



Research Paper

## Covid-19 Pandemic- An Opportunity to Re-born the Alternative Dispute Resolution Mechanism

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### Abstract

*E-Governance is the part of every department of life today. It increases productivity, enhances transparency and accountability. Technological Developments within the field of data and introduction of computers have made a turning point within the history of human civilization. Today we can't imagine our life without the technology. It has brought about a sea change in all fields of human activity and judiciary is not an exception to it. No one can deny that the justice delivery system in India has overburdened due to the delay and pendency of cases and this situation is become more difficult and worse as witnessed by Covid-19 pandemic. Covid-19 pandemic and resultant lockdown in almost all nations realized the mankind that it is the time to find the answer for such difficult situations since, total shut-down of justice delivery system can curtail the growth of nation.*

**Keywords-**ADR, Online dispute resolution, Technology, Judiciary.

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### I. Introduction

To overcome the pressure on judiciary we can find the answer in alternative dispute resolution mechanism with the help of negotiation, conciliation, arbitration and mediation services. These are the methods known to be resolving the disputes speedily and cost effectively. If these ADR methods adopted with add and use of technology then the ADR Mechanism will become more convenient and more speedily dispute resolving system. Now it is the time to adopt ODR that is Online Dispute Resolution System as one of the attempts to reborn and reform the ADR to make it more efficient. In India few online institutions have providing the online arbitration, conciliation. Mediation services to the needy peoples. The objective behind these online platforms is to provide cost effective, speedy and result oriented dispute resolution platform to the litigants. Since the online

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dispute resolution is the future of India, online dispute resolution institutions necessarily aid and assist the traditional method of dispute resolution to erase and remove justice delayed is justice denied.

## **II. Concept of Online dispute resolution (ODR)**

Online dispute resolution (ODR) may be a branch of dispute resolution which utilizes technology to facilitate the resolution of disputes between parties.<sup>2</sup> It employing available information and communication technology to resolve the dispute between the parties through online mode. It utilizes internet as a medium to resolve the disputes by adopting variety of ADR methods similar to traditional or offline ADR.

Combination of –

Alternative Dispute Resolution Mechanism + Information and Communication Technology = ODR (Online dispute resolution).

## **III. Need of Online Dispute Resolution (ODR)**

We all are facing the situation of Covid-19 Pandemic and resultant lockdown. To control the same, we have taken the collective efforts to prevent the spread of the disease by keeping social distance, preventing gathering of peoples and taking all required steps. With the collective efforts we can control it, but can anyone guarantee that in future there is no repetition of such situation? No, no one can guarantee that the situation of pandemic or like would never be arise in future. So, this situation needs to be taken as a lesson and alert that we need to be ready to face the situation keeping in mind that we have to lead all the functioning going on. Use of information and communication technology in dispute resolution proceedings is need of hour.

During the ongoing Covid-19 Pandemic ODR significantly become popular. Even the regular courts are hearing the cases with video conferencing and facility of e-filing has been launched to tackle with the situation and a step ahead in success of e-court mission mode project launched by e-committee Supreme Court of India.<sup>3</sup>

The virtual proceedings by digitalization of arbitration, mediation, negotiation or conciliation proceedings surely be helping to disputing parties to overcome the difficulties such as geographical barriers. Parties located at the different place find it difficult to remain present for the proceedings which they agreed between themselves as it is necessary to avoid the gathering of persons. With the use of technology parties located anywhere in the world can possibly be the part of proceedings from the remote place. It also saves the cost of transportation which the disputant parties might bear in offline proceedings. Since the technology is involve in every sphere of life, the transactions now a days took place involving the technology, this significantly raises the large-scale potential for innovation in dispute itself and to handle such situation and to resolve the disputes which itself consist the element of technology, the dispute resolution proceedings can't be escaped from the

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<sup>2</sup> Dr. Kurlwal Anupam , An Introduction to Alternative Dispute Resolution System (ADR), (3<sup>rd</sup> edn, Central Law Publication, Allahabad, 2017)302

<sup>3</sup> **E-Courts Project Phase II - Objectives Accomplishment Report as per Policy Action Plan Document** E-Committee, Supreme Court of India,

[https://ecourts.gov.in/ecourts\\_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf](https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf)

accessed 11 September 2021

technology. Such techno-elementary disputes are on a way of raising as we are facing the situation like Covid-19 Pandemic. ODR has the potential to be an effective alternative that utilizes technology to bridge barriers by facilitating low cost, remote, ease of accessibility, technology-based resolution process adhering to principles of natural justice which undoubtedly enhances justice delivery to all.

#### **IV. Legal Recognition and Judicial Outlook towards Online Dispute Resolution-**

So far as the legal recognition to ODR is concerned Section 65A and 65B have been added to the Indian Evidence Act,<sup>4</sup> by Information and Communication Technology Act, 2000. Information and Communication Technology Act, 2000 has been enacted with aims and objective to regulate the transactions carried out by means of electronic data interchange and other means of electronic communication, known to be electronic commerce which involve the utilization of alternatives to paper-based methods of communication and storage of data, possibly be electronic filling of documents with the govt. agencies.

- Section 4 of Information Technology Act, 2000 gives legal recognition to electronic records and provides that where any legislation consists the requirement of any information or matter should be in the type written or printed form, then such requirement shall be deemed to be fulfilled if it is kept in an electronic form. Section 5 legally authorizes digital signatures,
- Section 6 lays down the foundation of electronic governance, recognizes use of electronic records and digital signatures in Government and its agencies, the filing of any form, application or other documents, creation, retention or preservation of records, issue or grant of any license or permit or receipt or payment in Government offices and its agencies could also be done through the means of electronic form,
- Sec.7 provides that where any legislation consists the provision for the documents, records or information shall be retained for any specified period, then that requirement shall be deemed to have been satisfied if an equivalent is retained within the electronic form.
- Sec.8- Where any law requires the publication of any rule, regulation, order, bye-law, notification or any other matter should be published in the Official Gazette, then such requirement shall be fulfilled if the same is published in an electronic form.<sup>5</sup>

The Indian Judiciary justified the use of technology in judicial proceedings in various pronouncement. In *National Textile Workers Union V. P.R. Ramakrishnan*<sup>6</sup> Justice P.N. Bhagwati held that, law is not the static and it must change with the changing social needs, concepts and values. If law fails to respond to the needs of changing society, then it will curtail the growth of the society and choke its progress or if the society is vigorous enough, it will discard the law which stands in the way of its growth. Therefore, the changing circumstances today where virtually every crime has involved an electronic element has had a considerable effect in the law of the land and to respond to the current needs, the current laws have been amended to cater or

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<sup>4</sup><<https://indiankanoon.org/doc/35556724>>accessed 11 September 2021

<sup>5</sup><<https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>>accessed 11 September 2021

<sup>6</sup>National Textile Workers Union V. P.R. Ramakrishnan [1983] 1 SCC 228.

facilitate its larger goals i.e., dispensation of justice. *State V. S.J. Choudhary*<sup>7</sup>, it was held that the Evidence Act was continuing in nature hence, the word ‘handwriting’ in section 45 of that Act was construed to include ‘typewriting’ and on the basis of the same, courts have interpreted, over a period of time, various terms and phrases. For example, telegraph to include ‘telephone’ bankers’ book to include ‘microfilm’ to take note include ‘use of tape recorder’ documents to include ‘computer database’. *Syed Asifuddin V. The State of Andhra Pradesh*<sup>8</sup> AP High court was analyzed the definition of a ‘computer’ in the light of clause (i) of Sec. 2(1) of IT Act and observed that, it is clear that a cell phone is a computer which is programmed to do the function of receiving digital audio signals, convert it into analog audio signal and also send analog audio signal in a digital form externally by wireless technology. *Shakti Bhog v. Kola Shipping, 2012*, the Supreme Court<sup>9</sup> has held that online arbitration agreements are lawful as fulfilling the essentials of a complaint under sections 4 and 5 of the Information Technology Act<sup>10</sup> read with section 65B of the Evidence Act.<sup>11</sup>

#### **V. Functioning of the Online ADR System**

An online ADR service center functions like an offline arbitral institution. One can approach these institutions either ad hoc or on an agreement basis. Companies generally have a pre-arrangement for settlement of dispute under the aegis of online arbitral institutions. When a dispute arises, either the company or the consumer approaches the arbitral institution. Agreements are made out between the institutions and the company as regards the method of initiating the process into action, kind of settlement to be pursued, the fee structure, rights and responsibility of parties and the arbitral institution, the procedure to be followed, law applicable, confidentiality, security etc.<sup>12</sup>

#### **VI. Online ADR Institutions**

1. Better Business Bureau- Better Business Bureau provides online conciliation, mediation and arbitration services. In conciliation, the BBB staff started the procedure by collecting the information from disputant parties and encourages communication with an objective to promote discussion between them. This will lead the exchange of offers between the parties. During the mediation process a professionally trained mediator to consults with the parties and guide them in understanding their own mutually agreeable solutions. In arbitration BBB provides a professionally trained arbitrator who will hear each side, weigh the evidence presented and make a choice on the way to resolve the dispute that is binding on the parties or binding conditionally.<sup>13</sup>
2. Clicknsettle- Clicknsettle is engaged with arbitration and mediation services and offers electronic case management software. It is wholly owned subsidiary of NAM (National Arbitration and Mediation), a national provider of arbitration and mediation services and electronic case management software. CNS

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<sup>7</sup>State V. S.J. Choudhary [1996] 4 SCC 567.

<sup>8</sup>Syed Asifuddin V. The State of Andhra Pradesh [2006] (1) ALD Cri. 96, [2005] CriL.J 4314 Decided On 29 July, 2005.

<sup>9</sup>Shakti Bhog v. Kola Shipping [2012], <https://indiankanoon.org/doc/175517975/> accessed 11 September 2021

<sup>10</sup>Supra. Note no.3.

<sup>11</sup>Supra Note no. 4.

<sup>12</sup>Supra Note no. 1.

<sup>13</sup><https://www.bbb.org/dispute-handling-and-resolution> accessed 10 September 2021.

is an interactive, digital settlement application which offers disputing parties a way to settle cases confidentially, quick and in cheap manner at party's convenience and at party's computer.<sup>14</sup>

3. SquareTrade's- dispute resolution model was designed to deploy processes of conciliation, mediation and therefore the choice of arbitrations or recommended resolution, both as a facilitated service also leveraging technology to create a self-service means to assist parties to solve problems on their own. While providing services squaretrade adheres with the principles like clarification, compromise, consensual participation, neutrality, and confidentiality. The model consists a two-stage process, first is Web-based technology-supported negotiation processes and second intensifying, if necessary, to professionally facilitated resolutions.<sup>15</sup>

## **VII. Indian Online ADR Institutions**

1. Centre for Alternative Dispute Resolution Excellence (CADRE)

CADRE is established as a service provider for Online Arbitration Platform and ecosystem providing a path-breaking and hassle-free way to resolve disputes in India. It founded on the line to make dispute resolution cost-effective, speedy, simple and result-oriented. It has developed their specific CADRE rules to eliminate difficulties and dependencies from the dispute resolution process. It is a platform easy to use and user friendly.<sup>16</sup>

2. SAMA

Sama is one of the online service providers for resolution of disputes between businesses and customers, employers and employees, landlords and tenants, professionals and clients, or anyone else. It is fully online service running in a fast and cost-effective manner. It using sophisticated technology and a network of skilled professionals. This initiative is a result of collaborative effort of industry players and impact sector leaders like Agami, Ashoka, Omidyar network, Trilegal, Vahura and more who selected ODRways (now Sama), a mediation services platform founded in 2015. It run with a team to build an Online Dispute Resolution (ODR) platform for the future.<sup>17</sup>

3. Centre for Online Dispute Resolution(CODR)

CODR is an institution that facilitating fair, fast and accessible dispute resolution through a secure online platform. It consists panel of neutral expert persons. Its goal is to form the entire procedure unbiased and transparent while maintaining confidentiality. CODR's online platform that's tailor made for online arbitration and mediation, ensures that the users stressed on the matter and not on the technology. At CODR the litigant finds the solution for their dispute at one place by meeting online.<sup>18</sup>

4. AGAMI

Our present dispute resolution system especially the courts, are under severe stress and overburdened. Since the steps towards making courts more efficient and effective with the help of technology has begun with the National Action Plan for ICT enablement of High Court and District Court in India by the Supreme Courts E-Committee there's also a requirement to reimagine the longer future of dispute resolution in India. It is

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<sup>14</sup> <<http://www.clicknsettle.com>> accessed 10 September 2021.

<sup>15</sup> Steve Abernethy President & CEO SquareTrade.com, Building Large-Scale Online Dispute Resolution & Trustmark Systems, <<https://www.mediate.com/Integrating/docs/Abernethy.pdf>,> accessed 10 September 2021

<sup>16</sup> <<https://atthecadre.com/>> accessed 12 September 2021.

<sup>17</sup> <<https://www.sama.live/about-us.php>> accessed 12 September 2021

<sup>18</sup> <<https://resolveoncord.com/#>> accessed 12 September 2021

necessary to be an advanced with technology. Agami has founded the web-based Dispute Resolution (ODR) in December 2018 to expand the ODR ecosystem by accelerating ODR startups, creating demand amongst business, society and government, and unlocking resources of all types.<sup>19</sup>

#### 5. Presolv360

It was founded in 2017. It helps not only to resolve the dispute but it also helps to prevent it. It serves the proper dispute management which consists prevention, neutral evaluation and resolution of dispute between the parties. It helps to have the proper communication between the parties at the earliest stage which further leads proper negotiation, one of the important factors of dispute resolution with the integrated technological platform, cloud-based solution, and end-to-end dispute management software.<sup>20</sup>

### **VIII. The Way Forward**

The requisite in online ADR is an aid and assistance of IT itself. The IT industry should be keen and concerned in such dispute resolution system. It can also arrange technical personnel to sit with the arbitral tribunal for technical support. It can offer for improved services with specific standards under the control of rules and regulations. Hence, the rules and regulations in collaboration with Information and Technology Act and concerned laws need to be prepared to flourish Online ADR system in India.

The success of online dispute resolution is basically depending on the consumer trust, as the consumers are the primary beneficiaries, the trust regarding the online ADR services in the mind of consumer need to be enhanced by spreading an awareness among the beneficiaries. To achieve this goal confidentiality, security which generates the assurance and faith in the people while proceeding online needs to be established, as the issue of privacy always exist while behaving technologically.

The trained professionals at least having the basic knowledge of technology is the demand of time to explore the ODR services.

Proper infrastructure is another requirement which needs to be achieved to support the Online ADR mechanism in India. Further the care should be taken as regards the people who are not technosavvy because they should not be out of the flow of Online ADR mechanism and justice delivery system.

### **IX. Conclusion**

Undoubtedly ADR mechanism which is known for speedy disposal of cases has the more potential to be used with technology. Covid pandemic had affected every field and realized us to think for the proper solutions to deal with the difficult situation. Let's take it as an opportunity to explore the justice delivery system with the help of technology. Use of safe and secure technology with ADR mechanism will help to reshape and reborn the ADR mechanism in India. This could bring the revolution in Indian judicial system and can be one step ahead to reduce the burden on regular courts and to lead the justice delivery system easily accessible to the needy people in India.

#### **Declaration of Conflicting Interests**

The author declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

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<sup>19</sup> <<https://agami.in/odr/>> accessed 13 September 2021.

<sup>20</sup> <<https://www.presolv360.com/>> accessed 13 September 2021

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