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**CONCEPT OF ADR THROUGH TECHNOLOGY IN THE FACE OF THE
COVID-19**

- Rakhi Dhamija & Gunit Shah¹

ABSTRACT

Alternative dispute resolution system (ADR) is practiced since years. This came into action to lower down the stress level of the courts and their burden as well, by passing an act, the Arbitration and Conciliation Act, 1996 after having a conference over it. Online dispute resolution (ODR) system is same as (ADR) system but it provides everything online with some more benefits and can be easily accessible even in the situations like pandemic, remotely. A great surge is observed during this pandemic into ODR. ADR and ODR are fast and less technical. It is observed that parties tend to have good relationships. We can choose the mode of arbitration by our choice. The seat of arbitration plays a significant role in it by determining the court's jurisdiction. Also, discussed about the role of the technology that it can be easily accessible to anyone, everywhere sitting in any corner of this world. The role of artificial intelligence with ADR, that technology just can make things easy for human beings but cannot replace the human factor out of it. It's just a mere alternative and not an absolute substitute. MIB (management information base) with other software can bring an easiness in the work system but everything cannot be given in the hands of the robotic technology. While working into and being connected with ODR Mechanism one must keep in mind all the cybercrimes and be vigilant with online frauds happening all over the world. In conclusion, ADR and ODR can be a successful

1. 1st-year; B.B.A.LL.B.; GGSIPU, New Delhi.

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replacement to traditional courts if treated with care, with new strict rules and their judicious application as well.

Keywords: ADR, ODR, Technology, Covid-19.

INTRODUCTION TO ALTERNATIVE DISPUTE (ADR) SYSTEM AND TECHNOLOGY

We the authors of this paper have made an effort to analyze the use and the advantages of Information Technology in the working of Alternative Dispute Resolution (ADR) forums. Information technology (IT) provides opportunities to facilitate communication and then assist in bar and management of disputes. As it can be seen these days when we relate it to the current situation of this pandemic, technology has become so much important in so many fields. And, resolution of disputes between anyone is something which cannot be ignored as that would hamper their daily routine and their work schedule. Alternative Dispute Resolution (ADR) services can be used through the mode of Information Technology (IT) to provide information to the parties in case of any dispute arise between the parties and also acts as a substitute for, traditional judicial court system through which help cannot be accessed in situations like pandemic. As everything should be taken care of and handled remotely. Information technology (IT) can also play a valuable role in supporting the quality of Alternative Dispute Resolution System (ADR) by practicing through more effective modes which would enhance supervision, assessment, training, information management, research and evaluation by the use of various software and websites. A Management Information Base (MIB) is a database used for managing the entities in a communication network can also play an important role in this.

Alternative dispute resolution System (ADR) can be defined as a mid-way or the mid path, a workable and a perfect fair alternative to the old and traditional judicial system. It is another appropriate way of dispensing justice to the parties without involving into much legalities. It is also much faster work system than our traditional judicial system. Alternative Dispute Resolution System (ADR) is something which is very vast and cannot be defined with the help of some definitions or few words, it can further classified into various types: There are various

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ADR techniques viz. arbitration, mediation, conciliation, mediation-arbitration, mini-trial, personal judgement, final supply arbitration, court-annexed ADR and outline jury trial.

HISTORY

After and by the late 1990's alternative dispute resolution system (ADR) was being more preferred by people rather than the old traditional judicial system, more people were taking Alternative dispute resolution (ADR) system as an effective mode for dispensing their disputes. Amongst all this one of all the types that is mediation was growing faster and was becoming regularly integrated in commercial contract dispute resolution clauses as per the pre-determined conditions litigation.

More and more companies indulged themselves to get their problems resolved through mediation instead of arbitration to resolve some repetitive types of conflict for example: personal injury and real estate etc.

INTERNATIONAL ASPECT

Alternative dispute resolution system (ADR) is something which just do not Provide with a forum of resolving disputes but also helps in doing all the appropriate required things with less legalities and that too expeditiously.

The techniques have been developed on the scientific lines in USA, France, Canada, China, UK, Japan, South Africa, Australia, and Singapore.

INDIAN ASPECT

The Arbitration Act, 1940

The arbitration act 1940 was not considered to be an appropriate way of dispensing the disputes as many loopholes and gaps were witnessed out of it eventually with the time. The main purpose of it wasn't coming out of it which made the respective authorities frustrated. The Honorable Supreme Court pointed out the need of changing the law many times. Everyone was not so far happy with the purpose of this act as it wasn't resolving its sole purpose. In the conferences of chief justice, chief ministers and the state ministers of all the states, it was decided amongst them

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that all this is not satisfying all the purposes and all the burden cannot be imposed only on the shoulders of the courts, there is a need of an alternative dispute resolution system (ADR) which will not only take some of the burden of the courts but will also work in the favour of public interest by providing them faster, appropriate and economical decisions. This is also observed that with the help of these parties tend to maintain their relationships on good terms for a longer period without staining the party's relationship.

Arbitration and Conciliation Act, 1996

Part I of this act formalizes the method of Arbitration and part III formalizes the method of Conciliation. (Part II is regarding social control of Foreign Awards underneath New York and Geneva Conventions.)²

ONLINE DISPUTE RESOLUTION SYSTEM (ODR)

Online dispute resolution system is a dispute resolution system which uses the information technology as a mode to resolve or dispensing the conflicts / complaints between the parties. It can also be treated as online alternative dispute resolution system (ADR).

Online Dispute Resolution System (ODR) is something which we as a party can choose as a mode for dispensing and resolving our disputes. It is totally voluntary, we get liberty of withdrawing ourselves out of it whenever we feel like, the tone and set up of the entire proceedings is a bit informal when it is compared to the Alternative Dispute Resolution (ADR) System such as mediation or arbitration. It is usually kept highly confidential unless it is agreed between the parties according to their own formation of terms and conditions or policies ad their mutual understanding as well. It is more advantageous than Alternative Dispute Resolution (ADR) System only to some people who are comfortable with the technology as per their flexibilities and requirements, as it leads to the efficient time management by cutting out the time getting wasted while travelling to the required place and the expenses for the same as well which makes it more economical. It is a casual setup which adds to another advantage of getting access

2.<https://www.lawctopus.com/academike/arbitration-adr-in-india/>

to quick justice. It can be accessed from anywhere, anytime in the world without any geographical limitation acting as a barrier which can be related to as an advantage of the present scenario of going on in this whole world. Online dispute resolution system (ODR) can be accessed remotely which ensures comfort for the citizens and getting their disputes resolved easily and that too without any delay. More focus should be given on the enhancement of this forum by the respective authorities and respective required gaps should be filled timely as well if there any, so that working and solving of disputes never stops in any situation. It is discovered that a huge rise in online dispute resolution (ODR) system throughout this Covid-19 pandemic that is appreciated and has turned things easier within the favour of the people and their respective interests.³

SEAT OF ARBITRATION

Arbitration has evolved over the years to be one in all the foremost most popular mechanisms for resolving disputes between parties, particularly within the areas of international business. It's a technique of different dispute resolution for the settlement of disputes wherever a judgment is taken by associate impartial third party. Just in case of any dispute, there's important time spent negotiating, selecting associated drafting arbitration agreements to facilitating an economical arbitrational method and judgment. In general, arbitration could be a voluntary and cooperative mechanism and it's important to require under consideration all the most factors that sometimes have an effect on the arbitration method. During this respect, the selection of the seat of arbitration is one in all the most factors underlying any arbitrational agreement. Parties to the arbitration will reach an agreement towards the seat of arbitration at any purpose in time.

Seat Of Arbitration and Its Importance

One of the creation principles on that arbitration is predicated is that the liberty to pick out the seat of arbitration. The term "seat" or place of arbitration will be outlined because the geographical location wherever the arbitration is finally tried or otherwise provided for by the procedural law within the absence of any agreement. It implies that the seat of arbitration is that

3.<https://www.lawctopus.com/academike/arbitration-adr-in-india/>

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the jurisdiction to that the parties arrange to submit and therefore the arbitration law, arbitration procedural law which is able to apply to the arbitration agreement resultant to such selection of seat.

The selection of the "appropriate seat" is one in every of the foremost important choices to be taken by parties to associate degree mediation agreement as in several aspects of international arbitration, once choosing the seat of the arbitration, the parties have nice flexibility. The seat is usually the town/city wherever the hearing takes place, though it invariably ought not to be. The seat may additionally, however not essentially ought to be within the same legal jurisdiction because the contract governing law. However, this diversity will cause uncertainty on that jurisdiction's laws area unit drawn to the various aspects of the mediation method. In aspects of the expansion of arbitration follow, the seat of arbitration plays the subsequent essential role, which incorporates -

Validity: The legitimacy of the arbitration agreement can't be simply controversial with the discretion of the parties in choosing arbitration as their dispute settlement. choose the fairness of associate degree arbitration agreement and decoding arbitration clauses, the comparatively pro-arbitration policies create a rustic or a part a well-liked and sometimes common seat of arbitration;

Efficiency: the help or support that a court or entity will offer for arbitration proceedings shall decide the effectiveness of arbitration proceedings inside a specific legal framework;

Enforcement: The court at its seat shall do a review of the arbitration award within the attractiveness proceedings difficult associate degree mediation award or for non-enforcement of the mediation award. The seat of the arbitration is very important because it can typically decide the law and therefore the method followed by the mediation assembly additionally because the involvement that the courts would force in effort jurisdiction over the seat.⁴

In the case of *India Al Company Ltd vs. Kaiser Al Technical Service INC ("BALCO")*-⁵

4.<http://parisarbitration.com/en/glossaire/seat-of-arbitration/>

5. *India Al Company Ltd vs. Kaiser Al Technical Service INC ("BALCO")* – Civil Appeal No.7019 of 2005(India).

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The Hon'ble Supreme Court held that the selection of another country to be the seat of arbitration essentially provides rise to the acceptance that the law of that country regarding the conduct and oversight of arbitration shall reach the proceedings.

Key Factors in decisive the 'Seat of Arbitration':When establishing a seat for international arbitration, parties ought to be suggested to think about the subsequent decisive factors-

Enforcement and Challenges:While choosing the seat of arbitration, things ought to be unbroken in mind with reference to social control, it's essential to form certain the country during which the seat is found could be a party to the big apple Convention or Geneva Convention. Luckily, roughly a hundred and fifty countries are presently parties to the big apple Convention or the Geneva Convention and includes most of the world's developed countries. If Associate in nursing mediation award is issued in a very seat that's in one in all these countries, it is implemented within the domestic courts of the other country that's a celebration to those conventions.

Jurisdiction neutrality and impartiality: Generally, all courts support the native cluster or party, and in such things, independence of arbitrators adjudicating within the case is commonly referred to as into question. Neutrality within the sense that none of the parties' therein specific jurisdiction has any interest or stake within the matter, must always be a key issue. Here the concept of arbitration neutrality not solely applies to the parties' right to pick a neutral mediation seat, however additionally to their ability to pick a neutral arbitrator. This prevents prejudice against foreign parties from keeping the conflict from being honest and fairly resolved.

Convenience for the parties and Arbitrators: The convenience of the parties and arbitrators throughout arbitration is another vital fact to think about. The seat of arbitration ought to be geographically convenient for those interested (parties, witnesses, arbitrators and lawyers etc.) within the arbitration method. Each of the parties and therefore the arbitrators should converse in a very common linguistic communication and conduct proceedings equally.

The seat of Arbitration vs. Venue of Arbitration: The physical location of Arbitration doesn't have an equivalent legal significance as of the legal seat of Arbitration. Typically speaking, the

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position is decided supported the party's comfort. It doesn't have to be an equivalent and infrequently, an equivalent has been ascertained.

Most arbitration laws and institutional rules acknowledge the distinction between the place of the arbitration (place of arbitration) and therefore the place of the hearing (the venue of arbitration).

Article fourteen of the Arbitration Rules of the International Chamber of Commerce (ICC) states that-

1. The place of the arbitration shall be fastened by the Court unless arranged by the parties.
2. The mediation assembly might, once consultation with the parties, conduct hearings and conferences at any location it considers acceptable unless otherwise united by the parties.
3. The mediation assembly might deliberate at any location it considers acceptable.

Article 16(1) of the Arbitration Rules of the (LCIA) says:

“The parties may agree in telling their seat (or legal place) of their arbitration at any time before the formation of the mediation assembly and, once such formation, with the previous written consent of the mediation assembly.”

According to Section twenty of the Indian Arbitration and Conciliation Act, 1996

Place of arbitration. —

(1) The parties are absolute to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the mediation assembly having respect to the circumstances of the case, as well as the convenience of the parties.

(2) nonetheless the provisions of paragraph (1) of this text, the mediation assembly might, unless otherwise united by the parties, meet at anywhere it considers acceptable for consultation among its members, for hearing witnesses, consultants or the parties, or for examination of products, alternative property or documents.

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It is not necessary for the seat of arbitration and therefore the place of arbitration to be an equivalent (even if they are) and albeit the proceedings present itself in many various countries throughout the arbitration, the place of arbitration chosen would stay unchanged.

In the case of *Mankastu Impex Pvt. Limited vs. Airivisual Limited* the Hon'ble Supreme Court held that-⁶

The main criteria of any arbitration proceedings are the seat of arbitration. The connectedness of the seat of arbitration is crucial the arbitration proceedings, it decides the relevant law, and also the review of the arbitration award.

In the case, of *Enercon (India) Ltd. and Ors. vs. Enercon Gmbh and Anr.*⁷ before the Hon'ble Supreme Court of Asian nation, a dispute came in question for non-delivery of provides underneath associate degree property License Agreement ("IPLA") containing associate degree clause.

The matter then went before the Hon'ble Supreme Court wherever the rivalry was that-presumptuous that the Seat of Arbitration was Bharat, whether or not a people Courts would have synchronal jurisdiction because the venue of arbitration is in London?

The Hon'ble Supreme Court control that although London was specifically mentioned within the article to be the placement of the arbitration. however, it couldn't result in the illation that London was necessary to be the Seat as a result of London was referred to as the venue, and therefore the law governing the substantive agreement, the law governing the arbitration agreement and therefore the law governing the conduct of the arbitration were chosen to be Indian law. Asian nation, India courts would have sole jurisdiction once the seat was in India, and English courts couldn't have simultaneous jurisdiction.

GE Power Conversion India Pvt. Ltd. Vs. PASL Wind Solutions Pvt. Ltd.⁸

6.Mankastu Impex Pvt. Limited vs. Airivisual Limited – Arbitration Petition No. 32 OF 2018(India).

7.Enercon (India) Ltd and Ors. vs. Enercon Gmbh and Anr - Civil Appeal No.2086 Of 2014, (November 16, 2020).

8.GE Power Conversion India Pvt. Ltd. Vs. PASL Wind Solutions Pvt. Ltd. - Petition under Arbitration Act No. 131 and 134 of 2019.

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Court: Gujarat High Court, Case number: Petition under Arbitration Act number 131 and 134 of 2019.

The definition of a “foreign award” is ready out beneath section forty-four (44) ACA. To qualify, one in all the conditions is that the court should have created the award in a territory notified by the Central Government as a New York Convention country. It’s currently provided that a souvenir is “made” at the arbitrational seat.

Whether the ensuing award would be a “foreign award” enforceable underneath section 44ACA? During this case, social control of such a present was resisted on the bottom that it didn't qualify as a “foreign award” as a result of Indian parties couldn't negotiate in a very foreign seat. A single-judge bench of the Gujarat High Court – command that the arbitrational seat was so at urban center (as the judicature had⁹ ruled), it conjointly finished that to qualify as a “foreign award”, the status of the parties was impertinent. And, therefore, dominated that the award was a “foreign award.” And, conjointly found that the selection of a remote seat wasn't contrary to the general public policy of Republic of India. The Bench any found that none of the grounds to resist social control applied within the case and, therefore allowed its social control.

ODR AND SEAT OF ARBITRATION

Nearly 1,000,000 (a million) disputes are resolved remotely victimization ODR each year-round the world. ODR has become a key consider dispute resolution through technology. In recent times, as a lot of ODR platforms became effective across the globe, promoting specific sorts of dispute resolution for several national and international corporations, by replacing the present ADR method with technology, several ODR platforms have created the conflict resolution method simple, creating the method possible and time-efficient altogether. Many countries witnessed a substantial rise within the range of recent filings as a consequence of the result of the COVID-19 pandemic. In such a scenario, ODR came in rescue in providing associate degree economical resolution of resolution the disputes. In different words, the pandemic has

9. <https://indiankanoon.org/doc/52585881/>
<https://indiankanoon.org/doc/196897538/>

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emphasized the necessity for online dispute resolution to achieve each organization and establishment, whereas making an attempt to produce equal justice for all. But, one in all the considerations of arbitrators who are willing to use the ODR facilities in the way to outline the "Seat of Arbitration" and therefore the applicable laws. It's already been determined that the choice of the law in result might rely upon the place of residence of the parties to the conflict further because the place wherever the underlying contract was made. Therefore, if parties use a virtual arbitration system like ODR, the "Seat of Arbitration" is determined by the parties in any of the places wherever the jurisdiction wouldn't be affected in any method because it is natural for parties to a contract to agree on the 'Seat of Arbitration' either as a part of the contract or once making an attempt to repair a venue for arbitration, the most effective difference for parties to acknowledge the virtual ODR dispute resolution mechanism is to specify within the contract straightaway whether or not the relevant jurisdiction ¹⁰would be that of either of the catching parties. Thus, the parties are unengaged to declare a selected seat of arbitration in associate degree ODR method.

ADR AND ARTIFICIAL INTELLIGENCE

There are two types of artificial intelligence strong and weak, the weak one just mimics the human abilities to think and reason, it does not have anything which can make it take its decisions on its own it just works on the pre-programmed abilities to function in a specific situation which certainly fails to get fit in some of the situations sometimes. The strong one on the other hand has this ability of thinking and acting like human being, they are independent even they are preprogrammed but they have ability of creating reasoning for situations on their own. Where on the other hand we human beings have three mental parts; conscious subconscious and then there is unconscious, we as humans or here as an arbitrator use our consciousness primarily to make any decision like a rational human, being either to give the judgement or for awarding the party for the same.

10.<http://parisarbitration.com/en/glossaire/seat-of-arbitration/>
<https://viamediationcentre.org/readnews/NTE5/PROS-AND-CONS-OF-ARTIFICIAL-INTELLIGENCE-IN-ADR>

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Unconscious and subconscious also do play role in that as well all. These three mental parts are equally important in decision making process and there is no unfounded Technology yet who can substitute human involvement completely. Artificial intelligence whether it be strong or weak they work on algorithms and they cannot replace human factor. It can be an alternative but not the exact substitute to it.

ETHICAL CONSIDERATIONS

There aren't any standards specifically addressing court ODR. Two versions of standards for ODR a lot of usually are made. One is moral Principles for ODR by the National Center for Technology and Dispute Resolution. The opposite may be a somewhat a lot of condensed versions by the International Council for online Dispute Resolution. These standards articulate the ways that during which ODR ought to be accessible, responsible, competent, and confidential, equal, fair/impartial/neutral, legal, secure and clear. There also are several moral standards for numerous sorts of ADR. If you're adapting a typical court ADR method to an internet setting, you'll be compelled to abide by the prevailing standards for the ADR method. As an example, if you're conducting mediations via video-conferencing, you'll have to be compelled to operate at intervals mediation standards that give for party self-determination, confidentiality and go-between neutrality, at the side of the standards for ODR. If, on the opposite hand, you're making a completely new thanks to resolve disputes, you'll have to be compelled to extrapolate from ADR, legal and ODR ethics. As an example, if the parties reach partial agreement victimization ODR, you'll have to be compelled to verify who decides if those terms are going to be reported to the court. That call might devolve on long-standing legal principles concerning acceptability of settlement discussions.¹¹

SMART ARBITRATION

Unlike a standard contract, that solely lays out the terms of agreement for consequent execution, a wise contract autonomously executes some or all of the terms of the agreement because it is sometimes supported by Block-chain. Block chain arbitration, with the assistance of sensible

11. <https://www.mediate.com/articles/WingL2.cfm>

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contracts, will facilitate the functions of; storing and verification of rules, and automatic execution, upon the setting-off of the sensible article incorporated within the sensible contract.

The block arbitration is often divided into “on-chain” and “off-chain”. Thanks to a block chain’s disintermediated nature, no single party controls or will halt the execution of a wise contract on the Ethereum block chain once triggered.

In such instances, parties looking forward to sensible contracts ought to have management so as to halt the code of a wise contract from running. Though properly ready and deployed sensible contracts are self-executing, they and their outcomes don't seem to be essentially wrongfully enforceable.

To be wrongfully enforceable, a wise contract and therefore the method of “agreeing” to a wise contract should have all the attributes that create ancient contracts enforceable. Sensible contracts in Ethereum are changeless by default. Once you produce them there's no solution to alter them, effectively acting as associate unbreakable contract among participants.¹²

CYBER SECURITY CONCERNS

One of the core reasons why parties prefer to resolve their disputes through arbitrations as hostile through court proceedings is that the promise of confidentiality. It provides parties a personal forum to resolve disputes au contraire court proceedings. However, the promise of confidentiality is marred by despicable makes an attempt of cyber criminals attempting to interrupt the holiness of the forum. This contemporary threat specifically targets the legal sector. Despite the underlying threat, legal professionals, parties and mediation tribunals still believe unsecure platforms like 'clouds' and repositories as basic because the 'google drive' additionally as unencrypted emails. To forestall a series of unfortunate events from shaping up, many tips and laws are free. These embody, inter alia, the overall knowledge Protection Regulation, IBA Cybersecurity Guidelines, Cybersecurity Protocol, and also the public consultation draft of the

12.<https://media.consensys.net/controlling-autonomy-a-new-tool-to-stop-smart-contracts-once-executed-bc9de699bca0>

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ICCA-IBA Roadmap to knowledge Protection in International Arbitration. Within the lightweight of this situation, establishments ought to be technologically updated to serve the wants of the parties. Presently, most arbitrations area unit being undertaken remotely through electronic and digital means that and 'paperless' proceedings area unit on the increase. Procedural tips and rules ought to be framed so as to adequately address the cybersecurity issues.

Passing on the baton so as to realize cyber security, the IBA tips contain many recommendations for legal groups that area unit worth-mentioning. They embody the following: password cryptography with multi-factor authentication, a cybersecurity policy, implementing termination protections, ensuring the employment of secure networks, encrypting knowledge and devices, vendor and third-party supplier risk management, and staff coaching concerning the importance of cybersecurity and customary threats.¹³

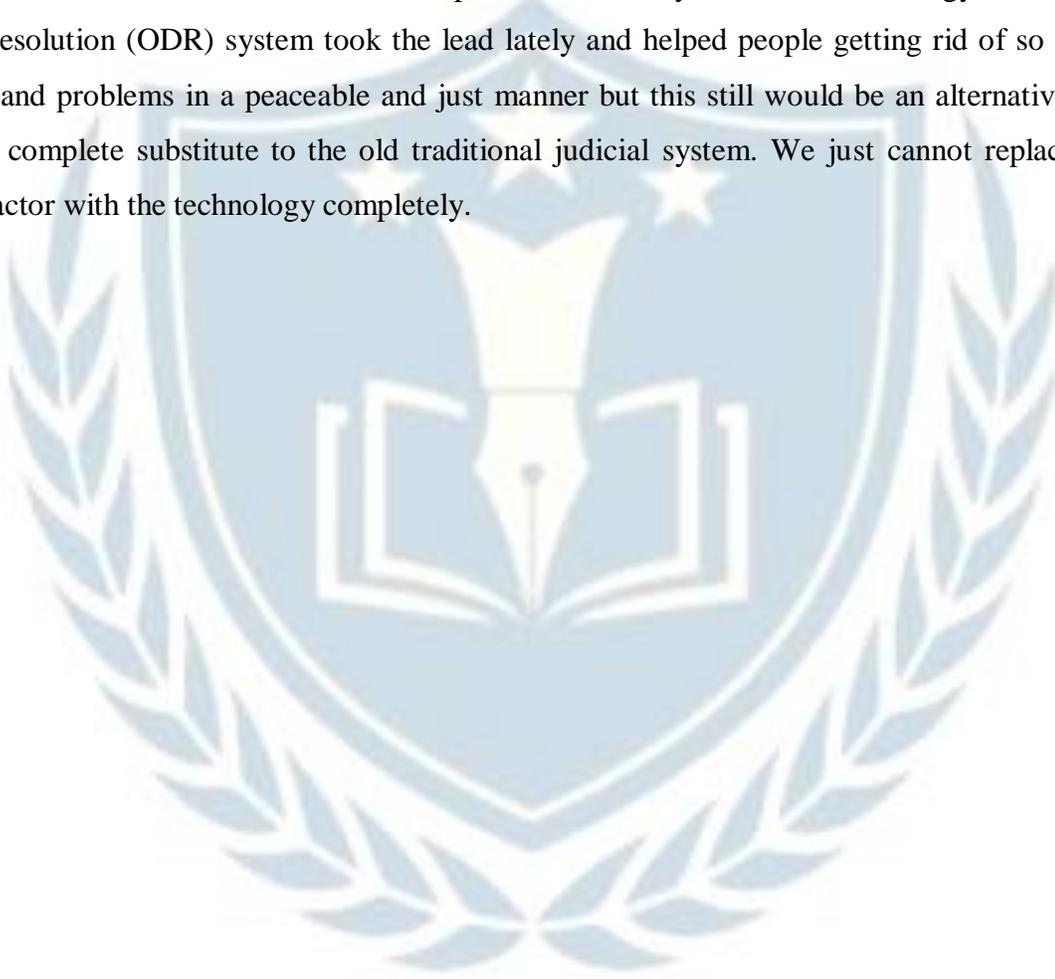
CONCLUSION

Alternative dispute resolution (ADR) system provides opportunities to the people to facilitate Communication and so assist in prevention and management of disputes with less legal framework and faster decision making and still manages to provide just, peaceable solutions to the parties. It has been seen that a fair rise in online dispute resolution (ODR) system which is just a step ahead of ADR or a modified version of it. It can be accessible from anywhere, anytime when we want when we want, which was really a game changer and a life saver in the time of in this time of ongoing Covid-19 pandemic. With this seat of arbitration plays major role defining the jurisdiction and we have the liberty of choosing it. Various determinative factors play associate degree progressively necessary role when deciding the jurisdiction. It's receptive discussion whether or not explicit factors dominate different factors and whether or not such factors will even be determinative is debatable. For the present once developing arbitration clauses/agreements, it ought to be advised or inspired that whereas drafting, parties and representatives to make sure clarity and inclusiveness on their intentions with regard to the seat and venue of the arbitration. In different words, parties ought to acknowledge that a distinction

13.<https://www.mondaq.com/india/arbitration-dispute-resolution/1060176/need-for-data-protection-and-cyber-security-in-arbitrations>

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exists between the venue and therefore the seat. For specific functions of convenience, the parties might agree that place aside from the seat of the arbitration, however the modification of venue doesn't modification the legal seat of the arbitration. To cut back the chance that the law most popular by the parties won't be a dispute the parties ought to specifically specify wherever the seat of the arbitration is going to be. Though alternative dispute resolution (ADR) system came out to be a successful alternative dispute resolution system with technology and online dispute resolution (ODR) system took the lead lately and helped people getting rid of so many disputes and problems in a peaceable and just manner but this still would be an alternative and not be a complete substitute to the old traditional judicial system. We just cannot replace the human factor with the technology completely.



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