the minds of the parties that when excluding the jurisdiction of other courts except the courts situated in a specific city, is it necessary to include restricting words like “only” or “alone” etc., For example is it necessary to state “For all the matters arising out of or relating to this contract, Courts in Delhi *alone* will have jurisdiction” or is it sufficient to state “ For all the matters arising out of or relating to this

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contract, Courts in Delhi will have jurisdiction”. Which one of the above statements effectively exclude the jurisdiction of all other courts, except the one chosen by the parties? The answer is both are of equal value in the eye of law.

In a recent case Indus mobile Distribution (P) Ltd Vs Datawind Innovators Pvt Limited reported in 2017 SCC Online SC 442, the Hon’ble Supreme Court of India held that the words like “only” or “alone” etc., are not necessary in such clauses to exclude the jurisdiction of other courts, other than the courts in the seat chosen by parties. The said Judgment held that the seat chosen by parties, need not be a place, where cause of action arose, since the arbitration seat can be a neutral one. This reasoning is given for the reason that once parties chose a particular seat, they indirectly exclude all other courts from getting jurisdiction over the matter.

Are not hit by either S.23 or S.28 of the Contract Act: The said judgment followed the earlier Judgment of Supreme Court of India in Swastik Gases (P) Ltd., Vs Indian oil Corporation Limited (2013) SCC Online SC 564, which confirmed the judgment of the High court of Rajasthan rejecting an application seeking appointment of Arbitrator, when the jurisdiction clause specified Kolkata. In the said matter an application was filed by a party in the High Court of Rajasthan seeking appointment of Arbitrator under S.11 of the Arbitration and Conciliation Act,1996, when the Contract provided for Kolkata as the seat. The contention of the applicant was that; the clause does not say “Kolkata only” and hence other courts also have jurisdiction. But the High Court of Rajasthan rejected the contention of the applicant, which was later confirmed by a three-judge bench of the Supreme Court. The said Judgment also held that such clauses restricting the jurisdiction are not in any way hit by either S.23 or S.28 of the Contract Act.

Not Against Public Policy: The above said Judgment was followed by various Judgments of the Supreme Court including B.E. Simoese Starabug NieDenthal and Anr Vs Chattisgarh Investment Limited as reported in (2015) 12 SCC 225. In the said judgment, Supreme Court of India went one step further and there is nothing illegal or against public policy, in those clauses restricting the jurisdiction of the Courts, having supervisory role.

Duties and Powers of Supervising Courts: The General powers of the supervising courts over an arbitration proceedings include appointment of arbitrator, handling of challenges over the appointment of arbitrator, interim orders, replacement of arbitrators, challenging of the arbitration awards etc., This is a widely accepted global practice, in the matters of arbitration.

