



SCOPE OF ONLINE ARBITRATION IN INDIA

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INTRODUCTION

1. Concept of Online Arbitration

Online Dispute Resolution (ODR) is a branch of dispute resolution which uses technology to enable the resolution of conflicts or disputes between parties. It predominantly involves the application of arbitration, mediation, negotiation or a combination of any of the methods. Incidentally, ODR is recognised as the online equivalent of Alternative Dispute Resolution (ADR). Nevertheless, ODR can supplement the conventional means of settling differences or conflicts by employing novel practises and online technologies to the process.

ODR is yet a fairly recent development. It is an extensive field, which may be directed to a range of disputes; from interpersonal disputes including consumer to consumer disputes (C2C) or marital separation to court disputes and interstate conflicts. It is said that proficient mechanisms to resolve online disputes will impact the development of e-commerce. Although the application of ODR is not limited to business to consumer (B2C) online transaction disputes, it seems to be apt for such disputes, since it is logical to use the same medium (internet) for the settlement and solving of e-commerce disputes when

parties are located faraway from one another.¹

ODR can be defined as the deployment of applications and computer networks for resolving disputes with ADR methods. Both e-disputes and brick and mortar disputes can be resolved using ODR. At the moment there are four types of ODR systems:²

1. Online settlement, using an expert system to automatically settle financial claims;
2. Online arbitration, using a website to resolve disputes with the aid of qualified arbitrators;
3. Online resolution of consumer complaints, using e-mail to handle certain types of consumer complaints;
4. Online mediation, using a website to resolve disputes with the aid of qualified mediators

Not all of these types of ODR are fully developed yet. Online settlement and online mediation are currently the most advanced of them all.³

ODR is the synergy between ADR and Information & Communication Technology (ICT). It uses computer-networking technology to bring the disputing parties together on an 'online' platform to participate in a dialogue about resolving their issues and conflicts in a more efficient manner, and for

¹ Advct. Dutta, *Origin Of Alternative Dispute Resolution System In India*, Academia.edu, https://www.academia.edu/4371674/ORIGIN_OF_ALTERNATIVE_DISPUTE_RESOLUTION_SYSTEM_IN_INDIA (last visited Nov.26, 2016)

² Esther van den Heuvel, *Online Dispute Resolution As A Solution To Cross-Border E-Disputes : An Introduction To ODR*, www.oecd.org/internet/consumer/1878940.pdf

³ *Ibid* Note 2



which traditional means of dispute resolution were either inefficient or unavailable.⁴

Online Arbitration (OA) is that branch of dispute resolution, which uses technology and internet to facilitate resolution of disputes between the parties. OA is also termed as cyber-arbitration, cybiration, virtual arbitration, electronic arbitration or arbitration online techniques.⁵ This field has appealed plenty of legal scholars since the mid-nineties.

Arbitration involves a decision by an arbitrator, wherein the parties have agreed by contract for that decision to be binding. If OA is adopted by the parties, the arbitration processes utilise email, chat or messaging, audio-conferencing or video-conferencing methods for communication between the arbitrator and the parties.⁶

OA is a combination of conventional Arbitration under Arbitration & Conciliation Act, 1996 along with technological features requiring application of Information Technology Act, 2000.

This paper looks at the various facets of Online Arbitration in India along with the difficulties, advantages and legal complexities that this form of dispute resolution entails. With the increase in number of consumer-seller disputes and the ever rising backlog of cases, the future of resolving conflicts in India is online arbitration. It would allow quick settlements to international as well as domestic business

entities. The imminent need of this form of dispute resolution cannot be discarded.

2. Background

The advent of Internet and the development of the World Wide Web brought in a new era of communication and breaking down of physical barriers. It has changed for ever the conception of human interactions. We can communicate across continents, retrieve information from multiple sources and conduct business seamlessly in a global marketplace. However, just as real world interactions are subject to disputes, the same applies to the context of online interactions.

The courts find it difficult to handle disputes arising in the online context due to a number of reasons including the high volume of claims, the contrast between the high cost of litigation and low value of transaction, the question of applicable law and the difficulty in enforcing foreign judgements. Alternate Dispute Resolution (ADR) has been promoted by courts worldwide because of its speed, flexibility, informality and solution-centric approach to dispute resolution.⁷ However, the tradition tools of arbitration have not been found successful in addressing the complications of web based transactional disputes. The need for a new and effective system gave rise to the introduction of online dispute resolution (ODR) including online arbitration.

Though the internet began in 1969, the need for ODR was felt only in the early 1990s.

⁴ ETHAN KATSH ET AL., ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION 21-33 (Eleven International Publishing 2012)

⁵ Rafal Morek, *Online Arbitration: Admissibility within the current legal framework*, odr.info/cyberweek/Online%20Arbitration_Rafal%20Morek.doc

⁶ *Supra* Note 1

⁷ *Supra* Note 4



During the first two decades, a limited number of people were using the internet for limited purposes. Till 1992, the internet was largely a US centric network, used mainly by academic institutions and the military. Commercial transaction was banned by the National Science Foundation's acceptable use policy. In 1992 the internet got commercialised and disputes related to online transactions started surfacing. The year 1994 saw the first case of spam and also the first internet fraud case. In 1996, The National Centre for Automated Information Research (NCAIR) provided funding for three ODR experiments. The Virtual Magistrate project was aimed at resolving disputes between Internet Service Providers and Users. The University of Massachusetts Online Ombuds Office was conceived to facilitate dispute resolution on the internet generally. The University of Maryland aimed at using ODR in family disputes where parents were located at a distance. In 1999, the availability of various tools made ODR more than just online communication. The ODR industry started emerging and governments realised that ODR can be a solution for many problems originating in the online environment. The e-commerce industry has seen an exponential growth in the last decade and is the real driver for the expansion of ODR. According to Google, 22% of the world's population had access to computers and used internet in 2010, which increased to 44% in 2014.⁸

In India, the formal legal system is not equipped to handle the insurmountable backlog of disputes. The idea of arbitration was introduced to ease the access to justice. The first instance of arbitration introduced the role of arbitrators in dispute resolution

through The Bengal Regulation Act, 1772. The Arbitration Act 1899 was repealed and replaced by the Arbitration Act 1940. Since then, arbitration in India has undergone a sea change with the introduction of the Arbitration and Conciliation Act, 1996 and its recent major amendment Arbitration and Conciliation (Amendment) Ordinance, 2015 allows scope for use of online methods. Online arbitration is a mixture of conventional arbitration combined with the technological features of the Information Technology Act, 2000. The National Internet Exchange of India (NIXI) has used ODR as an effective form of dispute resolution. It is similar to traditional arbitration but conducted over the internet. It is gaining popularity primarily because of its speed and cost effectiveness.⁹

3. Scope of Online Arbitration and its Pros and Cons

The role of technology with regards to the ODR mechanism varies according to the degree of modern technological tools and software applications used, and the balance between the human factor and the electronic element in the process. According to the role technology plays in the process – ODR schemes could be grouped into three categories: (a) Technology-assisted ODR mechanisms, wherein technology is restricted to providing adequate and secure medium of communication and information exchange; (b) Technology-based ODR mechanisms, wherein a full-fledged cutting-edge technology is applied to resolve disputes; and (c) Technology-facilitated online dispute prevention ('ODP') guarantees, which aids in

⁸ *Supra* Note 4

⁹ *Supra* Note 4



reducing the risk of potential e-disputes and enhances trust and security in e-business.¹⁰

E-arbitration generally fall within category (a) since the countries worldwide have not advanced to a stage where the human factor in arbitration, represented in the form of human arbitrator, is capable of being excluded. E-arbitration, in the strict sense denotes the integration of ICTs into arbitral proceedings to the extent that the proceedings are conducted wholly or substantially online. This would include filings, submissions, hearings, and awards being granted or decreed online. However, since such an idealistic perception of e-arbitration is not applicable universally. The ODR providers try to integrate ICTs into arbitral proceedings, with variable degrees, in an effort to stigmatize the process as a speedy, cost-effective, and efficient e-arbitration scheme.¹¹

When compared to traditional offline arbitration, OA has plenty of advantages. Firstly, OA is usually a swift procedure. Secondly, it is cost-effective. Thirdly, it offers round the clock accessibility and availability. Fourthly, it offers a more efficient case management. Fifthly, it is suitable for both small claims and highly complex and high value disputes.

The glitches OA faces in India are the lack of infrastructure and human institutions well versed with arbitration proceedings. Confidence and trust must be introduced to the litigant public who generally prefer courts to arbitration since they are not aware of

arbitration proceedings. Technology gap between the old and the young generation should be shortened to further develop online arbitration. Lawyers should be instructed to not engage in frivolous litigation and encourage clients to settle their disputes amicably via e-arbitration proceedings. Education barrier and lack of access to technology is another main drawback behind implementation of online arbitration in India. OA may not be suitable for resolving all sorts of disputes such as criminal matters and matrimonial disputes which do need other forums for access to justice. However, in spite of the drawbacks linked with online arbitration, it remains one of the most significant methods of resolving Business to Business (B2B) and Business to Consumer (B2C) disputes in the current era.¹²

E-arbitration related concerns are generally divided into technical and legal concerns. The technical concerns relate to technical standards and compatibility of systems, variation in the parties' technical abilities and expertise, security and confidentiality of arbitral proceedings and communications, ability to organize and conduct hearings online, and data integrity and authentication. On a different note, the legal concerns could be grouped into three categories: (a) arbitration agreement related challenges; (b) arbitral proceedings related challenges; and (c) arbitral awards related challenges.¹³

While the technical concerns or challenges are not exclusive to OA, it extends to all ODR schemes. They are of supreme significance in

¹⁰ MOHAMED S. WAHAB ET AL., ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE: A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION 402,403 (Eleven International Publishing 2012)

¹¹ *Ibid* Note 10

¹² E. KATSH & J. RIFKIN, ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICTS IN CYBERSPACE (John Wiley & Sons Inc., 2001).

¹³ *Supra* Note 10



the context of arbitral proceedings owing to the legal and adjudicatory nature of such proceedings, which are normally subject to strict procedural norms that are needed to protect the integrity of the proceedings at large to prevent subsequent challenge to arbitral awards.

The legal concerns and challenges can be mitigated by adhering to proper systems and procedures, which are discussed below.

Arbitration Agreement

Hon'ble Supreme Court in the matters of *Shakti Bhog*¹⁴ and *Trimax*¹⁵ have 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.

As in Conventional Arbitration, On-line Arbitration can either be Ad-hoc arbitrations or Institutional arbitration. In either of the situations, parties or the Institutions should clearly spell out the law governing the contract, the law governing the arbitration agreement, the procedural law, the jurisdiction of courts (whether exclusive/non-exclusive), applicability of Part I of the Act, language of the proceedings, the place of arbitration and other procedural details.

In addition, being an On-line Arbitration, the procedures relating to use of technology have to be either agreed by the parties or laid down by the Institutions. The Institutions acquire further importance as they are in a better position than the individual parties to clearly lay down the details which are required in an On-line Arbitration so that parties who follow the rules of a particular Institution are not faced with any additional difficulties.

It is particularly important to spell out these details because On-line Arbitration, unlike Conventional Arbitration, is not by physical meeting of parties and arbitrators but is a virtual meeting. Extra caution needs to be taken and minute details need to be put into the rules and procedures keeping this aspect in view. Since arbitration proceedings are meant to be confidential in nature, the infrastructure that is agreed to be used by the parties should not only provide confidentiality of data but should also be reliable.

Arbitral Proceedings

Moving on to the second part, i.e. **the arbitral proceedings** which are virtual in nature, it is seen that the procedure which would be adopted by the parties would already have been spelt out in the agreement or the Institutional rules followed by the parties. In addition, the Statement of Claim and defence etc. which need to be sent by transmitting the physical copies can be transmitted in electronic form. They can be sent through emails by attaching PDF files and in addition, signed copies can be later sent through courier. Again, Section 4 and 5 of the Information Technology Act, read with Section 65B of the Evidence Act come to the aid of the parties. Such pleadings can be transmitted in electronic form without losing recognition of law.

It may however be added that in the conduct of proceedings, there could be difficulties such as link failure, system failure, electricity failure etc. which need to be taken care of in the agreement or the Institutional rules so that

¹⁴ *Shakti Bhog Foods Ltd. V. Kola Shipping Ltd.*, AIR 2009 SC 12

¹⁵ *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.* (2010) 3 SCC 1



either a back-up or an alternate provision is made and information/ data fed in the system can be retrieved.

ICC has taken a lead and framed certain Standards for On-line Arbitration which include rules for giving unique file names, recording of dates, retrieval of lost electronic documents, mode of transmission and storage of emails, confirmation of receipt of email and rules for audio and video conferencing.

The procedural requirements of having the virtual proceedings have to be clearly spelt out including the details for exchange of pleadings, video conferencing and audio conferencing.

At this place, a word of caution may be added. In certain circumstances, parties and the arbitrators may be placed at different ends of the system in different geographical areas. Various permutations and combinations may arise, for example, a party may be sitting with an arbitrator at one end while the two arbitrators may be sitting at the second end and the other party may be sitting at the third end. This may lead to allegations of non-compliance of Sec 12 and 18 of the Arbitration & Conciliation Act, 1996. Rules for holding proceedings should be formulated in such a manner that in holding of virtual proceedings equality and impartiality to the parties is ensured.

It is a known fact that courts have already recognized appearance of accused and also cross examinations through video conferencing not only in England and Wales but also India.

The discussion amongst the arbitrators and the final signing of the proceedings can be

ensured by exchange of drafts through emails, which, as already stated above, provide a valid record for future reference and are acceptable under the law.

Arbitral Award and its Enforcement

Coming to the third part, i.e. **arbitral award and its enforcement**, Section 31 of the Arbitration & Conciliation Act requires the award to be in writing and signed by the arbitrators. The award can be issued through email by sending scanned signed copies in PDF format. The actual signed copies can be sent through post.

Alternatively, the arbitrators can affix digital signatures and provide authenticity and integrity to the award. For enforcement of the award, the original signed copy received by post or the digitally signed awards, as the case may be, can be filed before the courts.

New York and Geneva Conventions requires filing of original or duly authenticated copy of the award for enforcement. As per the functional equivalent approach promoted by Model Law of electronic Commerce¹⁶, electronic documents can be considered original for enforcement.

ROLE OF JUDICIARY

The role of the judiciary with regard to the topic online arbitration can be best understood by analysing the case study of Trimex International.

¹⁶ The 'functional equivalent' approach is promoted by Model Law on Electronic Commerce. Also See 'Guide

to Enactment of the UNCITRAL Model Law on Electronic Commerce (New York, 1997)'.



1. Trimex International Fze Limited v. Vedanta Aluminium Limited

FACTS:

Trimex offered, via an email, the supply of bauxite to VAL which, after several exchanges of e-mails, was subsequently accepted by latter, confirming the supply of 5 shipments of bauxite from Australia to India. Though a draft contract had also been prepared but it yet needed to be formalised. After VAL received first consignments of goods, it requested Trimex to hold back next consignment of goods so as to enable them to check bauxite's utility value. However, on same day, ship owners nominated the ship for loading the cargo. Later when contract was cancelled by Trimex, it claimed damages paid to ship owners from VAL which latter refused by denying any contract.

ISSUES:

Whether the acceptance that was communicated to Trimex gave rise to any agreement between the two parties?

Whether there was any valid subsisting contract between the parties in absence of any formal contract?

JUDGEMENT:

The judgment held by P.Sathasivam J. stated that the agreement between Trimex International FZE Ltd. Dubai and Vedanta Aluminium Ltd. India was in fact a valid contract.

The fact that there was constant communication between the 2 parties with respect to various technical terms of the contract such as price condition, liability, payment of interest and dispute resolution, proves that both parties were well aware of

the terms of the agreement and the mere fact that there was no "formal contract" will not tarnish it's validity in the court. Vedanta's argument that the "essential terms of the contract" have not been discussed clearly and our ambiguous do not hold weight either.

The term "essential" terms means those terms of a contract without which the contract cannot be carried out. However in the above case, the fact that shipments of bauxite were sent by Trimex and accepted by Vedanta proves that the agreement could be carried out and, was in fact, not ambiguous.

S.7 of the Indian Contracts Act, 1872 which states that "an acceptance must be absolute and unconditional" was also fulfilled. Thus, in the present case it is clear that the basic and essential terms had been accepted by the respondent thus leaving no option but to consider the contract as a concluded one.

ANALYSIS:

Trimex made a proposal for the supply of bauxite on certain terms such as price conditions, liability, and payment of interest, governing law and dispute resolution. Vedanta needed more information on the price and hence requested Trimex for the same. Before agreeing to Trimex's proposal, Vedanta initiated certain changes in the terms of the agreement which were not accepted by Trimex.

However Vedanta agreed to Trimex's proposal on the following day. At this point it was evident that the parties had reached a consensus. However it was not clear whether the consensus would imply the existence of a contract.

S.4 of the Indian Contracts Act states that "the communication of a proposal is complete when it comes to the knowledge of



the person to whom it is made. The communication of an acceptance is complete—again the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor, as against the acceptor, when it comes to the knowledge, of the proposer.” According to S.4 communication of acceptance was complete against Vedanta Aluminium Ltd. as soon as the confirmation of 5 shipment lots came to the knowledge of Trimex.

Also, the acceptance was unconditional and unqualified i.e. the deal was confirmed without making any changes in the original.

Against contention of ambiguity¹⁷, the court held that there was an agreement on essential terms. Thus, as the respective terms were communicated to both the parties, an agreement existed.

With regards to the second issue, the acceptance of a contract entered into, or its implementation, is not affected by the mere fact that the contract has not been prepared, if the contract is concluded orally or in writing.

S.10 of the Indian Contracts Act states that “In order to convert a proposal into a promise the acceptance must-

- (1) Be absolute and unqualified;
- (2) Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the

proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.”

A contract is said to be concluded when the parties agree to the essential terms of the contract and leaving out minor details has no hard binding effect on the same.¹⁸

Also, unless it has been specifically mentioned by either of the 2 parties that only when there is a formal contract will it be enforceable, the validity of the contract does not depend upon its formality.¹⁹

Vedanta was well aware of the fact that Trimex had to enter into a contract with the ship owner for 5 shipments for the delivery of bauxite to Vedanta²⁰. Trimex had also urged Vedanta to confirm the latter’s acceptance so that it could enter into a contract with the ship owner. Thus the intention of the parties made their respective promises to each other before Trimex entered into a contract with the ship owner. Also the existence of a contract between Trimex and the ship owner was well communicated to Vedanta. Hence the contention of Vedanta that there was no contract in existence does not hold ground.

Thus, the compensation asked by Trimex was US \$ 1million for the loss caused to ship owners due to the cancellation of the contract and an additional US \$ 0.8 million for the losses incurred by Trimex on the cancellation of the contract. In the judgment it was stated that the terms of compensation would have to be discussed by both the parties in the

¹⁷ Pagnan SPA v. Feed products ltd. (1987) 2 LLR 619

¹⁸ Mamidoil-Jetoil Greek Petroleum co. S.A. v. Okta Crude Oil Refinery A.D. (2001) 2 LLR 76.

¹⁹ Shankarlal Narayandas Mundade v. The New Mofussil Co.ltd. & Ors. AIR 1946 PC 97.

²⁰ Dresser Rand S.A. v. Bindal Agro Chem ltd. (2006) 1 SCC 75



presence of an Arbitrator. In the researcher's opinion, since Trimex had already placed an order to send the shipments through the shipping company, and had made Vedanta aware of all the terms at every stage of the negotiation, the compensation asked is fair.

The Trimex case is considered as a landmark one because the entire communication between both the parties happened online through emails, without any written signed document. The judicial response vis-à-vis technology has been positive.

The importance of Information Technology has been recognised by the Supreme Court in many other cases as discussed below.

2. Basavaraj R. Patil v State of Karnataka

In "**Basavaraj R. Patil v State of Karnataka**"²¹ the question was whether an accused need to be physically present in court to answer the questions put to him by the court whilst recording his statement under section 313. The majority held that the section had to be considered in the light of the revolutionary changes in technology of communication and transmission and the marked improvement in the facilities of legal aid in the country. It was held that it was not necessary that in all cases the accused must answer by personally remaining present in the court. Once again, the importance of information technology is apparent. If a person residing in a remote area of South India is required to appear in the court for giving evidence, then he should not be called from that place, instead the medium of "video conferencing" should be used. In that case the requirements of justice are practically

harmonized with the ease and comfort of the witnesses, which can drastically improve the justice delivery system.

3. State of Maharashtra v Dr. Praful. B. Desai

In "**State of Maharashtra v Dr. Praful. B. Desai**"²² the Supreme Court observed: "The evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video conferencing. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is recorded in the "presence" of the accused and would thus fully meet the requirements of section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law". The advancement of science and technology is such that now it is possible to set up video conferencing equipment in the court itself. In that case evidence would be recorded by the magistrate or under his dictation in the open court. To this method there is however a drawback. As the witness is not in the court there may be difficulties if he commits contempt of court or perjures himself. Therefore as a matter of prudence, evidence by video conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under

²¹ (2000) 8 SCC 740.

²² 2003 (3) SCALE 554.



whose laws contempt of court and perjury are also punishable".

The above case laws shows that the judiciary in India is not only aware of the advantages of information technology but is actively and positively using it in the administration of justice, particularly the criminal justice.²³

CONCLUSION AND SUGGESTIONS

There is a favourable climate being put in place for dispute resolution through the initiative of court annexed ADR. A culture is going to be set in place wherein ADR and in turn ODR will take centre stage.

The IT Act of 2000 gives legal sanctity to electronic records. Parties can safely settle their disputes online with the guarantee that the settlement agreement, if arrived at and executed as per the requirements of the Act, would be enforceable in a court of law. The cases referred to above give a clear indication that use of technology has the blessings of the judiciary.

Based on the affordability and availability of technological infrastructure, ODR can become the preferred mode of dispute resolution, even when both the parties reside in the same city; as the to and fro commute in most of the metros is highly unproductive and a waste of time. Moreover, the parties may not be required all the time, in which case one can log off and attend to some other work. The parties save on legal costs as lawyers, especially counsels, charge by the hour and can be engaged for shorted duration in case

of online proceedings. One also saves on travel and accommodation costs if one of the parties resides in another city. Another benefit of online proceedings is that the parties are able to engage the services of experts of their choice. These experts would have otherwise not been in a position to attend an offline meeting because of the time consuming efforts.

Resolution of disputes outside court will have a profound impact on the backlogs in the various courts in more ways than one. First, as we all know, a final order in a given matter does not finally end the matter – it only ends up as an addition to the backlog in a higher court as and by way of an appeal brought by the party aggrieved by the lower court's order. On the other hand, a dispute resolved in a non-adversarial manner resolves the dispute finally and hence there is rarely ever any challenge brought against such resolution which is a settlement by mutual consent. Hence, when the pending matters start getting settled by Court-Annexed ADR, not only will that decrease the burden of that court, but it will not lead to any increase in the burden of the appeal courts²⁴. Second, once the backlog reduces substantially, justice would seem to be more easily achievable and this will prompt more members of society to come forth and file proceedings for settlement of their disputes, which hitherto they avoided due to the delays in justice dispensation.

The ADR-related legislative reforms, when viewed in conjunction with other legislative provisions relating to information technology and e-commerce, provide an excellent opportunity to any group, body or institution seeking to establish themselves as service

²³ Dalal Praveen at <http://perry4law.blogspot.com/2005/05/justice-through-electronic-governance.html>

²⁴ Proceedings of the UNECE Forum on ODR 2003 <http://www.odr.info/unece2003>



providers for Online Dispute Resolution (ODR). There are several established entities actively engaged in providing ADR services and who are already well-positioned to fill the space suddenly created by this healthy juxtaposition of the several legislative provisions. What is lacking is not only awareness of this opportunity but also the proficiency/expertise necessary to implement ODR as a truly viable and a much healthier alternative mechanism to litigating in a court of law. Considering the pool of talent available, it is only a question of showing the way.

Another area which requires some effort is the formulation of a uniform code for ODR. This work should be carried out extensively and the different governments of the world should strive forth and establish an international body/organization, which would in turn co-ordinate with its member countries and the concerned forum of the United Nations. This will definitely aid in the creation of a set of transnational rules manifesting the interest and the will of the different countries.

India stands to benefit greatly from this effort simply because not only does it probably have the highest backlog of cases pending in its courts of law, but also because its litigious population does not take too many days off. Many have been shying away from the courts looking at the prolonged delays, but once they have an alternative and convenient mode like online resolution of disputes, they are certainly not going to shy away from opting for it to settle their disputes.

In fact, looking at the benefits that ODR has to offer, the Supreme Court is seriously considering setting up e-courts on the lines of the system which has been implemented in Singapore and is in the process of preparing

a feasibility report for the said project. And when such courts are established, that would truly bring ODR to the centre-stage.

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