

ODR as an Innovative Step to Transform the Indian Judicial System

Dr. Raj Kumar Yadav¹, Vandana Saroha²

¹Assistant Professor, Department of Law, School of Legal Studies, Room No.-318, Transit Academic Block, Central University of Punjab, VPO-Ghudda, Bathinda, Punjab, India- 151401

²H No.18 Hanuman Mandir Marg, Vidyanagar Bhiwani, Haryana, India

Abstract: COVID-19 phase induced delays and it was acknowledged as the biggest threat to the Indian judicial system by increasing overburden of cases in courts. Disposal of cases in courts is already a time-consuming process with hectic delays. Recently the collaboration of Niti Aayog with Omidyar network, Agami NIPFP, Trilegal, Ashoka is encouraging step to enhance access to justice through Online Dispute Resolution in India. According to the United Nation Commission on International Trade Law, in ODR processes there is a broad range of methodology and approaches including Arbitration, Conciliation, Mediation, Negotiation etc. and some hybrid mechanisms covering both online and offline elements are there.(1). With the technology and ADR modes it is an easy and efficient way in a modernised world to attain justice. Normally it took 4-5 years in court to litigate the case fully but Online dispute resolution endeavours to resolve it within 40 to 45 days. With the emergence of globalisation ODR mechanisms are flourishing day by day with the rapid pace.

Keywords: Online Dispute Resolution globalisation acknowledge enhanced mechanisms innovative

1. Introduction

1.1 Need of ODR processes in India

Not only India but all over the world due to the complex nature of the judicial system 75% to 97% of aggrieved parties are unable to access justice due to unfamiliarity with the processes. Judicial processes seem to be very expensive, time-consuming, and have technical procedural complexities. With technological development, various ODR platforms have emerged which unlocks new opportunities for existing new experts and professionals with innovative ideologies and processes.

At global level there is rapid development of ODR mechanisms and gaining popularity which suggests its adoption in India seems to be quite a positive step for uplifting Indian judicial system as well as beneficial in uplifting overburden over courts. With the help of ODR mechanisms there is 67% of reduction of time in solving cases in the US as founded by the Michigan Health system. The EU settled 97% faster disputes than the formal legal system with the help of ADR processes it is found that nearly 70% of consumers are satisfied by ODR resolutions on consumer disputes.

Some well known institutions providing ODR services are World Intellectual Property Organisation (WIPO), Singapore International Arbitration Centre (SIAC), International Chamber of Commerce (ICC).

1.2 Present scenario of ODR in India:

India is working at a rapid pace for Odr development in the Indian judicial system. With twenty stakeholders discussions extensive deliberations and nearly hundred individual and institutional involvement, efforts made by Niti Aayog indicates to be an encouraging step for introduction of ODR in

India. Various meetings and discussions were held with judges of the Supreme Court, legal experts, industrialists, Attorney general on the given subject.

Basically an action plan is designed for future working of ODR in the country by a committee headed by Justice (Retd) A. K. Sikri and some suggestions have been made to cope up with the challenges in the implementation of ODR in India.

There is a need for a planned framework for ensuring skillful training including ethical training and simulation exercises.

Recently the Supreme Court judge D.Y Chandrachud said" We have realized that we have given a fillip to arbitration and mediation ODR is in the same line today.

Various supporting legislations to ODR:

Various private institutions and contractual agreements are the main sources at international level which includes:

- 1) UNCITRAL Model on International Commercial Arbitration and Conciliation Rules.
- 2) New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958

Other Sources are:

- 1) European Convention on International Conventional Arbitration 1961(2).
- 2) American Convention on Extra Territorial Validation of Foreign and Arbitral Awards 1979(3).
- 3) EU Directive on Electronic Commerce (4).
- 4) Inter American Convention on International Commercial 1975(5).

Basically in India various legislative provisions supporting

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online dispute resolution are:

- 1) Arbitration and Conciliation Act 1996: This act is based on UNCITRAL Model on International Commercial Arbitration 1985 and Conciliation Rules 1980 for becoming globally applicable and recent amendment in the Act in 2015 gave recognition to Arbitration agreement using electronic means and gave green signal to ODR for effectively working in India.
- 2) Code of Civil Procedure, 1908: In 1999 amendment was made and sec 89 was provided when read along with order 10 rule 1A to 1C promotes settlement of disputes outside court and gave option for opting modes of ADR, also covers ODR mode as well.
- 3) Constitution of India: Article 21 provides fundamental rights of Right and Personal Liberty and the procedure must be reasonable, just and fair (6).
- 4) Indian Evidence Act 1872 along with Information Technology Act 2002 provides legal recognition to electronic records and signatures.

The information technology act is based on the UNCITRAL Model of E commerce in 1996 (7).

Section 65A and 65B of the Evidence Act supports the electronic evidence.

Advantages of ODR resolutions:

- 1) Includes informal and flexible process than courts.
- 2) Use of video conferencing as a mode of conference and safe from physical and face to face encounters.
- 3) Free easy access to justice.
- 4) No hassle in data documentation, management, transmission and provides easy data storage.
- 5) Time and cost effective. It saves from traveling expenses and delayed techniques.
- 6) Helps to maintain trust and confidence among parties.

Limitations of ODR processes:

- 1) Sometimes it is difficult for panelists and mediators to gain confidence and trust in parties so there are failures and setbacks in resolving disputes.
- 2) Data insecurity because there are no established data protection protocols and norms followed till date.
- 3) Lack of established infrastructure and legislative provisions.
- 4) Lack of awareness and skillful training to magistrates, lawyers, panelists for handling online dispute resolution and its methodology.
- 5) Lack of Technology and networking devices and control rooms, all courts do not have internet access fully.
- 6) Increasing awareness among stakeholders about ODR mechanisms, there is a need to organise seminars, conferences and workshops at a high level.

Judicial decisions:

In Trimex case (8)

In this case the Supreme Court held as in online arbitration parties meet virtually so online agreement must clearly define all particulars for resolution and must be in conformity with section 7 of Arbitration and Conciliation Act, 1996.

Shakti Bhog foods Limited vs. Kola shipping (9):

In this case it was held the telegram, telex can be used as a mode of communication and accepted valid mode by the court.

In the state of Maharashtra vs. Dr Praful B Desai (10):

In this case the Supreme Court held video conferencing as a valid mode of recording evidence of the witness.

2. Conclusion

ODR as mode of resolution is an encouraging step to facilitate global harmony and settlement of disputes at domestic and international level. If issues of confidentiality and privacy are resolved it could be an innovative step for the Indian judicial system in amicable settlement of disputes. The burden of the courts will be reduced at a faster pace and it would make India a globally recognised hub in dispute resolutions like London and Singapore.

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