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## ADVENT OF ONLINE DISPUTE RESOLUTION IN INDIA

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### ABSTRACT

The current eminence of online dispute resolution is gaining momentum and pace, regarding the pandemic period and the post pandemic period in the modern world. Though the expeditious growth of Online Dispute Resolution was a result of pandemic, it served quite the significant change in the current set up of dispute settlement sphere. The basic intent of this kind of mechanism is to negotiate and resolve disputes between parties, who are either restricted by distance or are in a need to seek a solution that fits all. The process of online arbitration in depth regarding electronic forms of mediation, conciliation, negotiation, med-arbitration and few others are given importance. The paper also throws light on some of the relevant provisions under various acts regarding the given topic. It tends to examine the relatable case laws and current trends coming into the digital market, with the rise of wave of innovation. With the influence of technology, e-governance has gone a long way in making the dispute settlement process more effective and reliable in recent times. The paper shall also focus on covering the shortcomings of the present provisions, and drawbacks of the mechanism and give recommendations to the same. Moreover, emphasis shall also be laid on the suggestions as to what more new innovative things can be incorporated in order to make the process of online arbitration run more smoothly and effectively.

**Key words:** convenience of parties, witness tampering, collaborative mechanism, legal framework, synchronized communications.

### INTRODUCTION

The first online dispute resolution took place in 1995 in India. It included four parties to the procedure, the first and second being the parties to the dispute, the third being the arbitrator and the fourth being technology. This kind of online arbitration has been an important tool box for international arbitration, with flexible procedures and creative solutions. It complies with section 4 and 5 of the Information Technology Act, 2008 as well as section 65B of the Evidence Act. The supreme court of India also recognizes the use of video conferencing, to record witness statements as given in the case of **State of Maharashtra Vs Dr. Praful B Desai (2003)**. The resolution process starts with section 87 of the arbitration and conciliation Act, which provides for the meeting of minds and the agreement between the parties. When a solution between two parties is delivered, it is not necessary that they should sit in one place, hence promoting the way of online arbitration, as in the case of **Grid Corporation of Orissa Vs AES Corporation (2002)**. Apart from mediation, arbitration, conciliation and negotiation, there are also other methods that are coming up in the recent days. Going one step ahead, the Ujjuj application has brought in a method where parties upload video and create a synchronized communications on their website for public opinion. The final decision shall be based on the number of votes and the same outcome shall be applied on the parties.

### LITERATURE REVIEW

1. **“Concept of Online Dispute Resolution in India”**  
**Social Science Research Network (published on April 19, 2015) by Negi Chitranjali**

Online dispute resolution is a mix- set up of technology along with alternate dispute resolution, in order to solve disputes anywhere and anytime. With the enactment of Information Technology Act, 2000, the concept of e-governance has gone a long way in India, saving time and money, and reduce paperwork. But the author feels that there is a need for separate forum in order to solve the disputes relating to online dispute resolution, and that such a law should necessarily co-regulate with the other modalities, in the online platform.

**2. “Online Dispute Resolution: An Indian Perspective”**

**International Journal of Management and Humanities (IJMH) by Ms. Apoorva Dixit, on Volume 2, Issue 1, on 2018**

This mechanism of dispute solving is seen as a logical and natural set-up, respecting the due process and providing us with flexible procedures and creative solutions, thereby serving as an important toolbox for international arbitration. A popular example would be e-bay, which has over 60 million disagreements, solved only through online negotiation and structured practical advice every year. There are unending debates on privacy of an individual with more technology evolving every day. Hence, with the rise of cross border disputes day by day, there is a definite need to define the confidential policy meticulously. Due to the absence of the same, there are risks of hacking and spoofing, absence of necessary safeguards while giving an award, loss of information and lack of trust to be seen, indicating a weak cyber system. According to the author, there is not much emphasis laid on establishment of an effective framework for online dispute resolution as well as no specialized

institutions are present in India to provide training, education, research and policies on the same.

**3. “Online Dispute Resolution in India - A Study With Reference to Information Technology Act, 2000”**

**International Journal Of Law Management and Humanities Volume 3 | Issue 3, 2020 By Abhinaba Maitra**

The article also focused on the case of **Grid Corporation of Orrisa Vs AES Corporation (2002)** implies that when a conflict between two parties is solved by delivering a solution, there is no need for the parties to sit in one place. This judgement is said to be promote online consultation and the same goes with the cases of **Shakthi Bhog Foods Vs Dr. Praful B Desai (2003)** and **Trimix International FZE Ltd Vs Vedanta Aluminum Ltd (2020)**. Though there is a flexible procedure and legal recognition given to electronic records, there is huge problem when it comes to understanding of the same by people. The author means to say that there is very low level of literacy regarding awareness of technology, hence people don't trust these kinds of mechanisms and they tend to rely much on the courts only.

**4. “Online Dispute Resolution Mechanisms in India - A Reality A Case Study of the Online Consumer Mediation Centre, Bangalore”**

**Turkish Online Journal of Qualitative Inquiry (TOJQI) Volume 12, Issue 6, July, 2021 by Mr S Kulkarni**

Under section 89 of Civil Procedure Code 1908, there is recognition of alternate dispute resolution to be found, involving four parties namely, the first and second

being parties to the dispute, third being the neutral arbitrator and the fourth being technology. There are new forms of arbitration such as web – enabled mediation, crowd justice, automated and assisted negotiation. The author quotes one such quintessence is used by the company of Smart Seattle, where the website of the company uses a settlement process by calling in the aggrieved party into the portal first, then joins the other company. The arbitrator gives an option of monetary settlement with a certain amount and if both the parties agree, the so called “blind bidding” is done and the problem is solved. Yet there is a great uncertainty to be seen in the amount of fairness and neutrality in the judgment delivered by the arbitrator, and absence of experts in the online process, to deliver decisions with utmost care and precision.

5. **“Dimensions Of Online Arbitration In India”**

**International Social Research Network (published on 6 Jun 2012) by Ciel, Cenoy**

Satisfaction of section 87 of the Contract Act, 1872 is very important in the formation of agreement, as that is the time when meeting of minds take place. However, this one deficiency seen by the author regarding digital inclusion, institutional facilities, technological infrastructure, and there is a need of socio –cultural change which needs to be focused on. Moreover, the technological gap still exists between the young and the old generation, so more people still rely on courts only. Another reason as to why people rely on court is because of the impossibility of the online mechanism to solve large cases, with more bulk evidence. These involve serious matters, arising out with

multiple claims like criminal and matrimonial disputes.

6. **“Rethinking the Practicalities of Arbitration in the Age of a Pandemic”**

**Social Science Research Network, published on Chakraborty, Atish and Chakraborty, Aurin, (May 18, 2020).**

The author also focuses on case of **Oil and Natural Gas Corporation Limited Vs Oil Country Tubular Limited (2011)**, where the arbitration disputes are being solved easily, at the convenience of the parties. But to be frank, virtual proceedings fail to defeat reality, as there is a lot of witness hampering taking place in recent times. The off-screen people tend to manipulate the witness by torturing them, hence there is great difficulty in inferring the true character of the witness during testimony.

7. **“Online dispute resolution in India”**

**Santaniello & Partners International Law Firm by Chitranjali Negi on December 2011, And The Same Can On Supreme Court’s News Letter**

Effectiveness, scalability and collaborativity are three key factors incorporated in the online mechanism of dispute resolution, recognized by the author. This complies with section 4 and 5 of the Information Technology Act, 2000 as well as section 65B of the Evidence Act, 2000. Despite these sections, there is a difficult time faced by the legal profession and the justice delivery system as arriving at a proper outcome is not certain here. A contributing factor that the author adds on, is with the absence of human essence, when it comes down to the process of decision-making.

8. **“Online Dispute Resolution: Feasibility in The Post Pandemic India”**  
**by Aviral Jain published on October 8<sup>th</sup>, 2020.**

Regarding the aspects mentioned above, with the development of technology, there are more synchronized communications and cloud-based networks coming up, avoiding the need for parties to meet in real time. However, there is a huge difference between establishment and implementation of the product. This means that, India still has paucity regarding access of simple computers as well as internet connections, and mostly this is found in rural areas. However, the author feels there is no even distribution of technology and hence, adoption of modern technology is not present everywhere. With the increase of online agreements, more parties tend to sign without reading it. Hence, more effective measures are to be implemented to promote the usage of online arbitration in India.

### CONCEPT OF ODR

Online dispute resolution is a method of resolving disputes, with the application of Information and Communication Technology. When the method is employed, most of the dispute resolution procedure takes through online, including the initial filing, the neutral appointment, evidentiary processes, oral hearings if needed, online discussions, and the other rendering of binding settlements<sup>160</sup>. Thus, ODR is a different medium to resolve disputes, from beginning to end, and at the same time, it respects the due process principles<sup>161</sup>.

<sup>160</sup>Sastry, V.V.L.N., The Indian Court System Is Devoid of Guidelines on the Timelines, Delayed Justice in India Entrenching Poverty). Available at SSRN: <https://ssrn.com/abstract=3517757> or <http://dx.doi.org/10.2139/ssrn.3517757>.

<sup>161</sup> ODR The Future Of Dispute Resolution In India' (Vidhilegalpolicy.in, 2020) <<https://vidhilegalpolicy.in/wp->

### HISTORY OF ODR

The process of Online dispute resolution was heralded as a way to circumvent clogged and slowing moving American federal and state courts. From 1995 to 1998, informal online dispute resolution mechanisms were recognized as a distinct method from Alternate dispute method, and since 1998, they became a separate an industry in the United States. The first online attempt was made in Northern America by the National Center for Automated Information Research (NCAIR), Cyberspace Law Institute and the American Arbitration Association.

The University of Massachusetts Online Ombudsman Office (OOO) was created in 1996 by the Center for Information Technology and Dispute Resolution of the University of Massachusetts and the same was being funded by NCAIR. The OOO is primarily interested in mediating disputes arising out online activities, which required each user to provide the OOO information about his or her dispute. If both parties are cooperating, the arbitrator can start the mediation. Later, in the year 1998, the Cyber Tribunal was initiated by the University of Montreal which used both mediation and arbitration. The experiment ended in December 1999 and the project then evolved into a commercial venture called “e-Resolution”. This is how the online dispute resolution started to evolve<sup>162</sup>.

### ESSENTIAL REQUISITES FOR APPLICATION OF ODR

The use of ODR mechanism requires the presence of certain essential components such as existence of advance informational technology, trained expert professionals, user friendly interface of online modules and

content/uploads/2020/07/200727\_The-future-of-dispute-resolution-in-India\_Final-Version.pdf> accessed 14 March 2021.

<sup>162</sup> 'Catalysing Online Dispute Resolution In India' (Niti.gov.in, 2020) <<https://niti.gov.in/catalyzing-onlinedispute-resolution-india>> accessed 20 April 2021.

maintenance of privacy of the disputants<sup>163</sup>. Besides these components, there are other basic principles like, affordability, accessibility, infrastructure, flexibility and transparency, which forms the basic structure of the mechanism. These components with regard to their convenience, expertise and trust, tend to attract the users, through their services over time. The usage of ODR is said to be simple, fast and more efficient with regard to time and cost, thus keeping the economic value at stake. The essential requirements of this mechanism include the following,

- **Binding Agreement** stipulating the mutual consent of the parties to settle any future matter by course of ODR technique shall consist of essentials of a valid contract as per Section 10 of the Indian Contract Act. With respect to Indian jurisprudence<sup>164</sup>, there are no concrete guidelines for online dispute settlement in any statute and so, there is a lack of desired laws leaves way for contracts to provide sanction to ODR.
- **Determining Jurisdiction** stating the limits the power of an adjudicating authority to give a decision, with regard to the place of occurrence. This is decided with the help of application of international and domestic laws and the facts and nature of the settlement process, of a particular case. The current legislation being expanded, helps this online process, by recognizing the cyber world as a real place. The ODR service providers are said to mandatorily disclose the jurisdiction, where complaints against the ODR provider can be brought, with respect to any relevant jurisdictional limitations.
- **Transparency** being the most

underlining doctrine of accessibility as the most critical aspect of ODR. All information and disclosures made, should be accurate, complete, clear and simple. They should be identifiable and accessible, in an appropriate manner, so that it can be printed and downloaded by the parties easily. All this is done to circulate the orders and judgments among masses and to not hide anything.

- **Privacy** as enriched under Article 21 of the Indian Constitution, is still a question with the advancement of technology. An individual's privacy is a guaranteed fundamental right, which have to be rightly balanced, by solving disputes of individuals without infringing their privacy as held in the case of **Puttaswamy Vs Union of India**. Hence, many people rely on online dispute resolution, as it meticulously abides by the confidentiality policy<sup>165</sup>.
- **Advanced Technology** should be equipped by the providers of ODR, to keep the process going and such providers are supposed to disclose all relevant facts about the technology they use. In case of any flaws, mis-happening or data leakage, it must be communicated by them. The technology in this regard must be accessible to persons of all language, people having low level of literacy, with affordable and secured characteristics.
- **Expert and Trained Professionals** need to be present as the ODR providers, having a special knowledge in the fields of dispute management and information technology<sup>166</sup>. They must create a team having arbitrators, mediators and counsellors, with high eligibility, background and affiliations.

<sup>163</sup> Mohamed Abdel Wahab, Ethan Katsh & Daniel Rainy, "Online Dispute Resolution Theory and Practice" in Devasenan and Aresty (eds), ODR and Justice (Eleven International Publishing 2021).

<sup>164</sup> Thissen, E.M, Zeleznikow, "Technical Aspects of Online Dispute Resolution Challenges and Opportunities" in Melissa Conley Tyler, Ethan Katsh, and Daewon Choi (Eds.), Proceedings of the United Nations Annual Forum on Online Dispute Resolution. (Centre for Electronic Dispute Resolution, 2004).

<sup>165</sup> Mohamed Abdel Wahab, Ethan Katsh & Daniel Rainy, "Online Dispute Resolution Theory and Practice" in Devasenan and Aresty (eds), ODR and Justice (Eleven International Publishing 2021).

<sup>166</sup> Davide Carneiro and others, 'Online Dispute Resolution: An Artificial Intelligence Perspective' (2012) 41 Artificial Intelligence Review.

Those providers should appoint neutral arbitrators to the disputes and make research in the history of the appointed members and check for any affiliations. They should also disclose the steps they take to require neutrals to fulfil their responsibilities promptly, maintain communication with the parties, and comply with the stated ethical guidelines.

### STEPS IN ODR

1. Check for the existence of consumer grievance such as non-delivery of items, defective goods delivered, item delivered is different from what had been ordered, refund issues, etc.
2. File the registration form with the required details, such as name, address, gender, age, city, state, email id, password, mobile number, identity proof etc. Once the account is created, either the client can file a new case or view the case history.
3. Select the e-commerce company against whom the complaint needs to be filed and file the necessary details such as invoice number/ order number/ bill number.
4. Pay the registration fee through online payment gateway, once for a single case.
5. File the case before a forum/ court/ commission, transaction details, relief requested, and upload the documents in PDF, PNG or any other format as required.
6. The last stage involves negotiation with the e-commerce company, where the parties make efforts to resolve the dispute through negotiating with each other.

### RULES OF ODR

The **International Chamber of Commerce (ICC)** has framed 7 guidelines to maintain standards in online arbitration proceedings, which include,

- Filing names with a unique name/identifier for each electronic document to identify the originator, class of document and place of arbitration.
- The same format of file naming system should be applied on all electronic documents.
- The name and date of the original document should appear on the first page of the electronic document, either at the top right corner or at the bottom.
- If there is any loss of data, the other participants shall help to reconstitute the electronic file by providing copies of the pertinent files that they control.
- A uniform method of mode of transmission and storage of emails should be practiced.
- Whether any confirmation of receipt of email has to be given should be mentioned priorly
- Lastly, the file format for sending attachments, like. PDF and doc should be generally followed.

The ICC has directed the arbitral tribunal to issue directions<sup>167</sup> while audio and video conferencing during online arbitration, to facilitate details for the conference, such as

- i. day, hour and applicable time zone,
- ii. places where a conference front-end is required,
- iii. parties who shall participate and number of persons at each end,
- iv. special requirements, if any and
- v. any other requirements.

The arbitration proceedings shall adhere by these rules and the same should be mentioned in the arbitration agreement. The arbitrators

<sup>167</sup> Page 10, Justice M. Jagannadha Rao, Chairman, Law Commission of India, constituted by the Supreme Court of India, ADR & Mediation Rules, <[https://lawcommissionofindia.nic.in/alt\\_dis.pdf](https://lawcommissionofindia.nic.in/alt_dis.pdf)>



must always try to maintain equality and impartiality during the proceedings, comply with Sections 12 and 18 of the Arbitration and Conciliation Act 1996<sup>168</sup>. Once the arbitral award has been formulated, it can be exchanged between the parties via email and signed by the arbitrators as enumerated under Section 31 of the Arbitration and Conciliation Act 1996. The scanned copies of the award should be sent via email while the original documents can be sent via post at a later date for reference, which would lead to the completion of the arbitration proceedings. The arbitral award shall be enforced according to the law, without any difficulties.

## TYPES OF ODR

### (1) Arbitration:

This is a voluntary process where the disputing parties engage the services of one or more neutral third parties, who decide a case like how a judge enters a final judgment in a litigated case. The procedure is more flexible and informal, and the judgement given is binding on both parties, and it is enforced internationally. The parties can provide for recourse to arbitration when they sign the contract that unites them, through an arbitration clause which facilitates that all disputes arising out of their contractual relationship are subject to arbitration, in accordance to the present law, and the contract can be altered also. An arbitral compromise is signed after hearing from both the parties and that shall be considered final<sup>169</sup>.

<sup>168</sup> Article 1, Paragraph 3, 'UNCITRAL Model Law On International Commercial Conciliation' (uncitral.un.org, 2002) <[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/03-90953\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/03-90953_ebook.pdf)> accessed 5 May 2021.

<sup>169</sup> 'UNCITRAL Model Law On International Commercial Mediation And International Settlement Agreements Resulting From Mediation' (uncitral.un.org, 2018)

### (2) Mediation:

A process by which two people agree to submit their dispute to a neutral third party ("mediator"), who uses various methods and techniques to reach an out-of-court settlement is called "mediation". The process can sometimes turn out to be collegial also in nature. There is a mediation clause in the agreement, which has a restrictive effect, when it is a prior condition to be met, in order to have recourse to a court of law or arbitration. This type of settlement is nowadays used in quite a lot of growing commercial contracts.

### (3) Negotiation:

A simple exchange of views and proposals happening during an out of court settlement falls under negotiation, where the main goal is to find a mutually acceptable solution to the dispute<sup>170</sup>. The process involves communications and perceptions, which are being kept confidential and voluntary. The negotiation process is confidential and voluntary in nature, and the parties are free to withdraw at any point of time. The process also takes into account of the inflection, facial expression, tone and body language. It takes various forms like telephonic, written and face-to-face communication. They are further sub-divided into 2 types such as, assisted and automatic negotiation<sup>171</sup>. The former settles the dispute free of charge, with the help of a neutral mediator, while the latter

<[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/annex\\_ii.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/annex_ii.pdf)>

<sup>170</sup> Alternative Dispute Resolution Act (Republic Act No. 9285 of 2004)

<sup>171</sup> Royal Decree Law No. 5/2012 On Mediation in Civil and Commercial Matters

is an algorithmic method, where the aggrieved party logs into the secured service of website, and the other party has an option to accept or reject the offer. This method constitutes a demand and settlement offer, and its mainly used to settle monetary settlements.

“Crowd justice” is a recent example where the video arguments are being uploaded prior and the public are asked to cast votes. Based on the vote count, an e-contract is being drafted and circulated among parties to sign the same. The users registered in that particular site can select the case that they would like to judge, and cast their vote. When the day of decision arrives, the average of the votes is taken and multiplied by the amount claimed and a final award is got.

#### EXAMPLE OF ODR USAGE

##### (1) eBay

The disagreements amongst traders on eBay are resolved every year using ODR, involving around 60,000 participants. They tend to come up with disputes over non-payment and non-delivery of products, where the parties are encouraged to resolve the matter themselves by online negotiation. This involves a clearly structured, practical process to avoid misunderstandings and reach a resolution.

##### (2) Youstice

An ODR service for handling large volumes of low value consumer complaints, and the service tends to enable negotiation between parties, by providing assistance in framing arguments with relevant icons for each. Later the suitable solutions are represented by those icons only.

#### MERITS OF ODR

Online Dispute Resolution is a highly flexible, informal, and creative tool of dispute resolution, not governed by strict rules of evidence and procedure<sup>172</sup>. It allows the parties to participate in a process that suits their needs, through a consensual approach rather than an adversarial one. It reduces the litigation costs, generally borne equally by both parties to a dispute. This method offers a sense of ownership and an equal stake in the outcome<sup>173</sup>. This method suits a high-volume, where solutions are arrived immediately, saving time and energy and they are being kept confidential till the end.

#### DEMERITS OF ODR

All parties are required to have adequate technology to participate in the process of ODR, which is not practically possible. People with language or communication or writing difficulties are unable to balance with the scope of ODR. Moreover, it is a non-binding process, which implies the absence of a legal precedent to solve a case. In most of the ODR proceedings, the parties will want the proceedings to be private<sup>174</sup>, which can be breached at times due to the open network of internet, being less secure. So, there is a risk that unauthorized persons intercept communications and break into computers connected to the Internet. An example of this would be spoofing, where the unauthorized person assumes the identity of an existing authorized user, to access confidential information. Sniffer packages may be used to intercept and manipulate particular data and they tend to benefit from it.

#### FACTORS RESPONSIBLE FOR GROWTH OF ODR IN INDIA

<sup>172</sup> 'United Nations Convention on International Settlement Agreements Resulting from Mediation' (Treaties.un.org, 2020) <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=XXII-4&chapter=22&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XXII-4&chapter=22&clang=_en)>

<sup>173</sup> 'Mediation Training Manual Of India' (Mediate.com) <<https://www.mediate.com/pdf/MT%20MANUAL%20OF%20INDIA.pdf>>

<sup>174</sup> K.S. Puttaswamy v. Union of India, Supreme Court of India, (2017) 10 SCC 1

1.The flexibility of adjudication process in India is considered as the first and foremost reason for the growth of ODR in India. In particular, the Arbitration Act of 1996, allowing the conciliation proceedings affords flexibility for the parties to hold their proceedings anywhere, even in cyberspace<sup>175</sup>.

2.The facilitation of electronic signature on e-commerce platforms have given legal recognition to the electronic records and digital signatures, under section 4 and 5 of the Information Technology Act, 2000 and section 65-B of Indian Evidence Act, 1872. The act has introduced alternatives to paper-based methods of communication and storage of information.

3. "Virtual reality is a state where one is made to feel, hear or imagine what doesn't really exist" – hence this method is useful in taking evidence of a witness and for reaching an effective consultation by resort to electronic media and remote conferencing. The same is being acknowledged in the case of **State of Maharashtra vs. Dr. Praful B. Desai**, [(2003) 4 SCC 60]

4.The wide usage of internet was a factor recognized by the supreme court<sup>176</sup>, stating that technological advancement is in a swift progress, even before the Bill for the Amendment Act was discussed by Parliament. So, when the parliament contemplated notice in writing to be given, it was already aware of modern devices and equipment already in vogue.

5.An online arbitration agreement shall be in writing, as enumerated under section 7(3) of the Arbitration Act and it will have the sanction of law due to operation of section 4 of the Information Technology Act, 2000. By reading

both the sections together, an online agreement is considered valid in the eyes of law. The same goes for written submissions, if any, made by the parties online.

6.A new provision for e-award is given under section 31(1) of the Arbitration Act, requiring the arbitral award to be in writing and signed by the members of the arbitral tribunal. The 'writing' requirement and the 'signature' requirement are met under section 4 and 5 of the Information Technology Act, 2000. The scanned copies of such documents are exchanged by parties via mail as enumerated in the case of **Shakti Bhog Foods Ltd. V. Kola Shipping Ltd (2009)**. A decree for the same could be easily obtained in a court. The mechanism of ODR is used today to solve the domain name related disputes by the National Internet Exchange of India (NIXI), hence enumerating the fact that ODR is strongly being recognized in India.

#### TOP ODR PLATFORMS

##### 1. Centre for Alternative Dispute Resolution Excellence (CADRE)

This was founded by Shalini Saxena and Kanchan Gupta, involving a website based online program, set up in Bangalore, Karnataka. With the help of simplified rules and trained and specialized arbitrators, they operate in such a way to ensure that the client go empty-handed without money and remedy, at the end of the process. The approach is done by a party, and it informs the other regarding the same. Then, both of them appoint an arbitrator, and he send the schedules and other information via WhatsApp and then a video conferencing is arranged for both parties to meet each other. At the end of 20 -25 days, a decision is arrived, binding on both the parties. They specialize in areas of debt recovery with regard to tenant and rental contracts, through web meeting, brochures,

<sup>175</sup>InternationalCommercialMediation:DraftConventionOnInternationalSettlementAgreementsResultingFrom Mediation' (Undocs.org, 2018)

<sup>176</sup> 'Joint Committee On The Personal Data Protection Bill, 2019 Seeks Views And Suggestions' (Pib.gov.in, 2020) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1601695>> accessed 18 March 2021.

training material, data tools, online learning modules, fact sheets, and briefing papers.

## 2. **SAMA**

It is a totally new way to solve disputes between business and customers and employers, landlords and tenants, and professionals and clients in a cost-effective manner. It was founded by Vikram Kumar, Pranjal Sinha and Akshetha Ashok in the year 2015, in Bangalore, Karnataka. It offers speedy and affordable resolution, that is cost-effective, government recognized and neutral in nature. The advisory partner is Trilegal and the expert partner is the Centre for Advanced Mediation Camping Practice (CAMP). It specializes in giving legal advice, arbitration, mediation, and providing legal services. Most recently, the ICICI bank used SAMA as an ODR platform to solve nearly 10,100 disputes worth about Rs. 20 lakhs.

## 3. **Centre for Online Dispute Resolution (CODR)**

This was founded by Vikas Mahendra who is a partner with Keystone law firm, working with an aim to put an end on online cases. It focused on ways to reduce the complexity of the process and secure ends of justice by letting the client and their advocate to control the whole process. Its primary goal is to make the whole procedure unbiased and transparent while maintaining confidentiality. It specializes in fields of property agreement, dispute resolution, and separation agreement.

### **FUTURE OF ONLINE ARBITRATION IN INDIA**

Online dispute resolution (ODR) and online arbitration have played a major role to drive technology<sup>177</sup>, in all parts of our life. However, in India, a paucity of access is seen with regard to

computers and internet connections, and this is seen as a major risk factor. India, at present engages in a lot of online transactions but the number of online users is very less compared to the population of the country, so this indicates that the technological readiness is seen to be very less among people.

Another concern arises when the parties don't read the agreement carefully before accepting it, so this creates a lot of confusion in the long run. Digital inclusion is the need of the hour; hence trust should be built among individuals to engage in ODR, thereby reducing the litigation cases. Information technology is seen as the focal point of alternate dispute resolution, which helps to facilitate communication and assist in prevention of disputes. This in a way also enhances the quality of ODR practice through more effective supervision, assessment, training, information management, research and evaluation. The IT Act, 2000 also helps in speeding up the dispute resolution process, handling the ample records and collectively covers the daily work of almost all the lawyers.

### **ROLE OF UNIVERSITIES AROUND THE GLOBE TO PROMOTE ODR**

The universities play an active role in the development of Online Dispute Resolution Mechanisms, in the form of mediation clinics, research clubs, training sessions for mediators and lawyers, etc. They help in addressing academic needs as well as social needs. Some of them include,

- (1) The Programme of Negotiation, conducted by a university consortium of Harvard University, Massachusetts Institute and Tufts University,
- (2) The Negotiation and Mediation Program of Gould Negotiation and Mediation Program, conducted by the University of Stanford, and
- (3) UTS Dispute Resolution program, conducted by the University of

<sup>177</sup> 'UNCITRAL Technical Notes On Online Dispute Resolution' (uncitral.un.org, 2017)  
<<https://uncitral.un.org/sites/uncitral.un.org/files/media->

Sydney Such initiatives, helping in generating awareness about this domain along with assisting in ensuring legal justice in the community

### RECOMMENDATIONS ON REGARD OF OUR ODR MECHANISM AS AN EFFECTIVE TOOL IN THE COMMERCIAL WORLD

- The establishment of a separate legislative framework is the primary steps to be done,
- The security measures in ODR need to strengthen and reliance on a new legislation is required to address problems regarding technology,
- A proper infrastructure should be initiated with proper support from traditional arbitration principles,
- Specialized institutions should be created for better training, education, research and policies for the success of ODR in India,
- Initiating a separate online arbitration procedure is required, and
- Spreading awareness among the people regarding ODR mechanism as an effective tool is necessary to be met.

### SUGGESTIONS

- An effective awareness campaign should be taken up by government and the non-governmental organizations, for spreading online legal awareness and legal literacy.
- Optimum number of guidelines and procedures need to be imbibed in the cyber laws to prevent misuse of such a system, leading to confidentiality and security issues.
- The Universities must be adequately incentivized to come up with such ventures and schemes which will eventually lead to the development of

legal sector, and access to speedy justice in the country.

- For the success of such a scheme, a table of competent experts, who are well-versed in the procedure, must come up with utmost care and precision.

### CONCLUSION

A thorough amendment of the Arbitration and Conciliation Act, 1996 should be done to give recognition for carrying out arbitral processes virtually, do the virtual filings and complete the arbitral proceedings within the stipulated time. Effective steps need to be ensured to see that all the arbitral institutions design their case management mechanism, with necessary safeguards, as how the Seoul Protocol has recommended. If such reforms can be made, the present situation can be held effectively, and the arbitral system shall increase its global standards, to make India a global arbitration center soon.

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