

# **DISPUTE SETTLEMENT: THE ROLE OF ADR AND ODRS**

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# Discourage Litigations

- Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good [person]. There will still be business enough.-**Abraham Lincoln**
- **"Justice delayed is justice denied" and justice hurried is justice buried**
- A '**dispute**' was defined by Permanent Court of International Justice (PCIJ) in the ***Mavromattis Palestine Concessions (Greece v UK) 1924 PCIJ***: '**a disagreement on a point of law or fact, a conflict of legal views or interests between parties**'.
- **What is Dispute?** Disputes are characterized by: (1) specific disagreements concerning matters of fact, law, or policy between (2) two or more parties so that (3) a claim or assertion by one party is met with refusal, counterclaim, or denial by another.

# Methods of Dispute Resolution

- **There are four methods of dispute resolution:**
- **Traditional Dispute Resolution:** the traditional dispute resolution method or litigation refers to the proceedings before an appropriate court of law according to the procedure established by law
- **Alternate Dispute Resolution:** the alternative methods are more flexible and party-centric and include negotiation, mediation, conciliation and arbitration.
- **Hybrid Methods of Dispute Resolution:** Hybrid-methods, as the name implies are a cross-over between two alternative methods of dispute resolution.
- **Online Dispute Resolutions:** Online Dispute Resolution is an alternative dispute resolution technique that uses the internet as an interface to resolve disputes.
- **COVID-19 and Alternative Dispute Resolution:** It is the unprecedented delays that should steer the parties towards alternative dispute resolution (ADR). It is in the wake of this crisis that Online Dispute Resolution (ODR) or Virtual ADR has come into play

# Methods of Dispute Resolution - International

- International Disputes Settlement
- Kinds of Disputes Settlement
- Peaceful and Cohesive Settlements
- History and Development of Dispute Settlement (PCA, PCIJ)
- UN Charter and Dispute Settlement
- International Court of Justice (ICJ)
- WTO and Disputes Settlement
- ICC and Dispute Settlement



# Indian Judiciary

- The Constitution is the fundamental source of law in India, giving due recognition to statutes, case law, and customary law consistent with its dispensations.
- A single unified judicial system is a unique feature of the Indian judicial system.
- The Supreme Court is at the apex of the entire judicial system, followed by High Courts in each state or group of states.
- Article 141 of the Constitution- Judicial President
- High Courts and below each state's High Court lies a hierarchy of subordinate courts.
- Panchayat Courts also function in some states under various names like Nyaya Panchayat, Panchayat Adalat, and Gram Kachheri to decide civil and criminal disputes of petty and local nature.
- Lok Adalat is another form of judicial forum that has been set up to dispose of smaller cases and to decrease the burgeoning case load.

# Facts about Judiciary

- Recently, Justice DY Chandrachud shared National Judicial Data Grid (NJDG) statistics, a total of 32.45 Million cases are pending in India as of May 2020, out of which 9.045 million are civil cases and 23.39 million are criminal cases, and approx. 10% of the cases are 10 years old, making the scenario much worse.
- There are 59,867 cases pending in the Supreme Court, and 44.75 lakh cases in various high courts.
- At the district and subordinate court levels, the number of pending cases stand at a shocking 3.14 crore, said the Union law minister Ravi Shankar Prasad on 26, November 2019.
- **Reasons for Pendency**
- The delay is caused mainly due to factors which are insufficiency of judicial officers, lack of infrastructure, abuse of process of law, Misuse of Process of Law
- Low strength of judges- There are approx. 19 judges per million of population
- Daily listing of cases-"The Week" in a recent article proposed that on average a district court judge has around 60 cases before him per day

# Why ADRs?

- ADR is of special importance for India. The Indian judicial system is overburdened with more than 3 crore Plus cases lying pending before it.
- ADR methods can play an important role in reducing this burden from the shoulders of Indian courts.
- ADR provides various modes of settlement including, *arbitration, conciliation, mediation, negotiation* and *Lok Adalat*.
- ADR is also founded on such fundamental rights, article 14 and 21 which deals with equality before law and right to life and personal liberty respectively.
- ADR's motive is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strive to achieve equal justice and free legal aid provided under article 39-A relating to Directive Principle of State Policy (DPSP).

# Commercial (Special) Courts

- Litigation is time consuming and has placed pressure on the court system.
- In order to address the issue of pendency of cases, the government introduced the commercial courts act, which contemplates time-bound resolution of commercial disputes by judges with specialized commercial expertise.
- commercial divisions of High Courts were established in places where High Courts have ordinary original civil jurisdiction.
- These divisions dealt with commercial disputes of specified value i.e. INR 10,000,000 (Rupees Ten Million) or higher.
- However, the specified value is now reduced to INR 300,000 (Rupees Three Hundred Thousand). Accordingly, the Amendment now establishes commercial courts at the level of district judge even in places where High Courts exercise ordinary original civil jurisdiction.

# Commercial (Special) Courts contd..

- The State government may specify the pecuniary jurisdiction of such Commercial
- Courts. However, the state government cannot specify an amount which is less than three hundred thousand and more than the pecuniary jurisdiction of the District Courts in the said areas.
- The Commercial Courts Act, 2015(**"Commercial Courts Act"**), as amended by
- the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (**"Amendment Act"**) vests Commercial Courts and Commercial Divisions with the jurisdiction to try disputes of a 'commercial nature', as defined in the act.

# Tribunals

- Specialized tribunals such as the Income Tax Appellate Tribunal, the National Company Law Tribunal, the Goods and Services Tax Appellate Tribunal, the Consumer Forum, the Central and State Administrative Tribunals, the Debt Recovery Tribunal, and the Intellectual Property Appellate Tribunal are established under various enactments.
- Appeals from the orders of these tribunals/appellate tribunals lie to the High Court and the Supreme Court, as the case maybe.
- The organization of the subordinate courts and tribunals varies slightly from state to state.
- There is consideration of the advantages tribunals enjoy over courts as more flexible, specialist, and informal bodies capable of handling a much greater throughput of cases

# Alternate Dispute Resolution

- The concept of Alternative Dispute Resolution (ADR) mechanisms is a substitute to the conventional methods of resolving disputes.
- The process of resolving a dispute through the court system is expensive and time consuming. For these and other reasons, more and more business persons are turning to **Alternative Disputes Resolution (ADR)** as a means of settling their disputes.
- ADR offers to resolve all type of matters including civil, commercial, industrial and family etc. Generally, ADR uses a neutral third person who helps the parties to communicate, discuss the differences and resolve the dispute.
- It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility, which is why it is also known as amicable dispute resolution mechanism.

# Legislations Relating to ADR

- **Section 89** of the **Code of Civil Procedure, 1908** embodies the legislative mandate to the court to refer sub judice disputes to various ADR mechanisms enunciated therein where it finds it appropriate to do so, in order to enable the parties to finally resolve their pending cases.
- The **Arbitration and Conciliation Act, 1996**. The **Legal Services Authority Act, 1987**
- The Geneva Convention on the Execution of Foreign Arbitral Awards, 1927; and The New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.
- India became a party to the 1958 Convention on 10th June, 1958 and ratified it on 13th July, 1961. The government of India in consonance with the United Nations Commissions on International Trade Law (UNCITRAL) drafted the Arbitration and Conciliation Act, 1996. The purpose of this act was to make a provision for an arbitral procedure that is just, efficient and encourages the settlement of disputes



# Benefits of ADR

- **ADR can allow access to justice.** For example, as there can be cost and time savings in ADR, it can be more accessible to those of limited financial means.
- **ADR can be faster.** A dispute can often be resolved in a matter of months, even weeks, through ADR, while a legal proceeding can take years.
- **ADR can save time and money.** Court costs, lawyers' fees and experts' fees can be saved. There can also be savings for the courts and government.
- **ADR can permit more participation.** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome ("empowerment" of the parties).
- **ADR can be flexible and creative.** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute. This may include remedies not available in litigation (e.g. a change in the policy or practice of a business).

# Benefits of ADR cont..

- **ADR can be cooperative.** The parties may work together with the dispute resolution practitioner to resolve the dispute and agree to a settlement that makes sense to them, rather than work against each other in an adversarial manner. This can help preserve relationships.
- **ADR can reduce stress.** There are fewer court appearances. In addition, because ADR can be speedier and save money, and because the parties are normally cooperative, ADR is less stressful.
- **ADR can remain confidential.** Unlike the court system where everything is on the public record, ADR can remain confidential. This can be particularly useful, for example, for disputes over intellectual property which may demand confidentiality.
- **ADR can produce good results.** Settlement rates for ADR processes are often very high, generally between 70% and 85%.
- **ADR can be more satisfying.** For the above reasons, many people have reported a high degree of satisfaction with ADR (resulting in higher rates of compliance with settlement agreements – i.e. less need for lengthy and risky enforcement proceedings).

# Benefits of ADR cont..

## ■ **Individual benefits:**

- Cheaper redress • Resolution of dispute more quickly than mainstream court processes
- In recommendation- and facilitation-based processes, retention of decision making with the parties rather than referral to a third party and In recommendation- and facilitation-based processes, a reduction of the need to enforce proceedings to ensure that parties will comply with an agreement, since the parties enter into their agreements consensually.

## ■ **Private sector benefits:**

- Enhance private sector development by creating a better business environment;
- Lower direct and indirect costs of enforcing contracts and resolving disputes;
- Lower transactional costs so that resources are not diverted from the business;
- Reinforce negotiation-based methods of doing business, depending on the process.

## ■ **Institutional benefits:**

- Enhance good public sector governance by reducing the backlog of disputes before the courts and improving the efficiency of the court system;
- Provide better access to justice through a greater choice of dispute resolution methods;
- In particular jurisdictions, improve the reputation of the court system in providing effective resolution of disputes.

# Disadvantages of ADR

- **Suitability.** ADR may not be suitable for every dispute — for example, if a party wishes to have a legal precedent or it is a public interest case, judicial determination may be more appropriate.
- **Lack of court protections.** If ADR is binding, the parties normally give up most court protections, including the right to a decision by a judge or jury, based on admissible evidence, and appeal rights
- **Lack of enforceability.** The durability of ADR agreements can be an issue if they lack enforceability. Generally not a serious problem in European jurisdictions.
- **Disclosure of information.** There is generally less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information about the strengths and weaknesses of their respective cases.

# Disadvantages of ADR contd...

- **Cost of ADR.** Dispute resolution practitioners may charge a fee for their services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a court hearing.
- **Fairness.** ADR processes may not be as fair as court proceedings. Procedural rules and other laws governing the conduct of court proceedings contain many safeguards to ensure the fairness of the process and the outcome. These are not necessarily included in ADR. In addition, there may be power imbalances if a party is not represented.
- **Delaying tactics.** ADR processes can be used as a delaying tactic or to obtain useful intelligence on an opponent before proceeding with litigation.
- **Inequality.** Effective ADR requires that parties have the capacity to bargain effectively for their own needs and interests. A party may be vulnerable where there is an unequal power relationship, particularly if the party is not represented.

# Arbitration

- The process of Arbitration cannot exist without a valid arbitration agreement.
- In this method parties refer their dispute to one or more persons called arbitrators.
- Decision of arbitrator is binding on the parties and their decision is called 'Award'.
- The object of Arbitration is to obtain fair settlement of dispute outside of court without necessary delay and expense.
- Statement of claim is a written document filed in the court or tribunal for judicial determination and a copy also sent to the defendant in which the claimant describes the facts in support of his case and the relief he seeks.
- Arbitrators selection is the process in which the parties receive lists of potential arbitrators and select the panel to hear their case.
- The parties meet in persons to conduct the hearing in which the parties present the arguments and evidences in support of their respective cases.
- After the witnesses examined and evidences are presented, then there in conclusion arbitrator gives an 'Award' which is binding on the parties.

# Kinds of Arbitration

- (1) Ad-hoc Arbitration: Arbitration is said to be ad hoc when it is not only agreed to but also arranged by the parties themselves. The parties create the procedure to conduct arbitration proceedings also. This enables the parties to tailor the procedure to its needs.
- (2) Institutional Arbitration: When arbitration is conducted under the supervision of an institution in accordance with its rules of procedure it is termed as institutional arbitration. There are various institutes e.g. International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), Singapore international Arbitration Centre (SIAC), American Association of Arbitration (AAA) etc.
- (3) Statutory Arbitration: It is mandatory arbitration which is imposed on the parties by operation of law. In such a case the parties have no option as such but to abide by the law of land. It is apparent that statutory arbitration differs from the above 2 types of arbitration because (i) The consent of parties is not necessary; (ii) It is compulsory Arbitration; (iii) It is binding on the Parties as the law of land
- (4) Domestic and International Commercial Arbitration: If both the parties to an arbitration agreement are from India the arbitration is called domestic arbitration and when at least one of the parties is from outside India the arbitration is international arbitration.

# UNCITRAL Model Law

- In the year 2006, the UNCITRAL Model Law was amended with the object to modernise the form requirement of an arbitration agreement to conform with international contract practices and establish a more comprehensive legal regime dealing with interim measures in support of arbitration.
- Accordingly, the General Assembly of the United Nations recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international Commercial arbitration practice.
- In view of the recommendation, the Indian Legislature enacted the Arbitration and Conciliation Act in 1996 with the object to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards so as to define the law relating to conciliation and for matters connected therewith or incidental thereto.



# Arbitration & Conciliation Act, 1996

- Arbitration proceedings in India are governed by the Arbitration & Conciliation Act, 1996.
- The Act covers both international and domestic arbitration, i.e., where at least one party is not an Indian national and where both parties are Indian nationals, respectively.
- Part I of the Act titled 'Arbitration' is general in nature and contains ten chapters. Part II deals with 'Enforcement of Certain Foreign Awards'. Chapter I of Part II deals with New York Convention Awards and Chapter II deals with Geneva Convention Awards. Part III of the Act deals with Conciliation which does not have any bearing on the present Report.
- Part IV of the Act deals with supplementary provisions.
- The Act also contains three Schedules.
- The First Schedule refers to the Convention on the Recognition and Enforcement of Foreign Arbitration Awards.
- The Second Schedule refers to Protocol on Arbitration Clauses.
- The Third Schedule refers to the Convention on the Execution of Foreign Arbitration Awards.

# Mediation

- Mediation is an Alternative Dispute resolution where a third neutral party aims to assist two or more disputants in reaching agreement.
- It is an easy and uncomplicated party centred negotiation process where third party acts as a mediator to resolve dispute amicably by using appropriate communication and negotiation techniques.
- This process is totally controlled by the parties.
- Mediator's work is just to facilitate the parties to reach settlement of their dispute.
- Mediator doesn't impose his views and make no decision about what a fair settlement should be.
- **The process of Mediation works in various stages. They are,**
  - Opening statement
  - Joint session
  - Separate session and,
  - Closing

# Med-Arb

- A **hybrid dispute resolution** process combines elements of two or more traditionally separate processes into one. The most common **hybrid** process is mediation-arbitration, or "med-arb", which uses the same individual or **dispute resolution** forum first as a mediator, and then if necessary, as an arbitrator. This is a mixture of mediation and arbitration.
- Here the parties agree to mediate but will refer the dispute to an arbitrator if the mediation is unsuccessful.
- **Why hybrids?**
- Hybrids have been developed, essentially, to combine the best of both worlds. In other words, hybrids are intended at combining advantages of ADR methods, whilst attempting to minimize or eliminate potential disadvantages.
- A reflection on the usefulness of ADR hybrids therefore has to start with a reflection on the benefits and disadvantages of ADR in general.

# Med-arb

- ***Med-Arb, or Mediation-Arbitration:*** An example of multi-step ADR, parties agree to mediate their dispute with the understanding that any issues not settled by mediation will be resolved by arbitration, using the same individual to act as both mediator and arbitrator. Having the same individual act in both roles, however, may have a chilling effect on the parties participating fully in mediation.
- **The following advantages of Med-Arb have been identified:**
- 1) Finality: the dispute will be resolved by either mediation or arbitration.
- 2) Flexibility: the process offers the opportunity to move from mediation to arbitration and back to mediation (even in the arbitration phase the arbitrator can step back to his or her mediator's role to mediate a particular part of the award).

# Advantages of Med-Arb Cont..

- 3) Med-Arb can result in cost and time efficiencies, compared to separate mediation and arbitration proceedings.
- 4) There is a powerful incentive to settle: the presence of the neutral party and the threat of an arbitrated decision creates an incentive for the parties to successfully mediate their dispute.
- 5) Med-Arb creates an incentive for the parties to participate in the mediation phase genuinely and in good faith because they know that if they fail to reach agreement, they lose control over the outcome.
- 6) There is a good success rate: relatively few cases in Med-Arb actually proceed to arbitration.
- 7) The neutral party can gain insights during mediation that may contribute to a more appropriate arbitration award (if the same person is used).

# Arb-Med

- **Arb-Med** is an abbreviation for arbitration-mediation. It commences by the conduct of an arbitration hearing.
- The neutral person prepares an award on the issues with reasons, which is not issued to the parties.
- The parties then conduct a mediation. If the dispute does not resolve, the arbitrator then Issues the award and the parties are bound by the decision.
- Arb-Med can be used in various types of matters, although it may not be the most appropriate dispute resolution mechanism for smaller matters (given the availability of other mechanisms with increased cost-efficiency).
- Arb-med has gained credibility over the past few years. It has support both for its results and its ethics in eliminating potential arbitrator bias.
- Arb-Med is a combined process that can add value to disputes where a solution is pressing and parties seek to retain control over time, costs and outcome.

# Conciliation

- It is the process of facilitating an amicable resolution between the parties, whereby the parties to the dispute use conciliator who meets with the parties separately to settle their dispute.
- Conciliator meet separately to lower the tension between parties, improving communication, interpreting issue to bring about a negotiated settlement.
- There is no need of prior agreement and cannot be forced on party who is not intending for conciliation. It is different from arbitration in that way.
- The party initiating conciliation shall send to the other party a written invitation to conciliate under this part, briefly identifying the subject of the dispute.
- Conciliation proceedings shall commence when the other party accepts in writing the invitation to conciliate.
- If the other rejects the invitation, there will be no conciliation proceedings.
- Above provision clearly states conciliation agreement should be an extemporary agreement entered into after the dispute has but not before. Parties are also permitted to engage in conciliation process even while the arbitral proceedings are on(section 30).

# Ombudsmen

- **What is Ombudsman?** An ombudsman is an official who is appointed by the Government to investigate individual's complaints against a company, financial institutions, businesses, organization, specially a government department or public entities and attempts to resolve the raised concerns either by process of mediation or giving recommendations.
- The ombudsman is supposed to provide quick, neutral and cost effective justice to an aggrieved complainant. He tries to bring the issue of the consumer/complainant to the service provider's notice so that it can be resolved.
- In India, ombudsman exists for sectors like insurance, income tax, banking and other sectors as well. So you can approach the Insurance Ombudsman for your insurance related complaints; the Banking Ombudsman for banking related complaints and the Income Tax Ombudsman for income tax related complaints.
- To discuss the ombudsman in India, we need to describe Lokpal and Lokayukta. The **Lokpal and Lokayukta Act, 2013** was enacted to establish Lokpal for the Union and Lokayukta for States to perform the functions of Ombudsman in India



# Lok Adalat

- Lok Adalat is called 'People's Court' presided over by a sitting or retired judicial officer, social activists or members of Legal profession as the chairman.
- National Legal Service Authority(NALSA) 1987 along with other Legal Services Institutions conducts Lok Adalats on regular intervals for exercising such jurisdiction.
- Any case pending in regular court or any dispute which has not been brought before any court of law can be referred to Lok Adalat.
- There is no court fees and rigid procedure followed, which makes the process fast. If any matter pending in court of referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court when the petition filed is also refunded back to the parties.
- Parties are in direct interaction with the judge, which is not possible in regular courts.
- It depends on the parties if both the parties agree on case long pending in regular court can be transferred to Lok Adalat.
- The persons deciding the cases have the role of statutory conciliators only, they can only persuade the parties to come to a conclusion for settling the dispute outside the regular court in the Lok Adalat.
- Legal Services Authorities (State or District) as the case may be on receipt of an application from one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for which notice would then be issued to the other party. Lok Adalats do not have any jurisdiction to deal with cases of non-compoundable offenses.

# Benefits of Lok Adalats

- The benefits that litigants derive through the Lok Adalat are many.
- First, there is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.
- Secondly, there is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat.
- The parties to the disputes though represented by their advocate can interact with the Lok Adalat judge directly and explain their stand in the dispute and the reasons therefore, which is not possible in a regular court of law.
- Thirdly, disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.
- Fourthly, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat whereas in the regular law courts there is always a scope to appeal to the higher forum on the decision of the trial court, which causes delay in the settlement of the dispute finally.

# Online Dispute Resolution (ODRs)

- Online Dispute Resolution is an alternative dispute resolution technique that uses the internet as an interface to resolve disputes.
- The use of online techniques in the dispute resolution process such as submission of pleadings through email, videoconferencing for case hearings etc. facilitates convenient, cost-effective and expeditious resolution of disputes.
- Even though online dispute resolution may include the mechanisms of institutional alternative dispute resolution it is a step further for fast-track dispute resolution.
- Online dispute resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three

# ODRs Cont..

- Online dispute resolution (“ODR”) is conceived as a means to achieve some of the most powerful legal ideals of the Western legal tradition, which include: (1) **Legal Certainty**: In making individual plans, decisions, and choices everyone is entitled to know what the law is in advance.
- (2) **Access to Justice**: Everyone involved in a dispute shall be entitled to an easily accessible redress mechanism that provides for a timely resolution and effective remedies at reasonable cost.
- Regarding the dispute resolution function of private law, there are a variety of functional equivalents to litigation available, which are collectively referred to as alternative dispute resolution (ADR).
- On the one hand ODR relates to the resolution of disputes that result from online conduct, i.e. from communications and transactions which come about through the use of the Internet Domain name disputes are a prominent example as are disputes related to ecommerce.
- On the other hand, ODR relates to the use of online communication technology in the resolution process, even if the dispute itself has an offline origin.

# Why ODRs?

- Need of ODR:
  - (1) To facilitate E-Commerce (vendor and consumer).
  - (2) digital transaction.
  - (3) low value transaction.
  - (4) cross border transactions.
  - (5) ODR has control procedure flexibility.
- It provides a platform to resolve dispute with the help of expert at the comfort of home. Here technology allows for virtual communication without requiring the parties to be in a room together.
- Once Justice Ventachaliah said that: Judiciary should adopt new tools and technology that will speed up process and mitigate delays. It also help to protect the principle of "justice delay is justice denied".

# Why ODRs? Contd...

- **Online Dispute Resolution or ODR** is a process to settle disputes outside courts, combining technology and alternative dispute resolution ("**ADR**") mechanisms.
- ODR covers disputes that are settled over the internet having been initiated in cyberspace but with a source outside it i.e. offline.
- Originally, arbitration was intended as an alternative to going to court for various kinds of disputes but with time the method itself has become complex and expensive.
- ODR offers a faster, transparent and accessible option for many companies to resolve disputes online particularly those who have high volume and low-value cases.
- In the past half-decade, India has seen significant growth in the volume of online transactions, no other position would be more convenient to accept ODR as an efficient mechanism to resolve disputes and hence implement a fast and fair dispute resolution system.

# ODR Methods

- Online Dispute Resolution can be seen as an online equivalent of ADR as it primarily involves the use of negotiation, mediation or arbitration for dispute resolution.
- ODR is a method of dispute resolution where the parties communicate with each other in real-time by using various video-conferencing applications.
- ODR is form where communication is not conducted in real-time but via email or other such communication applications.
- Online Mediation is coming out to be the most favorable form of dispute resolution with nearly 70% of ODR platforms using the same to reach a conclusion. Typically online mediation starts with sending an email to parties that contain basic information about the proceedings followed by virtual meetings to be conducted in the chat rooms.
- Electronic Arbitration is a less popular method of online dispute resolution but it cover-up the process up to a certain extent.
- Every practicable method of ODR is unique and efficient to itself and the beauty is that it can be tailored as per the needs of the parties.

# ODR Platforms

- **CADRE** or **Centre for Alternate Dispute Resolution Excellence** is a website based platform for ODR. First, one party approaches the platform which then contacts the other party. If both the parties agree then an arbitrator is appointed and time-stamped intimations are sent through e-mails or WhatsApp. Usually, the parties do not meet face to face but they make contact electronically via video calls. The decisions that are legally binding come within 20-25 days of time. CADRE has been resolving tenant and rental contract disputes for NestAway an online home rental startup.
- **SAMA** is another ODR platform that facilitates easy access to high-quality ADR service providers and helps people to resolve disputes online. SAMA is being used as an ODR platform by ICICI Bank to resolve nearly 10,000 disputes with values going up as high as INR 20 lakh.
- **CODR** or **Centre for Online Dispute Resolution** positions itself as an institution that will administer cases online end to end.
- **AGAMI** is yet another non-profit ODR platform that aspires to create a better system of law and justice by providing time-efficient and feasible dispute resolution methods.



# Nature of ODR

- **Online and Offline Model of ODR:** The potential use of the Internet to resolve International disputes can be divided into two distinct areas: using Internet-related technology to resolve “real world” disputes online or partially online and using the Internet to resolve disputes arising on the Internet itself.
- For instance, in offline dispute, you can have a clause in your contract with your supplier for resolution of dispute using one of the ODR platform. As far as online disputes are concerned, the platform you are dealing with might have an inbuilt mechanism as is the case with EBay.

# Procedures adopted for ODR

- **Online Negotiation:** Forums such as [Cyber Settle](#) uses Negotiation for Dispute Resolution. Online negotiation can be of two types, closed model and open model.
- *Close Model*– Online negotiation thrives on technological changes through blind bidding which is one of the most prevalent dispute resolution services available online.
- The common characteristic of these processes is the parties' submission of monetary offers and demands which are not disclosed to their negotiating counterpart, but are compared by computer in rounds. If the offer and demand match, fall within a defined range or overlap the case is settled for the average of the offer and demand, the matching amount, or the demand in the event of an overlap. If the claim is settled, the participants are immediately notified via email
- *Open Model*– Under the open model, a party can view the other's party offer or demand only after having made a demand or offer. Whenever any offer is within twenty per cent of any demand, there is settlement of the median.

# Online Mediation

- A typical online mediation procedure takes place as follows.
- The complainant initiates it by completing a confidential form on the provider's website. Then, a mediator contacts the respondent in order for him/her to participate.
- Both parties set forth the mediation ground rules. The mediator communicates with the parties, sometimes jointly and sometimes individually, to facilitate an agreement. If an agreement is reached, it usually takes the form of writing.
- Thus, the online process does not differ very much from the offline process, except for the expanded use of technology.
- Email is the mediator's best friend for purposes of framing and moving discussion forward. But email was already used by offline mediators.
- In online mediation, websites such as [Smart Settle](#), [Legal Face Off](#) etc. are providing online mediators with new tools to supplement email with other communication tools including electronic conferencing, online chat, video-conferencing, facsimile and telephone.

# Online Arbitration

- Online arbitration proceeds along different communication stages (process agreement, initial presentations, rebuttals, consideration, and decision).
- Arbitration is in general a much less complicated communication process than mediation.
- In the simplest arbitration, software that allows positions to be stated and documents to be shared may provide a sufficient frame for the process.
- There are many arbitration service provider in abroad such as American Arbitration Association. AAA is known for handling large, complex cases.
- In 2011, 46% of the arbitration filed with the AAA involved claims \$1,000,000 or more.

# ODR is ideal for India

- The salient features of ODR which make it ideal for such business disputes in India are:
- **Speed:** One of the most attractive features of ODR is its speed.
- Litigants in India are used to getting matters resolved through the court system in years or decades.
- Even a suggestion that this can be done by ODR in months or weeks is music to their ears. Businesses will do anything to get their matters resolved speedily. And, this is precisely the reason why business litigants use the services of extra-legal institutions (even mafia) to get a speedy settlement.
- Private Banks are known to use the services of muscle-men to get the loan amounts back. It was noticed by the Supreme Court and it came down heavily to hold that banks or for that matter no one can use force to get the money back.

# ODR is ideal for India

- **Convenience – Necessity:** ODR is surely much more convenient than the normal ADR or litigation. It would be a very attractive feature for the people who already have access to the other systems of dispute resolution, for instance, ADR and litigation. However, for have-nots, who do not have access to justice due to several reasons – poverty, illiteracy, lack of awareness, etc. – convenience is not the deciding factor.
- **Ease of access:** Anyone with access to internet can have access to ODR. And for access to internet, one does not have to have a computer and internet facility at home or business. Access is available through a very large number of cyber cafés, which are mushrooming in every nook and corner of India. The charges are as low as Rupees 10 for an hour (approximately 20 cents). There are plans by the government to have internet facility in each and every village.

# ODR is ideal for India

- **Efficient time management:** In face to face (F2F) proceedings, the disputants with their lawyers have to be physically present at every date scheduled in the court or other tribunals. ODR does not require travel and attendance, hence, the business executives are available for the company. The same is true for customers or even in non-commercial disputes for other persons. This flexibility allows efficient time management and also gives a chance to prepare the case well and make an argument as compared to the court where oral arguments have to be made and rebutted at the same time.
- **Cost Savings:** Since, no travel is required in ODR, there is a significant saving in travel costs directly and a more significant saving indirectly in terms of availability of the disputant for the major portion of time which would have otherwise been lost in travel. This saving is most evident in cases involving international business disputes. Additional costs of board and lodging in another city where the court is situated are also saved from being incurred.

# ODR is ideal for India

- **No Geographical Barriers:** In India, the Supreme Court has its seat in New Delhi and the High Courts have their Principal Seats and Benches in the capital or another important city of the provinces. Besides these higher courts, each district has a District and Sessions Court which is the highest court in the lower judiciary. Many times, it becomes very difficult for litigants to travel from remote villages even to the district courts, what to talk of the High Courts and the Supreme Court.
- Since ODR does not require any travel, a disputant living in the remotest area of India can take part in the proceedings from his home itself, provided internet is accessible. This feature of ODR makes it one of the most easily available systems of dispute resolution. It is also true for international disputes. Thus, availability of getting disputes resolved by ODR shall encourage disputants to get their disputes resolved rather than suffer silently.



# ODR Problems in India

- The road for ODR in India is bumpy. ODR may have a number of advantages and unique features which can help resolution of disputes in India, there are a number of problems in using ODR for dispute resolution. Some of these problems are as follows:
- **Trust and Confidence:** Trust is the sine qua non of any dispute resolution system. India's Supreme Court and High Courts are independent and command enormous respect. This respect emanates from the trust the citizenry have in them. It is not sure how much trust and confidence the people have for ODR institutions.
- **Technology:** People in general have distrust in technology. Some people in India do not even use bank ATMs as they fear that in case the machine does not give them the correct amount, there is no person available at that time to whom they can complain. There is a phobia for technology also because of unfamiliarity and a sense of foreign involvement. It is true that ODR system was not devised in India and hence, the technology associated with it also comes from west. This feeling gives a sense of insecurity and fear that one may become a slave to this technology.

# ODR Problems in India

- **Lawyers:** Shakespeare had written in one of his plays, 'The first thing we do, let's kill all the lawyers'. Advocates of ODR will surely agree with it. The lawyers are one of the biggest hurdles with their mind-set of adversarial methods of dispute resolution. Also, there is a potential conflict with the fee earning of lawyers if ODR is followed. Lawyers in general are not trained for ODR in law schools. This makes the task difficult for the disputant to take a decision to go for ODR when the lawyer is strongly in favour of litigation.
- **Access:** The digital divide between IT haves and IT have-nots makes access at this time more difficult for the weaker sections of society. Issue of access to ODR shall broaden this gulf. People with all the resources generally have familiarity with the system and they can with some effort use the system for their own use. This makes the case for empowerment of the weaker sections by providing them access stronger.

# ODR Problems in India

- **Barriers:** Educational barriers shall prevent the uneducated from accessing ODR. Language also becomes a barrier. English is generally the language used for internet and ODR, while a large portion of work in lower courts is done in vernacular. The preference for English shall put the locals at a disadvantage. Cultural barriers may also pose a problem. ODR system transcends national boundaries as well as different cultures.
- **Personnel:** Adequate number of qualified personnel to man the ODR institutions and provide counsel to consumers and businesses is one of the major obstacles. The lawyers who have been trained for decades together for the traditional form of practice would find it next to impossible to switch over to the new trend of dispute resolution called ODR. Arbitrators (decision makers in any role – negotiator, mediator, conciliator, etc.) in ODR need to be specially trained for this special task.
- **ODR not suitable for all disputes:** Like ADR, ODR is also not suitable for all disputes. Questions of intricate legal complexity are best decided in a court of law. Matters of criminal nature, matrimonial disputes, and matters involving rights of citizens as against the State are some of the examples which cannot be decided by ODR system. The matters which can best be decided are business disputes – B2C and B2B. The rest of the disputes may be resolved in the years to come by some suitable modifications in the model used.

# COVID-19 and ADR

- **Need for Robust online ADR and ODR Mechanisms during COVID-19 Pandemic:** In the current scenario where everything is chaotic, the need for moving to an online platform is immense. However, in a situation where urgent issues are already pressurizing the Courts with heaving burdens, thereby cluttering the digital medium, an issue like arbitration is better being held up for the future. Anyways, to ease the burden upon offline arbitrators the online arbitration mechanism shall be highly significant in the post corona period.
- Use technology to transform avoiding and containing disputes, and resolve if necessary. There is a difference between pre litigation ODR and court annexed mediation.
- Parties are entrenched at the time of court-annexed mediation. Pre-litigation ODR is even before a dispute has reached the stage of a dispute. ODR can step in before erosion of trust takes place between the parties, and before partners become adversaries.

# COVID-19 and ADR contd..

- The coronavirus (COVID-19) global health crisis is drastically impacting communities worldwide. It has caused unprecedented disruptions and damaged the world's economy and business relationships. Great number of commercial disputes are coming forth as parties are finding it difficult to perform their contractual obligations. In fact, there is a complete possibility that the crisis will result in a surge of litigation and will consequently delay the resolution of pending court cases. It is the unprecedented delays that should steer the parties towards alternative dispute resolution (ADR). It is in the wake of this crisis that Online Dispute Resolution (ODR) or Virtual ADR has come into play.
- Virtual ADR allows the cases to be resolved in a hassle-free manner and in this system there is no need for travel by any party or attorney. All the parties can communicate with each other through video conferencing which makes it possible for them to hear and see each other. In case of mediation, it is possible for the mediator to separate the parties and engage in a mutually agreeable settlement. Greater utilisation of ADR will result in quick resolution of cases and will also be time and money saving.

# COVID-19 and ADR contd..

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- Like any new initiative, virtual ADR will have its share of teething troubles. However, it is certainly a step in the right direction. ADR is no longer an alternative means of resolving disputes. Rather, it is the preferred forum for the speedy, cost effective resolution of disputes. All of us are finding it difficult to maintain as normal an existence as possible. The current pandemic has altered the way we think about our lives and daily interactions. However, in unprecedented times like these, it is much more important to come together and fight to come out stronger and much more evolved.

# Supreme Court Directions and VC

- the directions passed by the Supreme Court, on 6 April 2020, for the conduct of court proceedings across the country via video conferencing (VC), during the period of the outbreak of the COVID-19 pandemic.
- Broadly, the Supreme Court has directed as under:
- All High Courts shall ensure functioning of the judicial system through use of VC technologies and to this end, shall decide the modalities for use of VC technologies.
- District Courts in every state shall adopt VC technologies prescribed by the appropriate High Court.
- Courts shall make VC facilities available for those litigants who do not have access to these facilities, including by appointment of advocates as "amicus curiae" and making VC facilities available to such advocates (if necessary).
- Till such time as the High Courts frame rules in this regard, VC technologies shall primarily be used for hearing arguments, both, at the trial as well as appellate stages.
- However, evidence shall not be recorded using VC facilities except with the parties' mutual consent.
- The directions shall remain in force till such time as further orders are passed by the Supreme Court.

# Vision of ODR

- **Systems for the Future: Vision of ODR: Justice DY Chandrachud, Judge, Supreme Court of India, on Technology and Access to Justice**
- The question today is *how well* can we adopt technology to enhance access to justice and strengthen rule of law.
- Technology can be disruptive and there is a technological divide in India.
- We should use technology to promote a sense of inclusive justice, justice for which the system is meant to deliver a service.
- Parameters of ODR:
  - Technology to promote user confidence in the process
  - Incorporate elements of design thinking to understand user needs for an ODR platform
  - Employ data management tools to ensure predictability, consistency, transparency, and efficiency of the judicial process



# Vision of ODR

- ODR to have a multi-pronged, multi sectorial initiative that focuses on:
  - Dispute resolution: resolving disputes that reach the courts through open, efficient, transparent process
  - Dispute containment: Only those disputes that require judicial resolution should reach the courts. Matters which do not require judicial resolution shouldn't reach the courts at all.
  - Dispute avoidance: Facilitate and ensure through ODR that a problem does not reach the stage of a dispute. This would ensure a problem does not become a dispute.
- Process automation is minimal use of technology.

## **Anoop Kumar Mendiratta, Law Secretary, GOI, on Technology and ADR**

- The aim is to provide an affordable, accessible, and effective ODR and the concern remains how can the Government and various stakeholders can facilitate ODR.
- At a time when technology plays a crucial role, ODR is much more than replicating the existing process of ADR online. The objective is to contain and resolve disputes also using analytical insights.
- For a transformative impact, we need to develop digital infrastructure to reach the masses, and we also need a change in mindsets. The statutory framework would also require some incidental changes.
- Identify disputes suitable for ODR. Collaboration between ODR centres and public institutions could be explored for Motor Accident Claims Tribunals, banking disputes, service disputes, etc.
- The Government is open minded and shall help alleviate concerns regarding ODR. Functioning between the private ODR players and the ADR providers needs to be complemented to ensure that online resolution can reach the different industries, locations and parts of the country and also support the public institutions in a big way.

## **Unlocking Opportunities for ODR Justice Indu Malhotra, Judge, Supreme Court of India, on the Potential and Possibilities of Online Dispute Resolution**

- ODR which was at an infancy stage in India, has now acquired greater importance due to COVID19. Advantage of ODR is that it will provide expeditious resolution of disputes. Further it is far less expensive, and economical as well.
- So far, India has followed the opt-in model, which means that option of going into mediation is voluntary. A hybrid of the two may be more successful for India
- Another area which has great potential for dispute resolution through the ODR mechanism are IBC disputes. ADR modes should be used by creditors and debtors to resolve issues in the shadow of insolvency, particularly now post COVID19. Low volume, high volume cases could be referred to online dispute resolution
- A scheme similar to the Hong Kong ODR Scheme for the MSME sector could be formulated for India for commercial disputes having high volume and low-value transactions.
- The need of the hour today is to develop a robust ODR platform, which is easily accessible, user-friendly, less expensive and efficient for resolution of disputes.

# UDRP and Dispute Resolution

- **The Uniform Domain Name Dispute Resolution Policy (UDRP):** Conventionally arbitration involves dispute resolution through the delivery of legally binding decisions, i.e. has the same enforceability before the Courts as any other judgements.
- Non-binding arbitration processes may also be effective when using ODR tools, as settlements are often encouraged by them.
- Moreover, self-enforcement measures may review the effects of non-binding processes. The most significant example is in the creation of UDRP by Internet Corporation for Assigned Names and Numbers (ICANN) UDRP has been referred to as an administrative process by some commentators.
- In any case, the UDRP has created a clear global ODR process, allowing trademark owners inefficient fight against cybersquatting.
- The UDRP is used for resolving disputes between trademark owners and users of registered domain names in bad faith purporting to resell it for profitable exchange, or taking advantage of a trademark reputation.

# Challenges In Online Arbitration

- Besides being a boom in the dispute settlement system, it comes with its own challenges and difficulties. Online Arbitration faces challenges in relation to-
- Power or system failure and potential inaccessibility- For some individuals, access to computers and internet may be a great challenge. Even after gaining access to a computer and internet, they might not be comfortable in using it.
- Place of arbitration- determination of seat of arbitration is one of the greatest difficulty faced in online arbitration. It is important to decide the place of arbitration as it will determine the jurisdiction of courts for setting aside the award.
- Confidentiality issue- since online mediation creates an electronic record, this may pose a great threat to privacy and confidentiality. This could enable a party to print out and distribute e-mail communications without the knowledge of the other party.
- Less effective- any dispute can be redressed more effectively if the parties to the dispute are personally and physically present before the arbitrator. Moreover, online communications do not express the pitch, tone and volume of the participants.
- Limited scope- Online dispute typically concern small sums of money. It has a limited range of disputes. It handles only those issues where the amount of settlement is the only undetermined issue.

# ODR Implications

- **The current state of the regulatory framework for online dispute resolution:** At the peak of the Internet boom of the late 1990s, it appeared that ODR was developing at a satisfactory pace without the involvement of government.
- E-commerce industry was encouraged to build ODR into business practices but not required, or overseen, to do so.
- Major deficiencies of the current ODR regulatory framework: There are numerous issues in online dispute resolution that presently appear “insufficiently regulated.” As discussed, this state of “insufficient regulation” results not only from lack of comprehensive ODR law, but also from the weaknesses of the other modalities of regulation
- Today, lack of complete information on ODR provider’s governing structure, business connections, etc., often raises doubts relating to the independence of ODR providers and their stakeholders, as well as the neutrality and impartiality of individual mediators or arbitrators.
- Other technology-related regulatory issues in ODR are data security and confidentiality. While the former relies primarily on technology and the latter – on law and norms, in fact they seem closely interrelated.

# International Disputes

- ❖ International Disputes- Between Inter State, States and individuals, Corporate Bodies, Non State entities- All subject to International Regulations
- ❖ Disputes can be of various Kinds- 'Legal' and 'Justiciable'. Different form 'conflict of interest'-such as Political and Non justiciable.
- ❖ 'Legal Disputes'-capable of judicial settlement by application of existing law and ascertainable rules of international Law.
- ❖ Business disputes are increasingly becoming multijurisdictional and multi-party in nature.
- ❖ International disputes are those in which the rivaling claims are based on international law. This will normally go hand in hand with the parties being (at least so-called 'limited') subjects of international law.

# Issues Relating to Int. Disputes

- Attitude of Parties that determines its justiciability- i.e., willingness to accept the decision of international Tribunal for solving dispute.
- It's well established in International Law that "no state can without its consent, be compelled to submit its dispute with other State, either to Mediation, or to arbitration or to any other Kind of Pacific Settlement
- Issues Relating to International Disputes including:
  - Jurisdiction,
  - Access,
  - Mandate of the Court or Tribunal,
  - Evidentiary Rules and Principles,
  - Procedural issues,
  - Judgements, Awards or Decisions
  - Remedies and Enforcement.



# Kinds of Disputes

- Kinds of dispute Settlements: Peaceful/Pacific and Coercive or Compulsive Dispute Settlements
- Obligation for the peaceful settlement of international disputes
- Methods of international dispute settlement--Diplomatic methods and Legal methods
- **Diplomatic methods of dispute settlement**
- Negotiation, Good offices and mediation, Inquiry and fact finding and Conciliation
- **Legal methods of dispute settlement:** Arbitration and Judicial settlement
- **Compulsive or forcible means of settlement**
- Retorsion, Reprisals, Embargos, Pacific Blocked, Interventions including wars

# Do states have obligation to settle their disputes peacefully?

- **UN Charter - Article 1(1)**--To maintain international peace and security, and to that end: ....and to bring about **by peaceful means**, and in conformity with the principles of justice and international law, adjustment or **settlement of international disputes** or situations which might lead to a breach of the peace;
- **Art 2(3)**--All Members **shall settle** their international disputes by peaceful means in such a manner that **international peace and security, and justice, are not endangered**.
- **Art 33**--The parties to any dispute, **the continuance of which is likely to endanger the maintenance of international peace and security**, shall, first of all, **seek a solution** by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or **other peaceful means** of their own choice.
- The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.
- **Pacific Settlement of Disputes** -Chapter VI (Art 33- Art 38)-authorize General Assembly and Security Council.

# Peaceful Means of Dispute Settlements

- The numerous international dispute settlement treaties concluded since the 1899 and 1907 Hague Conventions for the Pacific Settlement of Disputes
  - (1) bilateral or multilateral negotiations;
  - (2) good offices;
  - (3) mediation;
  - (4) inquiries;
  - (5) conciliation;
  - (6) ad hoc or institutionalized arbitration;
  - (7) judicial settlement by permanent courts;
  - (8) "resort to regional agencies or arrangements" or
  - (9) to "other peaceful means of their own choice"; and
  - (10) dispute settlement by the UN Security Council (e.g., pursuant to Articles 34-38 of the UN Charter), other UN organs, or other in organizations

# History and Development of Int. Judicial Institutions

**Origin:** Modern history of International Arbitration –

- **Phase I** - Jay Treaty of 1794 between the United States of America and Great Britain - creation of three mixed commissions, composed of American and British nationals in equal numbers to resolve disputes.
- **Phase II** -The Alabama Claims arbitration in 1872 between the United Kingdom and the United States - agreed to submit to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War.

## **Impact of treaties:**

- sharp growth in the practice of including arbitration clause in treaties.
- conclusion of general treaties of arbitration efforts to construct a uniform law of arbitration
- proposals for the creation of a permanent international arbitral tribunal

# The Hague Peace Conferences and the Permanent Court of Arbitration (PCA)

- **Phase III** - The Hague Peace Conference of 1899 (Hague), convened at the initiative of the *Russian Czar Nicholas II* – discussion - peace and disarmament.
- **Result:** Convention on the Pacific Settlement of International Disputes. Features:
  - deals with arbitration and other methods of pacific settlement, such as good offices and mediation
  - Established **Permanent Court of Arbitration**
  - created a permanent Bureau (located at The Hague), with functions corresponding to those of a court registry or a secretariat,
  - laid down a set of rules of procedure to govern the conduct of arbitrations
- **Second Hague Peace Conference (1907):** revised the Convention and improved the rules governing arbitral proceedings.

# PCIJ and Dispute Settlements

- After the creation of the Permanent Court of Arbitration in 1899 and the PCIJ in 1920, negotiations have remained the principal means for the prevention or settlement of disputes among states.
- Bilateral negotiations and third-party-assisted political methods of dispute settlement can offer important advantages, including:
  - (1) greater flexibility, privacy, and control by the parties over the outcome; (2) comparatively less costs; (3) the ability to take into account political as well as legal considerations; and (4) avoidance of "winner-loser" situations.
- **Article 14**, League of Nations: gave the Council of the League responsibility for formulating plans for the establishment of a Permanent Court of International Justice (PCIJ) with power to solve dispute and give advisory opinion. In September 1921, a majority of the Members of the League had signed and ratified the protocol
- Between 1922 and 1940 the PCIJ dealt with 29 contentious cases between States and delivered 27 advisory opinions.



# PCIJ Features

- Unlike arbitral tribunals, the PCIJ was a permanently constituted body governed by its own Statute and Rules of Procedure, fixed beforehand. binding on parties having recourse to the Court
- Power to decide case if parties agree and Empowered to give advisory opinion
- It had a permanent Registry - served as a channel of communication with governments and international bodies
- Its proceedings were largely public and provision was made for the publication in due course of the pleadings, of verbatim records of the sittings and of all documentary evidence submitted to it.
- Developing a constant practice and maintaining a certain continuity in its decisions - a greater contribution to the development of international law;
- Accessible to all States for the judicial settlement of their international disputes and they were able to declare beforehand that for certain classes of legal disputes they recognized the Court's jurisdiction as compulsory in relation to other States accepting the same obligation.

# International Court of Justice(ICJ)

- The World Court and the Principle Judicial organ of the United Nations. Established June, 1945
- Competence depends upon the States consenting to accept its jurisdiction
- The ICJ is an organ of the UN that is regulated through the provisions in the Charter of the organization, the Statute of the Court and the rules made there under
- Since only States can be parties, some consider the Court's ability to resolve international disputes to be considerably less competent since it depends primarily upon a State consenting to accept its jurisdiction.
- This has not prevented it from evolving new int. legal norms of considerable significance. The Court which has an international status can also meet in a chamber, to hear particular kinds of disputes.



# Law Applied by the Court

- Statute under Article 38, Part 1 lays down that the disputes which are submitted to it are decided in accordance with International Law'
- 'International Law' is elaborated under the Statute in the same para of Article 38 which says that the Court shall apply
  - (a) international conventions whether general or particular, as recognized by the contesting States ;
  - (b) international custom, as evidence of a general practice accepted as law ;
  - (c) the general principles of law recognized by civilized nations ;
  - (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
- Article 38, Para 2 of the Statute states Court has a power to decide a case *ex aequa et bono*, if the parties agree thereto.

# WTO and Dispute Settlements

- The World Trade Organization (WTO) is an international organization designed to supervise and liberalize international trade.
- The WTO came into being on 1 January 1995, and is a successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947, and continued to operate for almost five decades as a de facto international organization.
- WTO deals with the rules of trade between nations at a near-global level. It is responsible for negotiating and implementing new agreements, and is in charge of policing member countries adherence to all WTO agreements, signed by the majority of the world's trading nations and ratified by their parliaments.
- **Functions of WTO** : Administering WTO trade agreements; Forum for trade negotiations; Handling trade disputes; Monitoring national trade policies; Technical assistance and training for developing countries and Cooperation with other international organizations

# WTO and Dispute Settlements

- The WTO's procedure for resolving trade quarrels under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly.
- A dispute arises when a member government believes another member government is violating an agreement or a commitment that it has made in the WTO. Ultimate responsibility for settling disputes also lies with member governments, through the Dispute Settlement Body.
- Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced.
- The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case.

# International Criminal Court (ICC)

- The International Criminal Court is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression in the sphere of international liability. It is founded by the Rome Statute and it can only prosecute crimes committed on or after the date of its establishment.
- The Rome Statute provides a sufficient framework of obligations, of considerable detail, but that both the goodwill and adequate legislative framework of States will be necessary to realize the ICC's potential. Notwithstanding their obligations under the Statute, States retain the decisive decision-making power at critical phases, making the political context and the ultimate availability of enforcement essential.
- The ICC will undoubtedly contribute to the formal rule of law in international criminal law [through its definitions of crimes, general principles and so forth]; that it will also contribute to the minimal level of minimal level of enforcement also called for by the rule of law cannot be assumed from the Statute itself.

# International Criminal Court (ICC) contd...

- The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.
- The ICC began operations on 1 July 2002, upon the entry into force of the Rome Statute, a multilateral treaty that serves as the court's foundational and governing document. States which become party to the Rome Statute become members of the ICC, serving on the Assembly of States Parties, which administers the court. As of November 2019, there are 123 ICC member states; 42 states have neither signed nor become parties to the Rome Statute.
- The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge chosen by his or her peers in the Judicial Division, which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates criminal proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office.

# Conclusion

- We are concluding this discussion here; Indian judiciary system is strong as compare to another judiciary system present in the world.
- Society is losing hopes and faith towards judiciary because of the time taken by it in delivering justice. Judiciary must overcome from these challenges, peoples should not hesitate before going to court.
- What government should do is to make judiciary more compatible, so that can dispose of cases as soon as possible.
- Solutions like Alternative Dispute resolution, Lok Adalats, fast track courts, gram Nyayalay should be promoted by government to deliver justice in an effective way and reduce the workload of judiciary.

# Conclusion

- Online dispute resolution has its sceptics and its enthusiasts.
- The sceptics say given that ODR has not revolutionized dispute resolution yet, it is nothing more than a passing fad.
- The enthusiasts see an opportunity to develop new resources to resolve conflicts more effectively than today and argue that the Internet and ODR are still in a process of institution building – even if it takes longer than originally assumed – time will come to develop a global ODR system
- ODR involves various methods of dispute resolution including e-Negotiation, e-Conciliation, e-Mediation, e-Arbitration and hybrid mechanisms such as Medola, Mini trial, Med Arb, Fast track arbitration, Neutral Listener Agreement, Rent a Judge, Concilio-Arbitration etc.

# Conclusion

- Globally ODR witnessed a boom with the e-commerce sector when E-bay and Paypal started resolving their disputes online.
- Countries like U.S.A, China, Brazil and some European Union nations have already adopted the ODR mechanism by constituting their separate platforms to resolve disputes arising out of e-commerce transactions.
- Millions of disputes have already been dealt with successfully without even filing a single suit in a traditional court of law.
- It is a proven fact that technology improves with time and technology being the main ingredient of different ODR methods, it is certain that ODR will come up with new and more desirable techniques



# Conclusion

- In India, ODR is still in its infancy stage but it is just a matter of time before ODR is adopted at a large scale in India.
- The electronic form of dispute resolution tries to enable new possibilities that were previously unavailable such as the virtual simultaneous presence of all the parties without needing personal attendance at a particular place and time.
- With 4.5 million cases pending in high courts, 31 million cases pending in district courts and 350,000 backlogs in the top 5 central tribunals, without a doubt we are in need of more and more ODR platforms and to come up to the rescue.
- ODR mechanism being simple and effective has the potential to come into mainstream dispute resolution systems and the acceptance of it cannot be called into question.
- In the near future, ODR will not only serve as a platform for quick disposal of cases but also as an area of employment for thousands of arbitrators or advocates.

Questions Please

Thank you