

PROJECT ASSIGNMENT OF

ONLINE ARBITRATION

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METHOD OF RESEARCH

➤ **Objective and Scope of the Project:**

Objective of the project paper is to determine use of technology for dispute settlement mechanism and to analyse aspects of Online Arbitration between national and international scenario.

➤ **Research problem:**

Technology has been involved in every aspect of life. The reliability of such technology is in question always. To what extent method of doing online arbitration or getting solution by this kind of arbitration is useful.

➤ **Research Questions:**

1. What is Online Arbitration?
2. What is procedure to conduct Online Arbitration?
3. What place will treat as seat of arbitrator?
4. How will confidentiality maintain of data or other information?

➤ **Hypothesis:**

Project paper proceeds with the hypothesis that Online Arbitration is a branch of arbitration by which parties can enjoy an easy and quick solution of their disputes. Legal validity of electronic data transmission is approved by judiciary. In Online Arbitration any dispute can be settled in fast track mode.

➤ **Research Methodology:**

In this project paper student has primarily used descriptive and analytical type of research. Student used doctrinal research method in this project paper. Student has gone through the books related to Arbitration, Alternative Dispute Resolution and Information Technology. Student has also relied upon many Articles of various

scholars and some other reading material which found in different journals available in the Library and also web sources.

➤ Limitations:

Project paper doesn't cover all the aspects of Arbitration, but only deal with online arbitration. Although for understand the basics of Arbitration, I dealt fundamentals of Arbitration also.

Mode of citation:

A uniform method of citation has been follow up during the paper.

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I

INTRODUCTION

Arbitration is a mode of setting dispute, by referring it to a nominated person who decides the issue in a quasi-judicial manner after hearing both sides. It means this is a solution in which parties settle dispute through intervention of third person, but without having resource to a court of law.

Arbitration is one of ADR mechanisms through which two or more parties may obtain a final and binding resolution to their dispute by an expert and independent professional of their own choice. For the arbitration process to be legally valid and ultimately binding, the parties must agree to using arbitration of their own free will and must signify their resolve to abide by and perform the award of the arbitrator. When we will talk about arbitration procedure then we will find that it is simpler than traditional litigation, the arbitration process may appear complex to the uninitiated. Most arbitration rules contain several dozen articles regulating the process from initiation to the delivery of the award to the parties. Between initiation and award, the process may not necessarily take place as smoothly as one may anticipate for a number of reasons unique to each case.

While most arbitration laws and rules allow parties to arbitrate unrepresented, they should seriously consider engaging expert counsel to guide them through the process. Mistakes made as a result of unfamiliarity with procedure and/or law cannot easily be cured after an award is rendered. Not having been represented by legal counsel does not constitute a ground in and of itself to vacate an arbitral award. The advantages of having disputes settled through the process of arbitration are as follows:-

- Speedy disposal
- Cost effective

II

BRIEF HISTORY OF ARBITRATION

Arbitration has a long history in India. In ancient times, people often voluntarily submitted their disputes to a group of wise men of a community—called the Panchayat—for a binding resolution. Modern arbitration law in India was created by the Bengal Regulations in 1772, during the British rule. The Bengal Regulations provided for reference by a court to arbitration, with the consent of the parties, in lawsuits for accounts, partnership deeds, and breach of contract, amongst others. Until 1996, the law governing arbitration in India consisted mainly of three statutes: (i) the 1937 Arbitration (Protocol and Convention) Act, (ii) the 1940 Indian Arbitration Act, and (iii) the 1961 Foreign Awards (Recognition and Enforcement) Act. The 1940 Act was the general law governing arbitration in India along the lines of the English Arbitration Act of 1934, and both the 1937 and the 1961 Acts were designed to enforce foreign arbitral awards (the 1961 Act implemented the New York Convention of 1958). The government enacted the Arbitration and Conciliation Act, 1996 (the 1996 Act) in an effort to modernize the outdated 1940 Act. The 1996 Act is a comprehensive piece of legislation modelled on the lines of the UNCITRAL Model Law. This Act repealed all the three previous statutes (the 1937 Act, the 1961 Act and the 1940 Act). Its primary purpose was to encourage arbitration as a cost-effective and quick mechanism for the settlement of commercial disputes. The 1996 Act covers both domestic arbitration and international commercial arbitration.¹

III

DIFFERENT KINDS OF ARBITRATION

Variety of arbitration depends upon terms of arbitration agreement, subject matter of dispute and the governing laws.

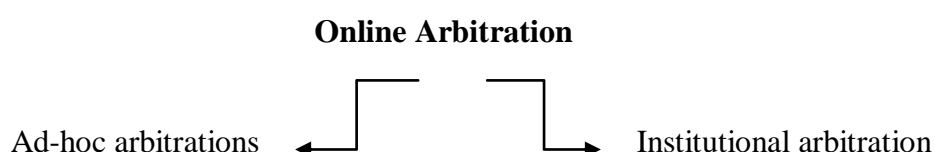
Some of them are mentioning here²-

¹ http://iis-db.stanford.edu/pubs/22693/No_103_Sarma_India_Arbitration_India_509.pdf (Last Accessed on 28th April, 2012 at 08:15 PM)

² Rajan, R.D, *A primer on Alternative Dispute Resolution (ADR)*, Barathi Law Publications, Tamil Nadu, New ed. 2005, pp. 103-112

1. Binding Arbitration	9. Domestic Arbitration	17. Grievance Arbitration
2. Non-binding Arbitration	10. International Arbitration	18. Interest Arbitration
3. Fast-track Arbitration	11. Ad hoc Arbitration	19. Labour Arbitration
4. Court-annexed Arbitration	12. Institutional Arbitration	20. Hybrid Arbitration
5. Concillio-Arbitration	13. Specialised Arbitration	21. Hi/Lo Arbitration
6. Commercial Arbitration	14. Contractual Arbitration	22. final offer Arbitration
7. Consumer Arbitration	15. Compulsory/statutory Arbitration	23. Flip-flop Arbitration
8. Industrial Arbitration	16. Compromissory Arbitration	24. Online Arbitration

This is a fourth generation age and in this age use of technology has increased. Today teaching, game, study, and war everything is going on internet. For the quick and better performance we take help of technology. E- Courts, e- filings etc are few example of this net communication system.



IV

OVERVIEW OF ONLINE ARBITRATION

By name it is clear that this type of Arbitration belongs to electronic arbitration. If arbitration is conducted online, the parties have to discuss through e-mail about the choice of law, enter into online an arbitration agreement digitally signed by them, and determine the geographical

location of the server through which arbitration is to take place and also have to determine the place of signing the award by arbitrator. The term Online refers to communication through an electric medium, especially on the internet. It would include use of telephone or mobile, fax, or e-mail facilities or any other mode available on the internet or any other information and communication technology which can be beneficially used to solve disputes.

Online Arbitration is particularly convenient and efficient where the parties are located at a distance, as distance communication obviates the need for travelling. In principle, Online Arbitration can be used for both disputes arising from online interactions and transactions and for disputes arising offline. However it is particularly apt for e-commerce disputes, where it is logical to use the same medium (the Internet) for the resolution of disputes and where the parties are frequently located far from each other³.

There can be three possible situations for submitting or referring a claim, dispute or difference to an online arbitration. (1) An e-contract containing an online arbitration clause. (2) A written contract providing for online arbitration; and (3) Reference to online arbitration after the dispute has arisen.

The role of online technology for dispute settlement is very modern and effective role. If the plaintiff is a fellow of New York City and the defendant is in Bangalore and the arbitrator is in London. Without leaving their cities and without seeing faces of each other, they can resolve their disputes via use of Online Arbitration. So there are no geographical limitations and not any disturbance in the business of parties.

"Online dispute resolution" (ODR) means different things to different people. Collating the different uses of the term, one could say that ODR is information technology and telecommunication via the Internet - (together referred to as "online technology") applied to alternative dispute resolution. ODR applies information technology and distance communication to the arbitration. Thus ODR is essentially an offspring of ADR. Like ADR, it generally has the same advantages over litigation of greater efficiency, greater party control and lower costs; in fact, the introduction of high technology increases these advantages of ADR over litigation⁴.

188th report of Law Commission of India (December 2003) proposed that we apply a 'fast-track' procedure for the 'Commercial Division' cases in the proposed Commercial Division of the High Courts. The Law Commission, in its 176th Report on Amendments to the Indian

³ <http://www.egov.ufsc.br/portal/sites/default/files/anexos/18561-18562-1-PB.pdf>

⁴ Hornle, Julia, *Online Dispute Resolution- More Than the Emperor's New Clothes*, The ICFAI Journal of Alternative Dispute Resolution, Vol. 03 (04), October 2004, pp. 29-59 (29)

Arbitration and Conciliation Act, 1996 proposed a 'fast-track' procedure for arbitration in India, where parties opt for such a procedure. We shall keep that model as a guide for prescribing a 'fast-track' procedure in Commercial cases of pecuniary value as high as ₹ 1 crore or more⁵.

Actually technology has provided the answer on most occasions of difficulty. The internet has emerged as one of the most significant and revolutionary inventions of our time. Dispute resolution is one of its many applications. With the increase in the globalisation of business, business disputes are also getting global in character. The traditional methods of resolving such business disputes have become very expensive and consume a lot of time. Litigation was never the method of choice for the solution of international business disputes. ADR methods were favoured. With the use of internet, ODR (Arbitration) has evolved. According to the American Bar Association Task Force on E-Commerce and ADR, "Online Dispute Resolution has only one overarching feature it takes place online". Further, "ODR encompasses many forms of ADR and court proceedings that incorporate the use of the internet, web sites, e-mail communications, streaming media and other information-technology as part of the dispute resolution process"⁶. Online Arbitration is a new tool for dispute settlement mechanism. This mechanism is more cost effective, more efficient and better than other traditional approaches of dispute settlement.

The business disputes may be business to business or business to customer. Both types of disputes, litigation are the least favoured method of resolution for a variety of reasons delay being the fore-most. Alternative dispute resolution (ADR) methods provide a reasonable solution. Commercial arbitration - private court by a private judge chosen by the parties - has been very successful but any form of ADR, including arbitration, is not beyond the control of courts. Thus, even the use of arbitration was and is dogged by inordinate delay. Procedural delays and complexities had made the control of courts much more painful, and in spite of parties opting to settle the business disputes through arbitration, courts simply became another level of the dispute settlement mechanism. The situation became so bad that the Supreme Court in India was compelled to remark in 1981, Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum,

⁵ <http://lawcommissionofindia.nic.in/reports/188th%20report.pdf> (Last accessed on 06th May, 2012 at 07:44PM)

⁶ Agarwal, K. Anurag, *Resolving Business Disputes Speedily*, Economic and Political Weekly, Vol. 41, No. 24, June 17-23, (2006), pp. 2417-18

less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary (emphasis added). Dissatisfied with the 1940 law of arbitration in India, demands of business in India coupled with international pressure saw the enactment of new law of arbitration - the Arbitration and Conciliation Act of 1996. This is in line with the United Nations Commission on International Trade Law (UNCITRAL) model law. Party autonomy is the driving force of the 1996 Act. Today, arbitration along with mediation and conciliation is commonly used to get business disputes resolved. However, the limitation of these methods, particularly, the physical presence of both parties and the arbitrator/conciliator/mediator at one place on a number of occasions, is prompting the business community to try another form of dispute resolution - online dispute resolution (ODR).⁷

Online arbitration is similar to traditional arbitration, in the sense that a third party chosen by the parties, or nominated by the institution chosen by the parties, renders a decision on the case after having heard the relevant arguments and seen the appropriate evidence. The main difference, in addition to the online communication of all parties, is that non-binding arbitration is much developed online. Arbitration traditional produces awards, which have a binding force that is similar to a judgement. Online, non-binding procedures are often proposed and often used, the most notorious example being the UDRP. Whether they should actually be called arbitration may not be so important, at least online non-binding arbitration would probably fall under the US Federal Arbitration Act while they would certainly not fall under the European laws of arbitration. Whether non-binding awards fall under the New York Convention is not an interesting issue, as their non-binding character excludes recognition and enforcement by definition. More important are the advantages and drawbacks attached to both forms of online arbitration. They will be discussed below. In online arbitration, the parties usually communicate by emails, web-based communication tools and videoconferences. In the leading case of **'State of Maharashtra v. Dr. Praful B. Desai**

⁷ *Ibid*, at pp. 2417-18

(2003) 4 SCC, 601, Hon'ble Supreme Court held that video-conferencing could be resorted to for the purpose of taking evidence of a witness.

There are more than 25 ODR providers which offer online arbitration. In most cases, binding and nonbinding arbitration is available, but some providers restrict their services to the non-binding form. The caseload of online arbitration seems to be highly dependent on the binding character of the outcome: binding online awards seem to be extremely infrequent, whereas thousands of non-binding decisions have been rendered (most of which have actually been rendered under the UDRP). The business contexts are also different depending on the binding character of the decision: the scope of arbitrability is restricted in some arbitration to protect the weaker party while non-binding arbitration does not raise questions of arbitrability. Fees for online arbitration are usually the same as for mediation: they are in most cases charged on an hourly basis, and range from 50 to 250 USD per party and per hour. Under the UDRP, fees range from 1500 to 4000 USD, depending on the number of domain names at stake and the number of panellists. They are borne by the complainant, except when the respondent chooses a three-member panel. There are usually no time-limits in arbitration, but when there are, they vary between 4 hours and 60 days. In the UDRP, there are several time-limits, which bring the procedure to an average of 2 months⁸.

V

ONLINE ARBITRATION IN INDIA

On-line Arbitration, as the name suggests, is a mixture of conventional Arbitration with the addition of technology. Conventional Arbitration, i.e. arbitration other than on-line arbitration, requires application of Arbitration & Conciliation Act, 1996 while in the case of On-line Arbitration, assistance of technological related laws, particularly the Information Technology Act, 2000 is also required.

Sections 4 and 5 of Information Technology Act read with Sec 65-B of the Evidence Act provide legal recognition to electronic records and signatures.

The Arbitration & Conciliation Act, 1996, if considered from the point of view of On-line Arbitration, can be divided into three parts.

1. The arbitration agreement,
2. The arbitral proceedings and

⁸ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898821 (Last Accessed on 28th April, 2012 at 03:00 PM)

3. The arbitral award and its enforcement.

Online Arbitration in India and foreign countries is based upon implication of technology for dispute resolution. When parties are from different places and place of arbitration is also different, than some issues should be observed carefully-

➤ **Legal sanctity of Online Arbitration: -**

Alternative Dispute resolution system is used for the quick solution of disputes in less cost. The aim and objective of enactment of Arbitration and Conciliation Act is, to provide quick and effective remedies for disputes and the al requirements of this objective is fulfil by the Online Arbitration. We are in cyber age and many things are in electronic form and can be easily accessible by e-network. So with use of this magical technology arbitration can be more effective procedure for dispute resolution system.

➤ **Legal sanctity of documents and written submission sent through e-mail or any other electronic form: -**

General rule in both national and international law is that arbitration agreement should be in writing. According to section 7(4) of Arbitration and Conciliation Act, 1996⁹, arbitration agreement can be in document form or in a correspondence form. An e-mail with the digital signature of the parties is also treated as signed document. Section 7 (3) provides that an arbitration agreement shall be in writing, however if the parties are agree online to refer the matter to Online Arbitration then the question comes up, whether this online agreement will be valid in eye of law. Here I am referring section 4 of Information Technology Act, 2000¹⁰, it provides that written document means any information or matter or document available in electronic form and accessible by parties.

Hon'ble Supreme Court in the matters of Shakti Bhog¹¹ and Trimax¹² have upheld the validity of arbitration agreement entered into by exchange of emails though no formal agreement in writing signed by the parties had come into existence.

➤ **Legal sanctity of the award rendered that is required be writing and signing:**

⁹ Arbitration and Conciliation Act, 1996, U/S 7(4) - An arbitration agreement is in writing if it is contained in- (a) a document signed by the parties; (b) an exchange of letters, telex, telegram or other means of telecommunication which provide a record of the agreement; or (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

¹⁰ Legal recognition of electronic records -Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is (a) rendered or made available in an electronic form; and (b) accessible so as to be usable for a subsequent reference.

¹¹ *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd.*, AIR 2009 SC 12

¹² *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.* (2010) 3 SCC 1

Now the question comes up about legal sanctity of Online Award. Much important thing is that Section 31 (1) of the Arbitration and Conciliation Act, 1996 lays down that an arbitral award shall be made in writing and shall be signed by the members of arbitral tribunal. Section 5 of Information Technology Act, 2000¹³ provides that digital signatures have the same effect as a paper signature.

In addition, being an On-line Arbitration, the procedures relating to use of technology have to be either agreed by the parties or laid down by the Institutions. Section 31 of the Arbitration & Conciliation Act requires the award to be in writing and signed by the arbitrators. The award can be issued though email by sending scanned signed copies in PDF format. The actual signed copies can be sent through post.

Alternately, the arbitrators can affix digital signatures and provide authenticity and integrity to the award. For enforcement of the award, the original signed copy received by post or the digitally signed awards, as the case may be, can be filed before the courts.

¹³ Section 5- Legal recognition of digital signatures- Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person (hen, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Explanation.—For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

New York and Geneva Conventions requires filing of original or duly authenticated copy of the award for enforcement. Equivalent approach promoted by Model Law of electronic Commerce, electronic documents can be considered original for enforcement.

The Institutions acquire further importance as they are in a better position than the individual parties to clearly lay down the details which are required in an On-line Arbitration so that parties who follow the rules of a particular Institution are not faced with any additional difficulties.

International Scenario:-

The Article II of the New York Convention provides that “Each contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship”. “The term “agreement in writing” shall include an arbitral clause in a contract or arbitration agreement signed by the parties or contained in an exchange of letters or telegrams”. In other words, the New York Convention does not state anything about the electronic transmission as a possible means of conclusion of an arbitration agreement. Nevertheless, over last decade both international and national laws have started to address the development in e-commerce and facilitate electronic contracts. Article 7(2) of the UNCITRAL Model Law on International Commercial Arbitration (“the Model Law on Arbitration”) states that any method of communication can be treated as a record of the agreement. According to UNCITRAL Model Law on E-Commerce another possible explanation of arbitration agreement is concluded by electronic transmission, but the arbitration procedure itself will be conducted in a traditional form¹⁴.

➤ Legal issue pertaining to the court which will have the jurisdiction to enforce the award:-

Very important legal issue comes as to the court which any party should approach for enforcement of Online Arbitral award. The question what does constitute place of court, sitting place of arbitrators or the place where Online Arbitration agreement was signed? According to section 36 of Arbitration and Conciliation act, 1996¹⁵ the award will be

¹⁴<http://www.law.muni.cz/sborniky/dp08/files/pdf/mezinaro/herbockova.pdf> (Last accessed on 06th May, 2012 at 01:50 AM)

¹⁵Section 36- Enforcement.- Where the time for making an application to set aside the arbitral award under award shall be endorsed under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

enforced under the CPC, 1908 as if it were a decree of the court. The definition of 'Court' as given in the Arbitration and Conciliation Act in section 2 (e)¹⁶ is that the court in which the award will be enforced is dependent on the subject matter of the arbitration and not the place where the arbitrator sits or renders the Online Arbitration Award.

Constitutional obligations confer in Article 51A (h) - it shall be duty of every citizen of India- **to develop the scientific temper**, humanism and the spirit of inquiry and **reform**. So our Constitution also says for develop the technological skill. This is a general duty for every citizen to develop and increase use of technology and I am looking this as a green signal for online technology of Arbitration.

Arbitral Proceeding:

The arbitral proceedings which are virtual in nature, it is seen that the procedure which would be adopted by the parties would already have been spelt out in the agreement or the Institutional rules followed by the parties. The Statement of Claim and defense etc, which need to be sent by transmitting the physical copies, can be transmitted in electronic form. Parties can be sent through emails by attaching PDF files and in addition, signed copies can be later sent through courier. Again, Section 4 and 5 of the Information Technology Act, read with Section 65B of the Evidence Act come to the aid of the parties. Such pleadings can be transmitted in electronic form without losing recognition of law.

It may however be added that in the conduct of proceedings, there could be difficulties such as link failure, system failure, electricity failure etc. which need to be taken care of in the agreement or the Institutional rules so that either a back-up or an alternate provision is made and information/ data fed in the system can be retrieved.

Elements required in online arbitration¹⁷:

Online Arbitration is the most effective simple method for the best resolution of cyberspace disputes. There are many legal issues that arise out of Online Arbitration, such as choice of applicable law, requirements of arbitration agreement, signature and place of arbitration etc.

The broad elements of Online Arbitration are-

- i. Online Arbitration agreement
- ii. Deposits of Opening Costs

¹⁶ Section 2 (e)- "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes

¹⁷ *Supra*, Note at 2 on pp. 621-622

- iii. Adoption of Online Arbitration Process
- iv. Appointment of Online Arbitrator
- v. Claims or Counter Claim along with Document
- vi. Framing of Contentious Issues
- vii. Leading of Evidence by way of Affidavits all On-line
- viii. Personal Hearing, in the Physical World if Agreed by both the Parties
- ix. Granting of Online Award

The current approach of online arbitration is online/cyberspace arbitration. The principle underlying the cyberspace approach is to find better, faster and cheaper ways to resolve disputes with the aid of technology. The non-adjudicative ADR approach to ODR focuses mainly on negotiation and mediation, and how to improve both communications and relationships between parties. The arbitration approach emphasises rights and applications of law to resolve the dispute with an arbitrator's decision. The impetus behind this approach is the success of traditional arbitration. If it works well offline, then it should be adapted online, the reasoning goes. The major players in ODR are: the business community, consumers, and government and ADR institutions. The business community favours ODR because it is private, fast and inexpensive. It also encourages consumer trust. For consumer organisations, ODR enforces consumer rights. Government see ODR as a tool to provide access to the justice that courts are not yet equipped to provide, decrease court congestion and further the e-commerce economy. ADR institutions see ODR as an opportunity to gain the competitive edge. The application of information communication technology (ICT) is evolving as an important means for the future resolution of certain types of conflict. ODR will become an increasingly important component of the infrastructure required if online business and other relationships are to realise their full potential¹⁸.

VI

ADVANTAGES OF ONLINE ARBITRATION

Both the Internet and online international arbitration transcend national boundaries.

1. The Internet is a neutral place for the parties to a dispute.

¹⁸*Supra*, Note at 6 on pp. 2417-18

2. The parties and arbitrators do not have to travel for the hearings in online arbitration; audio and video conferencing capability allows the parties to conduct meetings and hearings remotely to reduce the travel expenses and the costs of organizing the arbitration.
3. Using online international arbitration for electronic commerce and other disputes will also save time and increase efficiency – parties will be enabled to initiate and defend a claim by accessing a Website and complete forms electronically for the process. Online arbitration will increase the speed and efficiency of arbitration; web-based document filing systems will help parties to submit many documents instantly, over any distance, and at virtually no cost.
4. Online arbitration will be convenient. Submissions can be archived by automated document management systems and could be reviewed from any location, at any time. Due to these advantages, online arbitration is a notable advancement in international arbitration and there are no insurmountable obstacles for online arbitration within the view of international commercial arbitration rules¹⁹.

VII

OTHER BENEFITS OF ONLINE ARBITRATION

Online arbitration is a new and flexible communication medium that widens the solve possibility of disputes. In brief we can see many benefits of online system of arbitration. Some of them are as follows-

1. Online arbitration can be conduct online and offline both
2. No physical limitations
3. Online system breaks jurisdictional barriers
4. It helps reduce the cost of dispute resolution
5. Rapid processing
6. Online arbitration needs of modern businesses
7. Flexible approach
8. Easy to convenience
9. It affords greater party control
10. It allows parties to respond and discuss at different times

¹⁹ <http://dergiler.ankara.edu.tr/dergiler/64/1542/16895.pdf> (Last Accessed on 29th April, 2012 on 04:30 PM)

11. Opening statement can be saved and reused by neutrals
12. Easy to make reference to earlier communications
13. It deals with B2B and B2C disputes both

There are many other benefits of online arbitration also. The technology moves with the movement of society, that is why in near future it will main and first preference for dispute settlement.

VIII

REQUIREMENT OF SUCCESSFULL ONLINE ARBITRATION²⁰:

Following conditions are very important for the successful Online Arbitration.

A. Legislative framework:

Implementation of ADR in Online environment as preferred or even primary mode of dispute settlement requires a legislative framework which facilitates Alternative disputes solve system.

B. Access to and knowledge of use of information technology:

All players of dispute resolution mechanism should have basic knowledge of internet technology. Now a day's use of electronic devices have increased and spread out worldwide.

C. Confidentiality and security measures:

In traditional dispute resolution system there is always security issue involved. Following minimum standard must be meet-

- ❖ To identify, who is author of message or mail
- ❖ To know, whether message sent by you has received by other party or not
- ❖ To ensure the integrity of submitted information
- ❖ To know, how to distinguish an original from a copy
- ❖ To protect stored information on a database from others
- ❖ To delete all information on the case from their database once settlement has been reached.

D. Institutional support for Online Arbitration:

For successful cyber arbitration, an institutional set-up is a must. It should have the following features-

- ❖ A proper administrative infrastructure which would support the Online Arbitration.

²⁰ *Supra*, Note at 2 on pp. 636-639

- ❖ A technically up-to-date and user friendly computer interface for best use of service is required.
- ❖ A panel of arbitrators, who are independent and impartial and enjoy the confidence of the industry in general.

E. Trust on electronic proceedings among users:

E-trust or e-confidence among the users are key factor of successful internet dispute settlement and as well as on the e-proceedings are very important for successful Online Arbitration.

F. In-house dispute resolution facilities:

The companies should have in-house online dispute resolution system, because it will sure decrease the cost and as well as save the time.

G. Online arbitration procedure:

All the legal issues that arise out of Online Arbitration need to be addressed before hand.

H. Use of many languages:

Multi language system will help for progress of Online Arbitration. Online arbitration is not a domestic dispute settlement system only but in International scenario it is also used in big scale.

I. Low costs:

This is one of the main benefits of Online Arbitration. Without low cost customers will not be inclined to utilise the services. Low costs must apply not only to financial costs but also the opportunity costs involved and the efficiency of utilising the procedure.

J. Work with new era:

There should be use of technology in dispute Settlement system, because as nature of disputes are changing so resolution mechanism should also be changed.

K. Court to be techno-savvy:

Courts must meet with the challenges of a technological world. Online arbitral award has to be accepted by the court before enforcing it. Unless, the court is also techno-savvy, there will be a delay in implementation of arbitral award made online.

IX

PROBLEMS OF ONLINE ARBITRATION SYSTEM

This procedure has certain problems also. Some of them are as follows-

1. Lack of trust among online system users
2. Unequal access to technology
3. Technology as the fourth party
4. Proof of electronic documents is big problem
5. Lack of security
6. Problem in access to justice
7. Loss of human element
8. Language and cultural barriers
9. No uniformity of governing law

So it is very clear that Online Arbitration system should be encourage and should be adopted for better dispute settlement system. Not only in India but whole world this system is now becoming famous because of its benefits. It is also true that there are some minus points of this system but advantages of system will prevail. Online or cyber arbitration must be adopted for dispute settlement system as it has many virtues of settlements.

X

CONCLUSION

Since online arbitration is fast, economic and efficient, it should be a preferable way of dispute resolution. Even though it is a new method to conduct dispute resolution, online arbitration is still conducted by traditional arbitration rules. The parties and the arbitrators in an online arbitration should always consider the legality of the applicable arbitration agreements and procedures, choice of law, seat of arbitration and form of the awards. These precautions will assist online arbitration to work within the framework of existing national and international treaties. However, online arbitration should develop its own rules over the course of time. It is clear that On-line Arbitration is not different from what the conventional arbitration is. The only difference is the omission of physical platform and introduction of a

virtual platform. In other words, the legal impediments which exist in conventional arbitration will continue to exist even in On-line Arbitration.

Parties appoint arbitral tribunal to resolve the existing disputes and not to add further disputes on account of introduction of technology. The technological obstacles that are likely to arise may be obviated by the Parties themselves by providing the above referred details in the agreement or by accepting the rules laid down by the Institutions for On-line arbitration.

In conclusion, online arbitration is possible and online arbitral awards should therefore have the same effect of traditional arbitral awards. Online arbitral awards are binding and final, subject to set aside only for the same limited procedural grounds as traditional arbitral awards.

The business community now under-stands that there is limited use in going to the court to get disputes resolved. With international disputes, there are issues of jurisdiction also. Hence, it is much more prudent to get some business disputes resolved through methods of ADR and also ODR. What is needed at this point of time is awareness about the importance of dispute resolution by ADR and ODR. India is particularly facing an acute shortage of trained personnel form an aging the show. A concerted effort on the part of educational institutions, government, judiciary and the business community is the need of the hour. This shall go a long way in allaying the fears of foreign investors and business partners.

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