

NEED AND SCOPE OF ONLINE DISPUTE RESOLUTION IN INDIA

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Abstract:

Delay in justice and high costs of litigation are major drawback of Indian legal system. These factors have resulted in loss of faith of people in the Indian judicial system. Therefore people avoid going to courts for their claims and disputes. This lack of faith has developed resolution of disputes by alternative methods like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). These methods have been proved successful in reducing pendency of cases and costs, in developed as well as in developing countries. Information and Communication Technology (ICT) after the development of computer and internet technology has played an important role in every sphere and therefore dispute resolution system has also been affected by this change. Online dispute resolution has been emerged as a result of technological changes and development of new online environment. It is a new concept and is capable of solving the problems of traditional litigation, judicial system and ADRs. It has been proved to help the courts to reduce the huge backlog of cases especially at district and subordinate level in different countries. E-Court system has also been considered as a part of ODR movement. In number of developed countries such as USA, Australia, New Zealand , Canada, UK etc grants were provided by government to ODR projects and number of initiative were taken to support e-commerce and ODR system. In India the plot is ready to support the new changes and ODR system. There is need of online dispute resolution to solve the problems of Indian judicial set up and traditional system. Indian government must seriously think in this direction.

Keywords: Online Dispute Resolution in India, E-commerce and Law, Judiciary and Online Dispute Resolution

1. Introduction

‘Justice delayed is justice denied’ is the basic legal principal, which means if justice has not been administrated timely it is equal to no justice at all. This phrase is reflecting in Indian judicial system from times. Indian judicial system has been overburdened by huge pendency of cases, which has resulted delay in Justice. Latest statistics shows huge pendency of matters in the higher and lower courts. At the end of February 2016, 59,468 cases were pending in Supreme Court. Of these pending matters, about four-fifths are civil in nature and the rest were criminal in nature. Similarly at the end of June 2015, 40,05,704 cases were pending in different High Courts in the country. There were more than 2.18 crore cases pending in district courts across the country; 12 states have more than 5 lakh cases to decide; while a little more than one case, on an average, was awaiting conclusion for at least 10 years. Around 38.3 lakh cases were pending for more than five years but less than 10 years-17.5 per cent of the total number of cases. Therefore, more than one-fourth of cases pending across district courts in the country were pending for at least five years. And 29.5 per cent of total cases, or 64.5 lakh cases, have been pending for more than two years, according to the E-Committee’s report.¹

Another drawback of Indian legal system is high costs of litigation. These factors have resulted in loss of faith of people in the Indian judicial system. Therefore people avoid going to courts for their claims and

¹ “More Than Two Crore Cases Pending in India’s District Courts: Report” The Indian Express, June 9, 2016

disputes. This lack of faith has developed resolution of disputes by alternative methods like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). These methods have been proved successful in reducing pendency of cases and costs, in developed as well as in developing countries.

2. Emergence of Alternative Methods of Dispute Resolution

ADR methods have been developed as an alternative to the traditional methods of litigation and it includes arbitration, conciliation, mediation, neutral evaluation and expert-determination. These methods can be used to resolve any matter by an agreement between the parties. It can be used to resolve various categories of disputes such as civil, commercial, industrial and family disputes. ADR system has helped a lot in respects of international commercial cross-border disputes. Arbitration and Conciliation Act, 1996 at present provides for legal recognition of these methods of alternative dispute methods rather than litigation. ADR system has various advantages over the judicial system of dispute resolution which makes it very popular and effective.

The Advantages of ADR System over Litigation: following are the key benefits of ADRs:

1. Parties can decide rules or procedure for their case.
2. It is very fast and time saving device.
3. Cost of ADR methods is very low.
4. Arbitrator, mediator and conciliator are chosen according to the choice of parties.
5. There is no need to engage advocate by parties.
6. It helps to maintain privacy and security.
7. It is party friendly.

Therefore ADR mechanism provides consensual mode of resolution of disputes and provides very simple informal flexible procedure to help the parties to solve their dispute. Lord Wolf in his report has also suggested alternative dispute resolution for the civil cases to encourage the access to justice.² ADR system is also helping the court system and court run ADR system has become popular to provide the justice to general public.

3. An Idea of Online Dispute Resolution

Information and Communication Technology (ICT) after the development of computer and internet technology has played an important role in every sphere and therefore dispute resolution system has also been affected by this change. Online dispute resolution has been emerged as a result of technological changes and development of new online environment. It is a new concept and is capable of solving the problems of traditional litigation, judicial system and ADRs. It has been proved to help the courts to reduce the huge backlog of cases especially at district and subordinate level in different countries. E-Court system has also been considered as a part of ODR movement.

Online Dispute Resolution has been working at international level very successfully. Various countries has experienced this system to solve number of disputes such as Consumer to Consumer, Business to Business, Business to Consumer, small value of claim disputes, family disputes, inter –state disputes and other civil disputes. It has number of advantages over the traditional courts system and ADR systems. Such as:-

1. This system is very efficient to solve the disputes which arises in cyber space specially domain name disputes because such disputes are unique to the electronic platform.
2. This system enhances trust and confidence in the e-commerce environment which will ultimately promote the e-commerce.

² Lord Woolf, Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System In England and Wales (July 1996) Quoted In Hazel Genn, 'What Is Civil Justice For? Reform, ADR, and Access to Justice' *Yale Journal of Law & the Humanities*, Vol. 24 (2012), Issue 1, Article 18, p. 401.

3. ODR system is very important for small-value disputes due to low cost of this mechanism. In small disputes parties do not prefer to go to the court or to resort traditional ADR system.
4. ODR is also helpful to solve cross-border international commercial disputes, due to jurisdictional and procedural obstacles in traditional ADR system.
5. ODR system overcomes the geographical barriers. Parties need not to travel anywhere for filling the case. Wherever internet is accessible ODR is possible.³
6. Similar to the ADR system ODR mechanism will also help to reduce the pendency in the higher courts as well as in lower courts.⁴

There are number of benefits of ODR but in spite of these features it has not been developed in India. There are various obstacles in the way of ODR in India. Following are the problems and obstacles faced by the mechanism:⁵

1. Lack of trust and confidence

People don't have trust and confidence in these mechanisms as they have in state institutions like courts and state run dispute resolution system. Indians do not have trust and faith in computer and internet technology.

2. Lack of technology

Up-to-date technology, internet, connectivity, inter-connection of computers, advanced software and well educated manpower are the pre-conditions for ODR and its development. We are far behind from the other countries in the technological advancement. People do not have faith in technology due to various misconceptions and beliefs.

3. Negative approach of lawyers

Mindset of the lawyers is in favour of adversarial dispute resolution due to the number of factors. This is hindrance for development of ODR. Development of technology and court's helping software helps the parties to provide more information and transparency in procedure. Similarly ODR programs will help parties to conclude matters without engaging the lawyer. Therefore it conflict with their profession. But this perception is not correct. Lawyers are not properly trained in respect of ODR in law schools. Actually ODR does not affect the lawyer's profession. But helps to advocates in number of ways, such as online counseling and advice, advocacy at world/state level, for any case, easy to reach to clients, save time and money of advocates, case management etc.

4. Virtual world and illiteracy

Even after 70 year of independence literacy rate is very low in India and illiterate persons cannot understand the technicalities of virtual world. They believe in face to face interactions.

5. Lack of technical and experts in ODR institutions

Along with the education, for the smooth functioning of different processes under ODR adequate number of qualified personal and technical knowledge to general public is must. Lawyers in India are used to old and traditional physical world. There is need to train them not only regarding technology like use of internet, computer and smart phones but also regarding the use of ODR applications and procedures. And how they can participate and can take benefit from it.

4. Development of Information Technology and Legal Support to Online Dispute Resolution

Due to the growth of Internet and Information Communication Technology at world level online disputes has arisen at high level. The development of internet has also resulted in India; online

³ Chitranjali Negi, 'Pendency in Indian Courts- an Idea of Online Dispute Resolution,' April 17, 2015, available at: <https://ssrn.com/abstract=2597817> (Visited on January 2, 2017)

⁴ "Dispute Resolution Mechanism in Electronic Commerce" (2005) (Unpublished dissertation of LL.M, University of Manchester.

⁵ Anurag K. Agarwal, "Is India Ready for Online Dispute Resolution?" W.P.No.2006-10-3 IIMA 12 Working Paper (October 2006)

interactions are also increasing day by day. Therefore, there is need of such a system which can help to resolve online disputes in an efficient manner and ODR is an answer to this.

Arbitration and Conciliation Act, 1996 as has been amended in the year 2015 along with the Information and Technology Act, 2000 provides legal basis to the ODR system. Uniform principles of ODR have been incorporated under these laws. Government mission of digital India has also cleared the ways to the ODR. National e-Governance plan of India were also helped to support the ODR system. Therefore it is not wrong to say that development of Information and Communication Technology, the idea of digital India and e-Governance has promoted ODR movement.

As per Internet and Mobile Association of India and Interlink advisors, about 150 million people in India are involved in e-commerce and participation in e-commerce is likely to increase to 230 million households by 2024-25.⁶ By 2016, total numbers of internet users are increased to 462124989, which is 35% of the total population strength. In the year 2011 only 10% of the total population uses the internet. This fast growing internet users has not been witnessed in any other country.⁷

Therefore plot has been set in India for the development of the ODR and under international obligation it has become mandatory duty to follow those international documents. Legal recognition has been provided by Information Technology Act 2000 to electronic evidences, e-commerce. Arbitration and Conciliation Act, 1996 has been enacted in the conformity with Model Law on International Commercial Arbitration. Rules of Arbitration and Conciliation Act, 1996 have been followed by number of institutions such as Indian Council of Arbitration, International Centre for ADR (ICADR) etc. to conduct online arbitration, conciliation and mediation. Supreme Court of India and different High Courts also administering arbitration, conciliation and mediation according to their rules and rules enacted by parliament to deal with such matters. National Information Centre has initiated e-courts project by introduction of ICT in Indian judicial system starting in 2009 when first online court were set up in Delhi.⁸

5. Supreme Court of India and Online Dispute Resolution

In case of *State of Maharastra v. D. Praful B. desai*⁹ SC allowed and permitted video conferencing as valid mode of recording evidence for witness evidences.

*Grid Corporation of Orissa Ltd. v. AES Corporation*¹⁰ SC accepted that actual presence of parties is not necessary for conversation and concluding of contracts if it can be done by electronic media and technology.

*Shakti Bhog Food Ltd. v. kala Shipping Ltd.*¹¹ In this case communication and acceptance by telex, telegram and other mode of communication has been accepted as valid mode of communication.

6. Scope of Online Dispute Resolution in India

ODR can be discussed in two ways one as dispute preventive other as dispute solving device. In first case it tries to create trust and confidence in businesses. This process acts before arising of disputes and conflicts between business communities and consumers. Online feedback system by business communities and online complaint resolving system by them are good practices in this concern. In second sense it is part of dispute resolution system of a state.¹² There are different approaches to ODR

⁶ Aniket Dhawaj Singh and Swarnika Singh, "Need For Online Dispute Resolution" *BLR* 204 (July-September 2016).

⁷ Available at <http://www.internetlivestats.com/> last visited on January 1, 2017.

⁸ Aniket Dhawaj Singh and Swarnika Singh, "Need For Online Dispute Resolution" *BLR* 204 (July-September 2016).

⁹ (2003) 4 SCC 601.

¹⁰ AIR 2002 SC 3435.

¹¹ AIR 2009 SC 12.

¹² Orna Rabinovich-Einy and Ethan Katsh, "Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment" 1 *IJODR* 5(2014).

such as cyberspace non-adjudicative ADR, arbitration, court system. All these methods may be used in India. ODR seems best to supplement offline dispute settlements system also.

6. Online Dispute Resolution and Domain Name Disputes

In India online dispute resolution has been practiced to solve domain name disputes. National Internet Exchange of India (NIXI)¹³ has used ODR system. For this purpose dispute resolution policy has been formulated in accordance with international documents and guidelines. Entire process is being conducted online. Arbitrators are appointed from the panel selected by the authorities who are experts having the knowledge of the law and experience in the resolution of domain name disputes. Number of disputes has been resolved by this system and hardly any decision has been challenged in the court of law.

7. Techno-Legal Centre of Excellence for Online Dispute Resolution

Techno-Legal Centre of Excellence for Online Dispute Resolution (TLCEODRI) in India has been managing techno legal issues of ODR since 2012. Odrindia and perry4law has launched to conduct online dispute resolution under TLCEODRI. Services such as online mediation, online arbitration, and cyber arbitration can be availed by national and international stakeholders by visiting the website and ODR agreement clause. Therefore parties initiate procedure as per rules of institution. Rules and procedures for the institutions and management of disputes have also been provided at their websites. Parties may initiate proceedings online. Arbitrator would be appointed by TLCEODRI then parties can upload relevant documents online to support their case.

In order to train the for ODR processes, TLCEODRI has also launched a blog for ODR training in India where they can post articles, opinions, views, suggestions and methods pertaining to use of Cyber Arbitration and ODR in India. An ODR discussion forum has also been launched by TLCEODRI so that public awareness about Cyber Arbitration, Online Arbitration, online dispute resolution, etc can be spread.¹⁴

8. The International Chamber of Commerce (ICC) and Online Dispute Resolution

The International Chamber of Commerce (ICC) has formulated certain guidelines to maintain standards in online arbitration proceedings. Some of the rules states that:

1. File names should always be given a unique name identifier for each electronic document so as to identify the originator, class of document and place of arbitration.
2. The same form of file naming system should be used throughout the arbitration for all electronic documents.
3. The file name and the date of the original document (e.g. the date shown on a letter that is submitted as evidence) shall appear on the first page of the electronic document, either at the top right corner or at the bottom.
4. If data loss occurs and the affected participant cannot itself reconstitute the lost electronic documents, the other participants shall help to reconstitute the electronic file(s) by providing copies of the pertinent files that they control.
5. A uniform method of mode of transmission and storage of emails should be practiced.
6. Whether any confirmation of receipt of email has to be given should be mentioned beforehand.

¹³ National Internet Exchange of India is a government non-profit company established in 2003 to facilitate and control domestic Internet traffic in India. Since 2005, NIXI has also created INRegistry as its autonomous body for maintenance of .IN domain. Since December 2012, NIXI also manages the National Internet Registry of the country delegation Internet Protocol addresses (IPv4 and IPv6) and Autonomous System numbers to its Affiliates.

¹⁴ Available at <http://www.odrindia.in> last visited on January 20, 2017.

7. File format for sending attachments, like. PDF, Doc, HTML, ASCII should be generally followed unless specifically mentioned otherwise

For audio and video conferencing during online arbitration ICC has stated that the arbitral tribunal, in consultation with the parties, will issue directions giving details for the conference, such as:

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

The arbitration proceedings should adhere by these rules and every detail must be clearly mentioned in the arbitration agreement. The arbitrators must always try to maintain equality and impartiality during the proceedings and comply with Sections 12 and 18 of the Arbitration and Conciliation Act 1996.

Finally, 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. Scanned copies of the award can be sent via email while the original documents can be sent via post at a later date for reference. This would complete the arbitration proceedings. The arbitral award can be enforced according to the law and there should not be any difficulty arising out of the award.¹⁵

9. Need of Government Support

Government run ODR has always been preferred by the people due to people's faith and confidence in governmental dispute resolution. It can be ideally hosted by government because government has more incentive to resolve disputes. It has no vested interest in outcome of decisions.¹⁶ Government is capable providing social reputation to ODR providers and provides credibility and authenticity to ODR system. Government also provides financial help to ODR projects and assists in building technical and administrative the infrastructure required for ODR procedures.¹⁷ There is need to amend Consumer Protection law for better resolution of the grievances and disputes of e-commerce consumers. The time for online dispute resolution in India has finally come and Indian government must seriously think in this direction.

In number of developed countries such as USA, Australia, New Zealand , Canada, UK etc grants were provided by government to ODR projects and number of initiative were taken to support e-commerce and ODR system. In Netherland and Singapore, electronic commerce platform and e-ADR respectively were steps in this direction by those governments.

10. Conclusion

On November 8, 2016 Indian Government has taken decision of demonetisation to curb problem of black money in India. Thereafter problem of shortage of cash has arisen. Then need was felt to promote digital payments to deal with cash shortage. Numbers of discount offers were announced by finance minister to promote digital transactions. Governments and private entities have also waived off charges over digital transactions to promote digital economy. Heavy discounts were offered by big e-commerce giants. This event has promoted e-commerce, which would not happen if demonetisation were not done. Therefore promotion of e-commerce in India definitely helps to create roads to Online Dispute Resolution.

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¹⁵ Chenoy Ceil, "Dimensions of Online Arbitration in India" June 6, 2012. Available at: <http://ssrn.com/abstract=2078896>

¹⁶ Colin Rule, Online Dispute Resolution for Business: B2B, E-Commerce, Consumer, Employee, Insurance and Other Commercial Conflicts, Jossey-Bass.

¹⁷ Thomas & Schultz, "Does Online Dispute Resolution Needs Governmental Intervention? The Case for Architectures of Control and Trust," North Carolina Journal of Law and Technology.