

DE JURE NEXUS LAW JOURNAL

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**ONLINE DISPUTE RESOLUTION – GROWTH UNDER THE LIGHT
OF COVID-19****INTRODUCTION:**

Briefly speaking, every legal system that we have today in the present world is classified into majorly two models;

Firstly, in Adversarial system¹, the parties in the legal proceeding develop their own theory of the cases and further gather evidence to support their claims. These parties are assisted by their advocates who tend to play a pro active role in delivering justice to the litigants. The lawyers gather the evidence which are needed to support the case and also participate in the cross examination and scrutiny of the evidence presented by the disputing party. Here, the role of the judge decides the claims which are solely based on the evidences and arguments presented by the parties and their respective lawyers presenting their case.

Secondly, we have, Inquisitorial system², where the judge is the decision maker who takes the center stage in delivering justice. The role of the judge is active in this system as he or she determines and examines the facts and issues that are involved in the case. They also decide the way in which the evidence must be presented before the court. For instance, the judge can decide for presentation of a specific form of evidence, it can oral or written statements, documentary (correspondence between the parties through letters or emails) or maybe a combination of both. The judge then evaluates the evidence presented before them and then according to the evidence presented in front of them they decide the legal claims in the given case. Therefore, this model is also known as the interventionist or the investigative model. This system less reliance is being given on the cross examination and other techniques which are generally used by the lawyers to present the case and to evaluate the evidences of their opposing counsel.

In common law countries like India, we follow the adversarial system in delivering the justice.

ALTERNATIVE DISPUTE RESOLUTION (ADR):

¹ UK, AUSTRALIA, INDIA are the countries where this system is being followed.

² EUROPE follows this system, generally countries with civil law jurisdiction

ARBITRATION: It is sort of a private arrangement which is less formal, and more flexible forum. Its decision is binding in the parties just like the order of the courts. As the final order of the courts are refers to as judgements, the final order of any arbitral proceeding is known as arbitral award. The parties have the freedom to select any qualified expert as their arbitrator. The proceedings of arbitration are very confidential in nature unlike the other court proceeding. Which is why it is mostly preferred in the commercial matters for their commercial reputation. Once, an arbitral award is rendered it is recognized as and enforced akin to a court pronounced a order or a judgement. The arbitrator also holds the power and authority to grant interim measure just like a judge in the court room.

MEDIATION: it is one of the types of ADR where the parties appoint a neutral third party who facilitates the whole process of mediation in order to assist the parties in gaining a voluntary agreement. It is premised on the voluntary will of the parties. It is also a flexible and informal technique of dispute resolution. Unlike the other process like litigation or arbitration, mediation is inexpensive, very fast and confidential. The main point of distinction between arbitration and mediation is in the arbitral award. The outcome of mediation does not have similar binding like an arbitral award. However, through non-binding, these resolution agreements may be incorporated into the legally binding contract, which is binding on the parties who execute the contract. But, representative suits, election disputes, criminal offenses, case against specific person like minor etc. have been excluded from the scope of mediation.³

CONCILIATION: it is a process which is very similar to mediation. In this process the parties out their own free will appoint a neutral third party to resolve the dispute. The main key difference is that the mediator merely performs a facilitative role and provides for a platform for the parties in the dispute to reach a voluntary decision. In conciliation, the conciliator may be interventionist in the sense that he or she may suggest potential solutions to the parties in order to resolve the claim.⁴

ONLINE DISPUTE RESOLUTION:

Online dispute resolution (ODR)⁵ has been made to utilize information technology to carry out our alternate dispute resolution. ODR is one of the means of dispute resolution which can performed either by mediation, conciliation and arbitration, which are discussed above, with the use of online technology to facilitate the resolution of dispute that are between the parties. The information management and communication tools may be applying to all the parts of the proceeding and also it may have an impact on the methods by which the disputes are being resolved.

In India, the general assembly of the United Nations recommended the working of the said model law and rule where disputes arise in the context of international relations and the parties seek an amicable settlement of that dispute by recourse to conciliation. India has adopted these

³ Alcons Infrastructure Ltd. vs Cherian Varkey Construction

⁴ Both mediation and conciliation are governed by section 89, provision inserted by the 2002 amendment of the CPC.

⁵ UNCITRAL has adopted model law on international commercial arbitration in 1985 and the UNCITRAL conciliation rules in 1980.

principles of dispute resolution in the Arbitration and Conciliation Act, 1996⁶. The above act helps us to provide for an alternative dispute resolution mechanism which are mentioned above. Many measures have also been taken by the Ministry of law and justice to introduce the ODR through arbitration, mediation and conciliation.

WHAT IS THE NEED FOR ODR?

Dispute resolutions is one of the scariest and the expensive things for people specially the stakeholders which are generally involved in the courts, companies, government, individuals, international organization etc. These are the prominent places where it is very easy to find conflict of law involved in the presented primarily for dispute resolution. Moreover, this can not only be seen in India but all over the world involving their respective laws. Hence, to reduce the hardship faced by such disputes, it is being recommended that it is high time that countries should adopt a model code of conduct that was incorporated with the domestic laws of the respective countries. When we talk about the Indian judicial system, we see horrifying data of pending cases that unattended before the court. The judicial system is already burdened with many cases, things will become worst with the issues of e-commerce disputes which are highly rising now a days. The ODR system would be of great help in attending those cases. It is also important to limit the role of the National Courts in India and to give rime focus to the will of the parties in establishing the procedure for the settlement of their disputes. This system would also help in securing procedural fairness by means of limited no of provisions from which the parties could generally not agree to depart. Through this system, it would be easier to put the rules in place which advance arbitration, even if the parties have not reached the agreement on the relevant procedural matters.

CHALLENGES WHICH ARE FACED BY THE ONLINE DISPUTE RESOLUTION:

It is to be kept in mind that arbitration proceedings are not generally prevalent in India so, there is a lack of technology access to internet connectivity in the local remote areas which created an obstacle in the proceeding of the ODR and which is the most important thing to actually practice this resolution. It is also to be kept in the mind that online arbitration is not found to be suitable for the criminal matters and matrimonial disputes. Also, education barrier is another main drawback behind the proper implementation of online arbitration in India. Since, most of the people are not aware of the working of the ODR, this mechanism has not been able to build trust and confidence amongst people because of the obvious reasons such as the lack if access to internet or technology, lack of awareness and apprehension and people have a skeptical approach towards this mechanism. This can also be articulated to the lack of face-to-face hearing or lack of physical existence and interaction between the parties to the dispute. It is also believed that there are less chances for resolution of the dispute for online business and transaction. One of the biggest challenges that are faces by the system are the lack of trained lawyers which have not quickly adopted the resolution in a healthy manner. Thus, in my opinion there is a lot of need to spread awareness regarding the resolution mainly through, seminars, training and campaign to make lawyers and people build trust and confidence over this system of resolution.

CONCLUSION:

⁶ Also, amended in 2015

With the rise in the cases of Covid -19 every thing has become standstill. The rise and surge in covid cases has made it impossible to work with the existence of too many people around. The online dispute resolution has made it extremely easy to deal with the cases which are of utmost important in today's time. It is cost effective, easy and time saving. Moreover, it gives a secondary platform just like the court room in the High Courts. It is an alternative for the present High court system. But, with all the needs and use that is provided by the ODR we still need to keep this in mind, looking at the challenges, we still have a long way to go.



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