

CVC, departmental vigilance and anti-corruption branch of CBI will be merged into Lokpal will have complete powers and machinery to independently investigate and prosecute any officer, Judge or politician.

It will be duty of the Lokpal to provide protection to those who are being victimised for raising their voice against corruption”<sup>5</sup>.

In summary, looking at the Government’s

version of the Lokpal bill, it is clear that the ruler wants to bring an Act for the name sake and wash their hands off from the issue. After 45 years of waiting, the Government simply wants to create an illusion that it has passed an anti corruption law which is like a teeth less paper tiger.

Hence it is the time to raise the voice by the common men who is the first victim of the corruption.

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### DEVELOPMENT OF ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISM AND EMERGENCE OF ONLINE DISPUTE RESOLUTION METHODS IN INDIA

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#### *Introduction*

Disputes are inevitable in any civilized human society and it will pose serious threat to peace and harmony if not resolved in time. Dispute resolution process was in practice from ancient periods of Vedas through Panchayat by various bodies like Parishads, Sabhas, Pugas, Sreni, and Kula and ultimately by King’s Courts. These bodies adopted the methods of Arbitration, Mediation and Negotiation. These practices were continued even during Moghal period. During the British period, the Court System was started wherein disputes were resolved through litigation and Panchayat system was slowly fading away. However, the Britishers introduced Arbitration method for settling some of the civil matters in phased manner,

starting from Bengal Regulations 1772 and finally enacted Arbitration Act in 1940 for resolving domestic civil disputes. Another Act for Arbitration (Protocol and Convention) Act 1937 was enacted based on Geneva Protocol on Arbitration clauses 1923 and Geneva Convention on Execution of Foreign Awards 1927 for dealing with foreign arbitration.

International Commercial activities increased after World War II and particularly in the era of Globalization the cross border commercial activities increased tremendously as no country could sustain their economic growth by meeting the local demands only. Consequently, the commercial disputes also increased manifold.

As the provisions in Geneva Protocol and Conventions were not found to be adequate in dealing with execution of foreign awards, Newyork Convention held in 1958

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5. According to Government proposed bill, there is a provision to punish the people who raise their voice against corruption on the allegations of false complaints.

brought out new provisions to suit the requirements and based on this, independent India enacted Foreign Awards (Recognition and Enforcement) Act 1961.

### ***Development of Alternative Dispute (ADR) Mechanisms***

Due to increase in cases and deficiencies in the Court system like inadequate number of Judges, adjournments, people's awareness *etc.*, the Courts have been overburdened, which resulted in docket explosion and even small cases are pending for longer period for disposal.

The litigation has become too expensive, time consuming and people are vexed with this system. In order to bring down the pressure on the Court and speedy disposal of cases, the Government decided to encourage use of ADR mechanism. Code of Civil Procedure 1908 (Section 89A) was included to make mandatory on the part of Judges to refer the civil cases to either arbitration or mediation or Lok Adalat or negotiation with the agreement of the parties, if they feel that there is a possibility of settlement by any of the processes.

Arbitration Act 1940, had many disadvantages, such as Court intervention at various stages of arbitral proceedings, not responsive to cotemporary requirements *etc.*, resulting in delay of finalization of cases and expensive. While the Government considering suitable amendments to this act based on Law Commission Reports and apex Court's observations in various cases, United Nations Commission on International Trade Law (UNCITRAL) brought out Model Law on International Commercial Arbitration with a view to have uniformity of law for arbitral procedure by all nations and to meet the specific needs of international commercial arbitration practices. India enacted Arbitration and Conciliation Act, in 1996 based on this model law with suitable modifications for domestic arbitration.

The Act includes the provisions for enforcement of foreign awards based on Geneva and Newyork Conventions, to both of which India is a party. Further this Act also included Conciliation proceedings and recognized for the first time that the agreement reached through conciliation to have the same status and effects of the arbitral award. The 1996 Act repealed the earlier mentioned Acts of 1937, 1940 and 1961

The Constitution of Lok Adalat under Legal Services Authority Act 1987, enactment of Family Courts Act 1984 and establishment of Mediation and Counseling centres at various locations and enactment of 1996 Act encouraged the use of ADR mechanisms for settlement of disputes in civil cases. Presently, India is one of the major hubs for International Commercial Arbitration.

### ***Growth of Electronic Commerce***

The invention of Internet Technology, particularly the development of software technology for electronic mails (e-mail) in 1972 and World Wide Web (www) in 1995, has given birth to Electronic Commerce (e-commerce) in mid 1990s through out the world. The Electronic Commerce is about the sale and purchase of goods or services by electronic means, particularly over the internet, using any of the applications like E-mail, instant Messaging, shopping cards, web services *etc.* As the business becomes more and more complex, one needed fast processing of information. A paperless approach for various business processes like enquiries, purchase order, pricing *etc.*, in the form of standards and protocol was developed, known as Electronic Data Interchange (EDI). Development of e-mail, encryption for data security, digital/electronic signature for authenticable identity, teleconferencing and video conferencing systems, improvement in telecommunications like telephone and telex and software development for storing, classification of data

for information management are some of the technologies resulted in extraordinarily rapid growth of e-commerce in the areas of Business to Business(B2B), Business to Consumer (B2C), Consumer to Consumer (C2C), Consumer to Business (c2b) and Business to Government (B2G). Consequent to the tremendous growth of e-commerce there was tremendous increase in cyberspace disputes also and there was a need for quick and inexpensive dispute resolution processes. Online Dispute Resolution (ODR) processes are found to be the answer.

### ***Online Dispute Resolution (ODR)***

ODR is of recent origin and born out of synergy between Information Communication Technology (ICT) and ADR. The parties located in different countries can resolve their disputes arising out of online commercial transactions by sitting in their places without physically meeting in person by ODR methods, but by exchange of documents with the help of technology tools. The methods used are negotiation, mediation and arbitration.

Two types of negotiations are available-automated negotiation and assisted negotiation. The former type involves a process of blind bidding wherein each party makes an offer without knowing the other's bid. If they are within the predetermined range of offer, the program will settle the dispute by calculating the mean value of the both bids. In the other type of negotiation, actual negotiation takes place between the parties with the assistance of computer. The ODR Service Provider makes available a web communication platform, guidelines and advice to the parties on how to proceed.

The Online mediation and arbitration processes are similar to the off line processes, *i.e.*, the settlement is made with the help third neutral party, mediator or arbitrator, except that facilitative and evaluative

techniques are combined with information technology. The technology that works with the third party is called the 'Fourth Party'. The fourth party does not replace the third party, but it acts as an ally, collaborator and partner to the third party. It can assume responsibilities for various communications with the parties. The skills, knowledge and strategies of the third party is however required as in the case of offline process.

There is an obvious need for ODR in E-Commerce context because there may be no alternative to the online option. The ODR can be used in the traditional dispute resolution mechanism. ODR can enhance these traditional means of resolving disputes by applying innovative techniques and online technologies to the process. It is less time consuming, less expensive and convenient.

There are certain mandatory requirements by law which are however to be met compulsorily, without which the enforcement of the decisions/award would not be possible. Some of the requirements in arbitration process are the arbitral agreement in writing, arbitral award in writing duly signed by the members of the Tribunal and the award should state the place of arbitration and the date of the award. Online arbitration applied for off-disputes may pose legal problems in this regard and may require suitable changes in the law to enable enforcement of the award.

### ***Emergence of ODR in India***

Online Dispute Resolution has various practice models in USA, Europe and Australia to name a few spaces. In Indian context the IT Act 2000 opened a Digital Age regulation. The Act aimed at legitimizing Digital signature and bringing the E-Commerce revolution. The electronic medium is used extensively for banking, money transfer, purchase of goods, ticketing *etc.* The IT Act 2000 has touched upon various issues of contract formation, digital

signature validation, cyber crimes and jurisdiction issues. But it has not explicitly dealt with ODR. Yet the provisions could be optimized for ODR in various sectors. In addition to such optimization of IT Act and changes in Arbitration and Conciliation Act 1996, other inputs like training, infrastructure and most importantly the willingness of the disputants to be part of the process are essential.

The lack of awareness of and expertise in management of ODR apart from inadequate infrastructure facilities are responsible for the slow emergence of ODR in India. There is hardly few ODR providers in this country. The Government and other LAW Institutions like Law Commission, Academic institutions should address these aspects and recommend ways to popularize the ODR in India.

### **Conclusion**

India is one of the top players in Information Technology in the world. It also has become a hub for International commercial arbitration. The e-commerce has also grown tremendously. By creating awareness of ODR, establishing training programmes, improving the infrastructural facilities and modifying the laws suitably, India can become the hub of ODR in the world.

Panel of experts may be constituted to study the various issues connected with ODR application in off line dispute resolution. We would even recommend for the research scholars to take up research work on this subject in both legal and sociological fields for pursuing PhD.

### **REFERENCES**

1. *Esber van den Heuvel*, 'online Dispute Resolution as a solution to cross border E-disputes, an introduction to ODR', [WWW.esher@schasfoort.com](mailto:WWW.esher@schasfoort.com), June 01, 2012.
2. *Katsh Ether and Janet Refkin*, 'Online Dispute Resolution-Resolving Conflicts in Cyberspace', San Francisco, USA, Jessey-Bass, 2001.
3. *Rajan R.D.*, 'A Primer on Alternative Dispute Resolution for Business', (New Edition) Thirunelveli, Tamil Nadu, India, Bharathi Law Publishers, 2005
4. *Rule Colin*, 'Online Dispute Resolution for Business' San Francisco, USA, John Wiley and Sons, 2002
5. *Sharma Vakul*, 'Information Technology - Law and Practice' (Third Edition), New Delhi, India, Universal Law Publishers, 2011.

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## **RECOGNITION AND ENFORCEMENT OF ELECTRONIC CONTRACTS IN INDIA**

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### **Introduction :**

The cyber world has no physical boundaries; no single authority governs it.

Internet is the medium for freely sharing information and opinions; it provides everyone with round the clock access to information, credit and financial services, and