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The Grievance with the Dispute Resolution through Electronic Media Interface: A Suggestive Approach

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ABSTRACT

India is the largest populous country and with the pending cases of almost 50 million and over 1, 69,000 cases were actually pending over 30 years as such. The party aggrieved from the conduct of the opposite chooses the court for the sake of dispute resolution then it a bad choice if there are other alternatives available for the sake of dispute resolution in a better way. It would impliedly lead to a point where the party has wasted his quality time by investing in court. This scenario led to the development and emergence of Arbitration: one of the fundamental ways to solve a dispute amicably as such.

So, this transition from the court to the arbitration as the method to solve the dispute went on to update different methods and modes to solve the dispute through arbitration. The researchers would like to focus on the fundamental issues which add the drawbacks to the transition that was actually developed and mainly the electronic media. Though the electronic media interface creates a forum for the arbitration to commence in a less expensive way but this mode actually opens a door for neglecting few mandatory norms as per the legislative framework.

The researchers would like to focus on such grievances where it is letting such motion of compromises up and then suggest few reforms both to the parties in order to eliminate the grievances and give effect to the legislative intent.

Keywords*: Transition, Electronic Interface, Legislative Intent, Grievance, Dispute Resolution.*

I. INTRODUCTION

Arbitration is an alternative dispute resolution method that has gained popularity in India in recent years. It is a procedure wherein a dispute between two or more parties is settled by the appointment of an arbitrator, a neutral third party. In contrast to litigation, arbitration is a private process, meaning that parties are not allowed to observe the proceedings. In India, arbitration is significant for several reasons. First off, in comparison to litigation, it is a quicker and more

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effective method of resolving problems. The Indian legal system is overworked, and cases are often not settled for years. Nonetheless, arbitration is a more effective means of resolving conflicts because it can be finished in six to twelve months.

The arbitration procedure is private. In contrast to litigation, neither the public nor the media are given access to the specifics of the disagreement throughout the processes. Parties can safeguard their economic interests and reputation thanks to this confidentiality. It's an adaptable procedure. The language used for the proceedings as well as the location and time of the arbitration are up to the parties to decide. This adaptability makes sure that parties can settle their differences in a fashion that works for them.

Arbitration is generally is a voluntary exercise the parties to the dispute generally have to submit to the arbitration through an agreement which ever exists between them and it is a consensual process. And also a cost-effective process. Compared to litigation, the costs of arbitration are significantly lower. This is because arbitration proceedings are less formal and streamlined, and parties do not have to pay for court fees or legal representation.

(A) Review of Literature:

- An article titled "**ONLINE ARBITRATION COMPARED TO OFFLINE ARBITRATION AND THE RECEPTION OF ONLINE CONSUMER ARBITRATION: AN OVERVIEW OF THE LITERATURE**" [3]which was actually written by the Chinthaka Liyanage and the same is being published by the Sri Lanka Journal of International Law. The author of this article initially explains the internet revolution and how it is actually able to connect people globally regardless of location and trading capabilities. The author highlights the reason for working on this paper is to explore the differences between offline and online arbitration, and the reception of online consumer arbitration for cross-border business-to-consumer electronic commerce dispute. And then the author continued to define the terms "online arbitration" and "offline arbitration" as such. The researchers used this article to understand the conceptual basis of both the online and offline arbitration as such and also the fundamental differences with regard to both the offline and online arbitrations.
- An article titled "**On-Line Arbitration of Electronic Commerce Disputes**" [4]which was actually written by Erik Wilbers and the same is being published by the journal

[3] Chinthaka Liyanage, Online Arbitration Compared to Offline Arbitration and the Reception of Online Consumer Arbitration: An Overview of the Literature, 22 SRI LANKA J. INT'l L. 173 (2010).
[4] Erik Wilbers, On-Line Arbitration of Electronic Commerce Disputes, 27 INT'l BUS. LAW. 273 (1999).

International Business Lawyer. The author of this article starts the discussion with the importance of Internet and how it is benefitting people in large and then he compares the same phenomenon with the parties having disputes where it creates an expansive reach of the Internet creates unprecedented opportunities for parties to communicate and to engage in transactions at distance. The author then continued to state few postulates from WIPO with regard to the changes which the electronic communication, process and procedure brought in by the parties. The researchers used this article in understanding the access, exposure and implications which the electronic arbitration would actually create.

- Another article titled "**Dispute Resolution On-Line**" [5]which was actually written by Catherine Kessedjian & Sandrine Cahn and the same is being published by the journal THE INTERNATIONAL LAWYER. The author of this article initially explains the need for solving the disputes which exists between the parties and then continued the discussion the benefit which the parties would actually have by solving the disputes through online media interface. The author then mentioned the radical approach of resolving the disputes on-line with certain factors to consider. The researcher used this article in order to understand the obstacles to the actual settlement of disputes through internet as an electronic media interface. And also the researcher through this article understood how the Internet is acting as a means to facilitate the International Cooperation and Communication as such.
- An article titled "**Lawyers and Judges Optional? Online Dispute Resolution Promises to Increase Access to Justice, but Challenges Remain**" [6]which was actually written by Lyle Moran and the same was published by the ABA Journal. The author of this article started the discussion with statistics mentioning the percentage of pending proceedings before the court and also continued the discussion by comparing the percentage of disputes which are pending before the court with the active courts ready to solve the disputes. The author explained the inhibition process along with the factors which sympathize and empathize the electronic arbitration. The researcher used this article to understand the intent of author with regard to solving of disputes on-line and also the researcher used the interpretation of the author in association with the creation of room for improvement.

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[5] Catherine Kessedjian & Sandrine Cahn, Dispute Resolution On-Line, 32 INT'l L. 977 (1998).
[6] Lyle Moran, Lawyers and Judges Optional? Online Dispute Resolution Promises to Increase Access to Justice, but Challenges Remain, 107 A.B.A. J. 58 (2021).

- An article titled "**Online arbitration in Theory and in Practice: A comparative study in Common Law and Civil Law countries**"[7] which was actually written by Ihab Amro and the same is being published by the University of Athens. The author of this article presents an overview of online arbitration (e-arbitration') as part of online dispute resolution ('ODR') techniques from both theoretical and practical perspectives. And then the author continued to explain the compromises with regard to the compliances in association with the e-arbitration. Also, the author shared few **practical thoughts on issuing an e-arbitration award when the award must be in writing**. The researcher used this article to understand how the e-arbitration hearing can be different from the traditional arbitration and also the researcher used to understand how the e-arbitration is recognized under some national arbitration laws.
- An article titled "**Covid-19 and E-Arbitrations: An India perspective**" [8]which was actually written by the Sonal Kumar Singh, Anish Jaipuriar and others. The author of this article started the discussion with the hardships caused by the Covid-19 epidemic and aims to discuss the inherent issues underlying virtual arbitrations vis-à-vis the existing enabling legal provisions in India in relation to virtual arbitrations and attempts to assess integration capabilities of Indian arbitration mechanism with technology. The author also highlighted the various existing international protocols, guidelines and reports which aim at addressing the issues surrounding virtual arbitration. The researcher used this article in understanding the rules and regulations of certain identified arbitral institutions and also the steps implemented towards facilitating virtual adaptation of arbitral proceedings.
- Another article titled "**Online Arbitration- India's step towards Digitization and boon in adversity**"[9] which was actually written by Prince Pawaiya and Onkar M. Gujar and the same was actually published by the Legal-service India journal. The author of this article discussed about the COVID-19 pandemic and then continued to discuss about the E-dispute Redressal Mechanism and then shifted the focus from explaining the

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[7] Ihab Amro, Online arbitration in Theory and in Practice: A comparative study in Common Law and Civil Law countries, *Kluwer Arbitration Blog (February 23rd 2024), https://arbitrationblog.kluwerarbitration.com/2019/04/11/online-arbitration-in-theory-and-in-practice-a-comparative-study-in-common-law-and-civil-law-countries/*

[8] Sonal Kumar Singh and Anish Jaipuriar, Covid-19 and E-Arbitrations: An India perspective, AKS Partners (*February 23rd 2024), https://www.lexology.com/library/detail.aspx?g=40e5193a-22d0-411c-97e7-222dc434c285.*

[9] Prince Pawaiya and Onkar M. Gujar, Online Arbitration- India's step towards Digitization and boon in adversity, Legal-service India journal (February 24th 2024), https://www.legalserviceindia.com/legal/article-2329-online-arbitration-india-s-step-towards-digitisation-and-boon-in-adversity.html

issues to the legislative framework. The author then concluded the discussion with few suggestions which can be brought in for the betterment as such. The researcher used this article to understand the legislative framework and also the challenges posed by the electronic arbitration.

(B) Statement of Problem:

The researcher identifies that there is a digital divide even though there exists technology readily available but still there exists a problem with regard to the millions of people who actually don't possess a digital knowledge and access to digital media. So, if we pose a shift from the traditional mode to the electronic mode then it becomes a problem.

Also, the main reason for actually choosing the alternative mode rather than going for court to resolve matters is to maintain the confidentiality but with regard to the electronic arbitration there are no such strong safeguards in place to protect the date from being breached and in fact there can be a situation where the sensitive or the confidential information of parties to leak.

And since the proceedings are conducted online, it becomes almost impossible to actually determine the place of trail and that virtual arbitration has no situs. Also, there is a need to harmonize stamp-duty and procedural requirements across different States. Being a heavily technology dependent process, the glitches faced during the process like internet connectivity issues may cause unnecessary delays and interruptions in the process.

(C) Research objectives:

i. The primary objective is to understand the reason why enterprises and companies adopt and submit to arbitration rather than approaching court for dispute resolution.

ii. To understand the implications and affects incurred by the parties when they adopt the choice of law by nations when they completely exhaust the process of choosing the law.

iii. To suggest possible reforms in order to annihilate the vacuum.

(D) Research questions:

i. Whether there exists a legislative framework in India for recognizing and following the electronic arbitration and enforce the award passed by countries?

ii. Whether the purpose and intent for resolving disputes through arbitration is hampered and retarded when the parties choose the electronic media as a forum?

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iii. Whether the government is pro-active in taking steps for an effective implementation of ODR services or not?

(E) Research Methodology:

The methodology used in this research paper is a traditional method of research that is Doctrinal research. It involves the systematic analysis of provisions which deal with the electronic arbitration and also understanding the challenges it creates to the parties upon submitting to an online forum and through this phenomenon the researcher would like to identify the ambiguity and counter with a need to have a proper regulation. And analysis of certain cases in such sector the researcher actually used secondary sources like journal articles, books and case briefs for the entire process of research.

(F) Scope and Limitation of the Study:

i. This study aims to focus upon the importance of submitting the commercial disputes to arbitration rather than knocking the doors of the court.

ii. This study mainly looks into various provisions and legislative framework with regard to the agreements and arbitration process entered electronically.

iii. This study aims to remove the ambiguity which it is creating and then propose few measures in order to curb the practice.

II. INTRODUCTION ON ELECTRONIC ARBITRATION

The most immediate contribution of information technology towards the legal field with respect to ADR is in the implementation of automated settlement assistance systems. Each party to the dispute assesses the value of its claim and sends it to the automated system. Using methods of calculation and criteria known to the litigants, the computer suggests - when the difference is not too great - a price on which both the parties can agree upon.

This system has enjoyed considerable success in disputes between insurers and insured in the other nations where they applied it. However, it is applicable only when the claimant is seeking a sum of money. Information technology also contributes to the development of online mediation and conciliation systems.

The conciliation or mediation body tries to bring the conflicting parties together, in order to arrive at an agreement that is then formalized in a settlement agreement. While the mediator or conciliator does play an active role, he/she cannot impose an agreement on the parties. The new technology removes the need for the parties to meet physically; it replaces these meetings with electronic exchanges.

Arbitral institutions aim to propose a partially or totally electronic procedure. The arbitrator is the third party, who is entrusted by the disputing parties with the task of settling their dispute. At the end of the arbitration procedure, he/she makes an award which is binding on the parties and which is invested with the authority of res judicata. Here too, the Internet facilitates the remote administration of the procedure and does not require the attendance of the parties or their legal representatives

One more type of online dispute resolution which is worth mentioning, even though it only concerns a particular kind of dispute. When owners of trademarks cannot register their domain names because other more diligent operators have registered those names in bad faith ("cybersquatting"), they can refer the matter by electronic means to one of the organizations approved by the Internet Corporation for Assigned Names and Numbers (ICANN) in order to have the disputed domain name transferred or deleted. ICANN's competence is based on the contract signed by the owner of the domain name when it was registered. This is not strictly speaking an arbitration procedure, since once the decision has been handed down, the parties can always refer to a judge for settlement of the dispute. It is a sui generis procedure, also known as an "administrative procedure".[10]

Technological advancements have bought many changes in human life which made aspects of human life easy, including the technological advancements in the legal sector.

One of the advancements to the legal sector, includes the method used to settle disagreements or conflicts that could occur in digital context which is called as online dispute resolution (hereinafter referred to as ODR). The procedure of ODR involves using digital technology and communication tools to facilitate the resolution process, doing away with the need for traditional court procedures or in-person hearings. [11]

This could be a service which is strong, comprehensible, widespread, easy to use, and framework-oriented towards the yielding of the best results. On another note, the court does not have to bear the entire cost of providing the service of ODR., The introduction of ADR has aided in the push for this recalibration towards the use of ODR. Today, technology is the means by which the next generation is aiming on revolutionising the conflict resolution environment globally. This belief that effective communication and, consequently, dispute resolution, inherently necessitate physical congregation—has been called into doubt by advances in

[10]United Nations Conference on Trade and Development <https://unctad.org/system/files/official-document/edmmisc232add20_en.pdf>Last accessed on February 25th, 2024.

[11] Annual Review of Law and Social Science 'Online Dispute Resolution and the Future of Justice', 2020 < https://www.annualreviews.org/doi/10.1146/annurev-lawsocsci-101518-043049> Last accessed on 20th February 024

information and communication technology (ICT) and expanded internet accessibility. The court has set the example by embracing the system's technological requirements. The judiciary has altered the concept of a traditional judiciary, which is typically associated with congested court complexes, overflowing paper files, and courtroom hearings, in many respects as a result of conducting a huge volume of virtual hearings. [12]

But other institutions have also successfully incorporated technology into their operations. The courts are only one example. Online versions known as e-Lok Adalats have replaced the Lok Adalat. This form of technological integration has the ability to reduce costs and increase convenience in conflict resolution. Beyond what appears to be now feasible, a plethora of new technologies may be developed in the future with the aim of enhancing access to justice.

A highly potential replacement for conventional dispute resolution techniques including litigation and arbitration is online dispute resolution, or ODR. ODR is a highly sought-after solution for people, companies, and governments since it uses technology to settle disputes quickly and affordably. Realizing that alternative dispute resolution (ODR) could enhance the accessibility of justice, India has made great progress in integrating ODR into the mainstream of dispute settlement practices.

The modern legal system is changing, and it is not the judges, bar groups, attorneys, or court officials that are driving the changes. The disputants and litigants themselves are the ones pushing them the most. People today expect to have access to such tools to assist them in managing the litigation process when they have a conflict or file a lawsuit, since they use technology in practically every aspect of their life. In addition, the lengthy delays that are common in the legal system are not in line with the quick speed of our recently digitally advanced culture. Conflict parties increasingly want resolution procedures that are quicker, less expensive, and more effective—that provide results in a matter of days or weeks as opposed to months or years. They are no longer prepared to pay hefty retainers and hourly rates in order to have their cases resolved slowly. Additionally, technology is providing people with the tools to demand the kinds of reforms they desire.[13]

III. Legislative framework of electronic arbitration in India

Section 7(4) of the Arbitration and Conciliation Act, 1996 ("A&C Act"), the agreement must

[12] Enas Qutieshat, 'Online Dispute Resolution', 2017 <https://www.researchgate.net/publication/339018325_Online_Dispute_Resolution_Online_Dispute_Resolution> last accessed on February 20th 2024

[13]Nikola Simkova, ODR and E-Commerce', 2015 <https://www.researchgate.net/publication/298069898_A_Literature_Review_on_Online_Dispute_Resolution_and_Application_to_B2B_E-commerce.> Last accessed on 19th February 2024

be in writing and it must be signed by the parties.

(A) Amendment of Arbitration Act for the inclusion of Electronic Contracts -

Section 7(4) (b) was amended in 2016 by way of the Arbitration and Conciliation (Amendment) Act, 2015 ("2016 amendment") and inserted the expression "*including communication through electronic means*". The implication of this amendment was that an agreement containing arbitral clause shall be valid even if it is executed through an electronic mode. However, issues like execution of contracts through exchange of emails containing reference to arbitration, and enforceability of arbitral clause in electronic standard form of contracts requires a revisit by the Supreme Court in a much comprehensive manner.

Amidst Covid-19 pandemic, all the sectors all over the world were shifting towards the use of a digital portal in order to continue daily matters.

The Hon'ble Supreme Court of India also took suo-moto cognizance by extending the limitation under various laws. Also, the Hon'ble Supreme Court including various High Courts, District Courts had resorted to different digital platforms to conduct online hearings in urgent matters.

The biggest issue that was seen was if arbitrations can be fully digitized and whether the proceedings can be conducted and concluded online?

Covid-19 outbreak has undoubtedly changed the dynamics and turned every sector towards the digital side. It also changed the traditional court proceedings towards complete online proceedings during that time.

In consonance with changing times, the use of technology can be advanced into the procedural aspect of arbitration to ensure cost effective, efficient and speedy manner in which arbitrations can be conducted in accordance with substantive law enumerated under the Arbitration & Conciliation Act, 1996.

The Arbitration & Conciliation Act, 1996 ("**Act**") is completely silent on whether an arbitration proceeding can be conducted through the mode of video conferencing and other electronic means.

Section 24 (*Hearings and written proceedings*) of the Act:

(a) entitles the parties to have oral hearings or waive this right if they so deem fit; and (b) empowers the arbitral tribunal to decide on the need for oral hearings, in case there is a lack of agreement between the disputing parties.

The Act does also not define 'oral hearings' but under Section 18 of the act which talks about "*Equal treatment of parties*" provides the essential crux of due process:

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(a) treatment of parties with equality; and

(b) full opportunity to be given to each party to present its case. Accordingly, as long as the tools (*i.e.* electronic means) employed to conduct 'oral hearings' satisfy the test of Section 18 of the Act, the virtual proceedings should remain valid, thus restricting a party's ability to challenge such proceedings or the arbitral award solely because the oral hearing was conducted virtually.

(B) Need for E- Dispute Redressal Mechanism (E-DRM) –

In the country of India, where courts are highly overburdened and there are a number backlog of cases clogging court rooms which is running in into lakhs, because of which the need for E-DRM is high s. Access to justice in India is becoming a challenge and resolving disputes is evidently a big issue, considering the time, money and efforts involved.

While Arbitration was intended as an alternative to court for certain kinds of disputes, that mechanism itself has become cumbersome and more often than not an expensive affair. E-DRM offers a more accessible, transparent and faster option, particularly for companies dealing with high volume and low value transactions. E-DRM can be used across sectors - from banking, finance to insurance - and also for e-commerce disputes.

The main reason that parties to a dispute tend towards arbitration is that parties to an arbitration agreement are free to agree on procedure and manner of conducting proceedings. The benefits of if there is an online dispute resolution mechanism is that online arbitration include but are not limited to speedy conclusion of proceedings, saving of costs such as, venue booking cost, travel cost, time, convenience, etc.

The need for expeditious resolution of disputes is an evolving process, which has been appreciated by both the bar and bench. In fact, even legislature has been conscious of this aspect and has time and again been introducing procedural amendments.[14]

(C) Information Technology Act, 2000 on Online Dispute Resolution

The Information Technology Act, 2000 (which is also referred to as the**"IT Act"**). Section 4 (*Legal recognition of electronic records*) and Section 5 (*Legal recognition of electronic signatures*) of the act read with Section 65B (*Admissibility of Electronic Records)* of the Indian Evidence Act, 1872 provides the necessary legal recognition to such electronic records and

[14] Sonal Kumar Singh and Anish Jaipuriar, Covid-19 and E-Arbitrations: An India perspective, AKS Partners (*February 23rd 2024), https://www.lexology.com/library/detail.aspx?g=40e5193a-22d0-411c-97e7-222dc434c285.*

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proceedings.

While the application of Sections 4 and 5 of the IT Act is straightforward with respect to pleadings (such as claim statement, defence statement, rejoinders etc.), concerns do arise in the case of affidavits. Presently, India does not permit e-notaries and lacks facilities for the same. Consequently, the affidavits accompanying the pleadings cannot be notarised remotely. This proves to be a major hurdle in transitioning towards a fully electronic proceeding unless notaries are permitted to electronically notarise documents.

In comparison to the country of United States, the Uniform Electronic Transaction Act in 1999 had paved the way for states to recognise electronic signatures and electronic contracts. Presently, the Covid-19 situation has forced states to take a re-look at physical notaries.

For instance, various states across the country such as Georgia, Alaska, Nebraska, Pennsylvania have sought to facilitate Remote Notarization Services through the enactment of emergency laws, guidelines, or executive orders. In the opinions of the researchers, the setting up remote notary facilities in the country of India will be a highly challenging andwill time-consuming as well as a complicated process.

(D) Indian Stamp Act and Registration Act:

In India before a domestic award can be executed and implemented it has to be duly stamped with the adequate value in accordance with the applicable laws.

Section 35 of Indian Stamp Act, 1899 states that an unstamped or insufficiently stamped document (such as an arbitral award) is inadmissible before a court of law. This defect of insufficient stamp/un-stamped arbitral awards can be cured upon payment of the necessary stamp duty along with the penalty amount.

The amount of stamp duty required to be paid varies from state to state depending on where the award is passed. In order to facilitate the swift execution of electronically passed arbitral awards the Stockholding Corporation of India Limited (SHCIL) has been set up to provide e-stamp services which permits online payment of stamp duty for certain states. Certain states have developed their own infrastructure, for instance, Maharashtra has developed its own e-stamping facility *i.e.* Electronic Secure Bank and Treasury Receipt (e-SBTR).

Section 17 of the Registration Act, 1908 also mandates registration of an arbitral award if such award has bearing on the ownership status of an immoveable property. Presently none of the States in India provide for electronic registration of arbitral awards.

1. Whether the government is taking steps in the implementation of ODR services or not?

The concept of Online Dispute Resolution (ODR) in India is at the beginning stage only.

The NITI Aayog had constituted of a high-level committee to plan on and to report the committee which was titled "Designing the future of dispute Resolution: the ODR Policy Plan for India" which was released on the date of 29.11.2021.

Its inter-alia recommends for mainstreaming of ODR in India, as a cost effective, convenient, efficient process which can be customized to the specific needs of the parties, considering the nature of the dispute. The Government of India has also acknowledged the need and importance of online dispute resolution and proposes to provide legislative enablement to ODR by way of requisite provisions in the Mediation Bill, 2021 introduced in the Rajya Sabha on 20.12.2021. The Bill recognizes conduct of mediation on online mediation mode thereby removing the distance barrier for parties. [15]

The ODR policy plan for India released by NITI Aayog on 29.11.2021 recommends various steps to spread awareness for ODR. The measures to increase awareness regarding ODR at the level of Government will arise, once the legal framework for that purpose is in place.

IV. "Floating" Arbitration

There is always an expected debate between those who believe that international arbitration should be free from any territorial interference and those who think that we still need a place for arbitration. And we generally think that it is important to determine the physical place of arbitration. It carries crucial consequences such as the public policy to be followed, the possible review and enforcement of the award, the default procedural rules to be applied in case the parties cannot agree on specific rules, and the jurisdiction of the courts providing legal support to the arbitration. If the arbitration is conducted on-line, should we then decide that there is no place of arbitration or should we consider that the arbitration is conducted at several locations, i.e., that of each arbitrator and that of the parties to the dispute.

The answer is probably neither one nor the other. The place of arbitration, since we do need one, could be deemed to be at the location of the presiding or sole arbitrator. One major inconvenience with this solution is that the place of arbitration would be unknown until the time when the arbitral tribunal is formed. The other alternative would be to locate the arbitration at the place of the arbitral institution. But this solution is, however, unworkable for ad hoc

[15] https://legalaffairs.gov.in/sites/default/files/AU1701.pdf

arbitration.

If it is an ad hoc arbitration then the parties have not selected an institution to administer the arbitration and it offers flexibility as to the conduct of the arbitration, but less external support for the process.

It would also run squarely against the tradition of certain institutions that emphasize the truly international nature of their proceedings. These traditions allow for arbitration to be conducted in many different places although they are all conducted under the auspices of the same institution. Until the existing rules have been adapted or, if that is not possible, until new rules have been developed, parties to a contract would be advised to decide on a place of arbitration and provide further that this place may only be agreed upon for legal purposes of conducting the arbitration on-line.

(A) Confidentiality and Security:

The parties generally adopt and submit to arbitration i.e. the alternative dispute resolution mechanisms in order to maintain the confidentiality. But the Internet is not a secured medium.

When hackers breach a computer network, they have the ability to alter the data that is shared there in addition to reading it. The examination done by U.S. state bars regarding whether attorneys breach their ethical duties to protect client confidences while corresponding with a client via unencrypted email reflects the concerns associated with Internet use. The South Carolina Ethics Committee compares using email to using a cell phone and mandates getting the customer's permission before sending out an email for client communication. Email correspondence between solicitors and clients is permitted in Iowa, but only after the client has acknowledged in writing the dangers associated with using email.

The Paris Bar considers that online conversations are not secure. It is working to set up an Internet for the purpose of facilitating communication between lawyers and the courts. The most secure way to send emails is to use encryption. However, given that numerous nations have placed severe restrictions on the use of encryption for confidentiality, it might not always be accessible. For a long time, France has been recognized as the nation that forbids private encryption the most stringently.

(B) Human factor:

The discouragement of in-person conflict resolution is another barrier to the real online dispute resolution. Building confidence is crucial in all forms of dispute resolution, but it's more crucial in arbitration. Making eye contact with the judges, arbitrators, or mediators can be very

important for both parties to comprehend one other's points of contention. In that regard, it is not coincidental that the English tradition requires orality as a part of the legal proceedings. When gathering information on witnesses, conducting it virtually will differ greatly from having all of the actors present in person. In fact, online dispute resolution doesn't really change all that much for systems that depend on witnesses' paper statements.

To the contrary, for systems that favor examination and cross-examination of witnesses, it would probably have far less value if conducted on-line.

(C) Enforcement of decisions:

Ensuring that defendants' basic rights have been adequately safeguarded is a prerequisite for the recognition and enforcement of arbitral verdicts. These rights include the notion of contradictory processes, the right to appropriate notice, and the tribunal's impartiality. An arbitral award's online process of rendering does not in and of itself prevent it from being enforced. However, demonstrating that the defendants' fundamental rights have been adequately protected in these situations may be challenging. Therefore, the development of a stringent procedure protecting the defendants' rights is necessary for the enforcement and recognition of decisions made through online proceedings.

The parties need to agree on the protocol. This can be accomplished by either having a specific clause in the arbitration agreement or by agreeing to have the arbitration handled by an organization whose regulations already include a similar procedure. One of the foundations of the recognition and enforcement procedure is jurisdiction, if we now turn our attention to court rulings. The current state of private international law regulations pertaining to international jurisdiction prohibits a virtual court from taking jurisdiction over a matter unless both parties have consented to the establishment of the virtual court.

Consequently, the court that made the request, i.e., the court that was asked to acknowledge and implement the virtual judgement, would decline to provide the decision legal force. Lastly, the New York Convention for the Enforcement of Arbitral Awards and the majority of national laws governing the recognition and enforcement of foreign court rulings require the party requesting enforcement of the award to present a properly authenticated original decision or award, or a duly certified copy thereof. To meet these standards, parties to an online dispute resolution must get a tangible copy of the award. On the other hand, the certification does not need a different procedure from the one that is currently in place.

The unsolved issues surrounding the current online dispute resolution process appear to favour a more moderate approach, which would entail incorporating the advantages of the Information

Superhighway into the current procedures. In disagreements, timing is usually crucial, and one of the Internet's main benefits is the speed at which information moves over the Information Superhighway.

V. Conclusion

It can be seen that India is currently at a phase of transitioning, navigating from traditional dispute resolution mechanisms to a more streamlined, digital-first approach. The prospect of India adapting online dispute resolution (ODR) from the traditional mode of arbitration,promises the scope to re-engineer the country's dispute landscape, offering a more accessible and effective means of resolving conflicts.

India's ODR policy aims to advocate for the adoption and promotion of ODR platforms by various stakeholders, including the government, judiciary, businesses, and individuals.

Though the shortcomings of India's ODR policy include various concerns such as

1. Lack of a proper comprehensive legal frame – there is currently comprehensive legislation which can govern ODR in India
2. Digital divide and acceptance – India is a country which has both rural as well as urban areas. This causes in limiting the accessibility of ODR service provider to many sections of people of different areas.
3. Need for standardization – currently there is no clear framework for the standardization and accreditation of ODR service providers.

There are several shortcomings that need to be addressed to ensure the success of ODR in the country. There is a high need for a development of a comprehensive legal framework, as well as increased awareness and acceptance, bridging the digital divide, addressing quality and credibility concerns, and overcoming resistance from the legal community which are highly important for the widespread adoption of ODR in India.

By addressing these existing shortcomings and building on the strengths of the policy, India has the potential to emerge as a global leader in ODR and set an example for other countries can follow.

(A) Suggestions:

The researchers after examining the whole concept of Electronic arbitration would like to conclude and suggest that there are both advantages and disadvantages associated and incurred by parties when they submit to the arbitration through an electronic media. But since there are

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more disadvantages in relation to it and those disadvantages are letting and over-shadowing the advantages which the whole mechanism can create.

So, the researchers would like to suggest that the idea to solve the disputes amicably outside the court by submitting to a neutral authority is a good choice but the base and medium in which it is being conducted is making it an inappropriate forum. The researchers opine that the parties through and while submitting to arbitration electronically are going against the traditional framework of arbitration. The objective and reasons as to why parties choose to submit to the arbitration is being no more there when the parties try to submit to the arbitration electronically.

So, the researchers would suggest that there should be an update for betterment but not to a position earlier so whatever is being done has to be done in accordance to bring betterment to the process and satisfy the parties. As, the researchers have already identified few challenges and grievances in relation and with regard to the electronic arbitration the same shall be resolved by adopting a software where the parties have to pay to the software company for creating a forum and that forum shall be encrypted with the security patches and the extent of protection to that software shall be as the same which would be given to all other government websites which store the confidential information.

Also, practically there are still few challenges which remain as challenges cannot be impaired as it would actually get but still a strict formulation of rules and adherence can turn them advantageous than as a challenge. Since there is no proper regulation with regard to the electronic arbitration a joint legislation which includes both International and Domestic in parlance with the New York convention to dictate a procedure in a chronological order can solve all the difficulties with regard to the procedural disclosures.

Since, the proceedings happen to take place online it is very much necessary for the parties to agree upon the place, seat as such else the proceedings through the software shall not go further as such. The connecting factors such as the residential status and subject matter of the dispute shall be given more importance while deciding the law applicable so that it does not turn out to be a problem during the enforcement with regard to the stamp duty. One more important aspect which the researchers would also like to stress is the penal provisions wherein the parties involved in arbitration shall not hamper the interest of opposite party to enter into arbitration. And the individuals responsible for such hindrance and data breach would be penalized according to the infringed party’s claim with certain documents and there is should not be any such maximum limit when caught committing the data breach.

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