Passagens. Revista Internacional de História Política e Cultura Jurídica
Rio de Janeiro: vol. 14, nº 3, setembro-dezembro, 2022, p. 531-558.

Legal validity of Online Dispute Resolution (ODR) System in India and Indonesia

DOI: 10.15175/1984-2503-202214308

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Abstract

Advancement in technology brought many inevitable changes with more efficiency, making human life easier. Benefit of technology shall be incorporated for effective and efficient justice delivery in dispute resolution mechanism. New development in this area is online arbitration dispute resolutions (ODR) which have been without doubt adopted and practices by justice delivery system across the globe. But the question remains the same as whether justice delivery system is equipped to cope up in the same pace with the changes taking place in the society and technology. Are the existing laws being enough to conduct online system as an effective mechanism to settle disputes among the parties? Keeping in context the preceding query, the present research resorted tracing the laws relevant to the use of ODR mechanism in India and Indonesia, as their present legal framework of arbitration addressing dispute resolution through the ODR mechanism lack specific laws. The present research adopts a mixed method using both primary and secondary data for tracing and comparison the ODR system in India and Indonesia. It is concluded that ODR deliverance are valid and enforceable in the present legal framework of both the countries. Therefore, people must not be doubtful while using ODR mechanism to settle their disputes. It also demonstrates that an ample scope is there in the existing laws of both the countries to accommodate and enhance the overall process and deliverance of ODR mechanism through amendments and separate guidelines.

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Received February 16, 2022 and approved for publication August 22, 2022.

Keywords: online dispute resolution in India; online dispute resolution in Indonesia; Information Technology Act ("IT Act"); judicial response; legal validity.

A validade jurídica do sistema de resolução on-line de disputas (ODR) na Índia e na Indonésia

Resumo

Os avanços da tecnologia tornaram possível levar a cabo com mais eficiência muitas mudanças inevitáveis que facilitam a vida dos seres humano. É necessário tirar proveito das vantagens da tecnologia no mecanismo de resolução de disputas para garantir uma administração eficaz e eficiente da justiça. Sem dúvida adotada e implementada por sistemas de administração da justiça em todo o mundo, a resolução on-line de disputas (ODR) marca um novo desenvolvimento neste campo. Contudo, resta saber se o sistema de administração da justiça está preparado para se adequar no mesmo ritmo às mudanças em curso na sociedade e na tecnologia. As leis existentes, seriam elas suficientes para gerenciar o sistema on-line enquanto mecanismo eficaz na resolução de disputas entre as partes? Para responder a essa pergunta, essa pesquisa identificou as leis relevantes que possibilitam o uso do mecanismo ODR na Índia e na Indonésia, tendo em vista que o marco legal de arbitragem em vigor nestes países, referente à resolução de disputas por meio do mecanismo ODR, carece de leis específicas sobre o uso do mecanismo ODR. A pesquisa adotou uma abordagem mista, valendo-se de dados primários e secundários para rastrear e comparar os sistemas ODR da Índia e da Indonésia. Conclui-se que as soluções de ODR são válidas e executórias no atual arcabouço jurídico de ambos os países. Por conseguinte, as pessoas não devem hesitar em recorrer ao mecanismo ODR para resolverem as respectivas disputas. Mostra-se igualmente a existência de amplo espaço nas legislações em vigor destes países para integrar, adotar e aperfeiçoar o processo geral e as soluções do mecanismo ODR, através de emendas e diretrizes independentes.

Palavras-chave: resolução de disputas online na Índia; resolução de disputas online na Indonésia; Lei de TI ("IT Act"); resposta jurídica; validade jurídica.

La validez legal del sistema de resolución de litigios en línea (ODR) en la India e Indonesia

Resumen

El avance de la tecnología ha permitido llevar a cabo de forma más eficiente muchos cambios inevitables que facilitan la vida de los seres humanos. Es necesario hacer uso de las ventajas que supone la tecnología en el mecanismo de resolución de disputas para asegurar una administración de la justicia eficaz y eficiente. Las resoluciones de litigios en línea (ODR), que sin duda han sido adoptadas y practicadas por los sistemas de administración de justicia de todo el mundo, suponen un nuevo desarrollo en esta área. Sin embargo, la pregunta sigue siendo si el sistema de administración de justicia

está preparado para hacer frente al mismo ritmo a los cambios que tienen lugar en la sociedad y la tecnología. ¿Son suficientes las leyes existentes para gestionar el sistema en línea como un mecanismo efectivo para resolver disputas entre las partes? Para dar respuesta a dicha pregunta, la presente investigación identificó las leyes relevantes para el uso del mecanismo de ODR en India e Indonesia, ya que su actual marco legal de arbitraje que aborda la resolución de disputas a través del mecanismo ODR carece de leyes específicas al respecto. La investigación adoptó un método mixto que utiliza datos primarios y secundarios para rastrear y comparar los sistemas de ODR de la India e Indonesia. Se llega a la conclusión de que las redenciones de ODR son válidas y exigibles en el marco legal actual de ambos países. Por consiguiente, las personas no deben tener dudas a la hora de usar el mecanismo de ODR para resolver sus disputas. Así mismo, se muestra que existe un amplio margen en las leyes existentes de ambos países para acoger y mejorar el proceso general y la redención del mecanismo de ODR a través de enmiendas y directrices independientes.

Palabras clave: resolución de disputas en línea en India; resolución de disputas en línea en Indonesia; Ley de Tecnologías de la Información («IT Act»); respuesta judicial; validez legal.

La validité juridique du système de règlement en ligne des litiges (RLL) en Inde et en Indonésie

Résumé

Les progrès de la technologie ont permis d'effectuer plus efficacement de nombreux changements inévitables, facilitant la vie des êtres humains. Il est nécessaire de profiter des avantages de la technologie dans le mécanisme de règlement des litiges pour assurer une administration efficace et performante de la justice. Le règlement en ligne des litiges (RLL), qui a sans aucun doute été adopté et mis en place par les systèmes d'administration de la justice du monde entier, marque un tournant de l'évolution dans ce domaine. Cependant, la question demeure de savoir si le système d'administration de la justice est prêt à faire face au même rythme aux changements en cours dans la société et la technologie. Les lois existantes sont-elles suffisantes pour gérer le système en ligne en tant que mécanisme efficace de règlement des litiges entre les parties ? Pour répondre à cette question, cette recherche a identifié les lois pertinentes permettant l'utilisation du mécanisme RLL en Inde et en Indonésie, étant donné que leur cadre juridique d'arbitrage actuel, ayant trait au règlement des litiges par le biais du mécanisme RLL, manque de lois spécifiques. La recherche a adopté une approche mixte, utilisant des données primaires et secondaires pour suivre et comparer les systèmes RLL de l'Inde et de l'Indonésie. Nous avons conclu que les solutions RLL sont valides et exécutoires dans le cadre juridique actuel des deux pays. Par conséquent, les personnes ne doivent pas hésiter à faire appel au mécanisme RLL pour résoudre leurs différends. De même, il a été démontré que les lois existantes des deux pays peuvent intégrer, adopter et améliorer le processus global et les solutions du mécanisme RLL par le biais d'amendements et de directives indépendantes.

Mots-clés : règlement des litiges en ligne en Inde ; règlement des litiges en ligne en Indonésie ; Loi sur les technologies de l'information « IT Act » ; réponse judiciaire ; validité juridique.

印度和印度尼西亚关于网络线上解决争端 (ODR) 系统的法律效力问题

摘要

技术的进步带来了许多不可避免的变化，它使社会效率更高，人类生活更轻松。技术进步的成果之一是线上解决争端的机制被广泛使用，以有效、高效地伸张正义。该领域的新发展是线上仲裁争议解决机制 (online arbitration dispute resolutions - ODR)，无疑已被全球司法处理系统采用和实践。但存在的问题是：司法执行系统是否能够以同样的速度应对社会和技术发生的变化？现有法律是否足以将线上系统作为解决各方纠纷的有效机制？在上述问题的背景下，本研究参考印度和印度尼西亚两国关于使用线上解决争端机制相关的法律，因为它们两国目前也采用线上仲裁机制解决争议， 但是其仲裁机制缺乏具体的法律支持。本研究采用混合方法，使用一手和二手数据来追踪和比较印度和印度尼西亚的 ODR 系统。作者得出的结论是，在两国目前的法律框架下，网上解决争端是有效的、可执行的。因此，人们在使用线上解决机制来仲裁争端时，绝不能怀疑它。本研究还表明，两国的现有法律正在通过修订和发布单独的指导方针来适应和加强线上解决机制的整体流程和司法执行。

关键词：印度的在線爭議解決; 印度尼西亞的在線爭議解決; 信息技术法案；司法反应；法律效力。

Introduction

People in virtual business transactions are getting engage from different locations and jurisdictions through the proliferation of internet. This is more evident in the present Covid 19 pandemic when there are more restrictions on the physical movement of peoples. This consequently results into creates challenges to traditional approach of justice delivery system and opening new technological platforms. Private

organizations are already started coming up with innovative techniques to resolve disputes among people online. This can be evidence from eBay back in 1999 brought in an online mediation process between eBay platform and consumer complaints. Since then, this model has evolved into more sophisticated advanced variants in present days which is popularly been known as online dispute resolution (herein after ODR) and are used by most of the private organizations.

The Commission on International Trade Law which a United Nations working group has described the ODR is a system assisted by usage of electronic communications with the help of other communication and information technology to resolve disputes among parties. In its simplest form, ODR is E-ADR (Electronic- Alternative Dispute Resolution), in which the conduct of proceedings and documents are exchanged through technology over the internet.

In actuality, compared with traditional offline ADR, ODR possess more advantages because participants need not required to physically present in person. Asynchronous hyper real communication mechanism is used to resolve the dispute. It implies that the parties and the arbitrator are not required to communicate at the same time and can record their response at their leisure. As a result, technology is acting as a "fourth party" in ODR. ODR is having some key benefits such as first, it is cost effective as information is transmitted through reliance of video conferencing technology which reduces the cost of dispute resolution. Second, for the disputing parties, the Internet is a neutral space. Third, flexibility available to the parties as they can hold meetings and hearings remotely using audio and video conferencing technology. Finally, by

going to a website, the parties will be able to file and defend a claim and filling out forms for the arbitration procedure online. At present there are two types of ODR. First, ODR supported by private bodies and second, ODR supported by Court Annexed. Internationally Smartsettle, Cybersettle and the Mediation Room are private entities across globe having their own setup of regulations, offers online-mediation and resolution to disputes in commercial matters. For example, The International Council for Online Dispute Resolution ("ICODR"), a partnership of public and private sector organizations that use online dispute resolution service providers to resolve disagreements or conflicts. The group promotes ODR by establishing standards and best practices, as well as educating and certifying service providers. Because of the success of private ODR, most of the countries governments in various jurisdictions have decided to incorporate ODR and opening of ODR centers affiliated into their court systems. Some examples include car accidents, loan defaults, and consumer disputes, among others. Some of the prominent court-affiliated ODR centres are the New Mexico Courts ODR Centre in the USA, online money claim disputes in the United Kingdom, small value disputes in civil administrative tribunal of Canada. On this backdrop, this article explores the following research questions; whether online dispute resolution & relevant agreements are valid in the India & Indonesia? and if so, whether existing arbitration provisions relating to the process, support the process followed in ODR or required a new one, seat of arbitration & jurisdiction of local courts. Lastly, whether the award obtained in ODR mechanism are enforceable in the present legal framework to see its logical conclusion in justice

delivery system of both the countries. The present article discusses the ODR system in India and Indonesia in a comparative form of present legal framework of Arbitration laws and allied supporting laws on online arbitration process.

Methods

The present research adopts a mixed method which relies on use of legal doctrines, legal principles along with data. These includes Indian Arbitration and Conciliation Act 1996 and amended in 2015 & 2021 (INDIA, 1996); Information Technology Act 2002; Indian Evidence Act 1872 (INDIA, 1872) and Indonesian Law Number 30 of 1999 (Arbitration and Alternative Dispute Resolution) (INDONESIA, 1999); Law Number 11 of 2008 (Electronic Information and Transactions) (INDONESIA, 2008). Besides the present research articles also utilizes journals articles, commentary of jurists & judges, judgments of courts. Relying on the above method and sources the present research analyses and compared aforementioned online dispute resolution of both the countries.

Result and discussion

Judicial response and preparedness in India and Indonesia

The Indian Supreme Court is unceasingly playing a significant role in laying down the groundwork for online dispute resolution (ODR). This is evident from the State of Maharashtra V. Praful Desai case (INDIA,

2003a), where Supreme Court upheld that the witnesses' evidence and testimony through videoconferencing as a valid mode in court of law. In the said case Supreme Court decided that this mode of virtual reality is now the actual reality specifically in present Covid 19 pandemic. Going with this trend The Apex Court further said that in the same physical space its need not required that people must sit together if the consultation could take place by electronic media and remote conferencing mode. Apart from this the Apex Court also noted the need to expand the application of ODR in cases such as traffic challans and cheque bouncing, can be either partly or entirely take place in online mode instead of parties' physical presence and recommended the solutions.

Furthermore, the Apex Court have specifically recognised the validity of online arbitration as long as it complies with the conditions outlined in Sections 4 and 5 of the Information Technology Act ("IT Act"), 2008 (INDIA, 2008). Followed by Section 65B of the Indian Evidence Act of 1872 (INDIA, 1872) has been followed by provisions of the Arbitration and Conciliation Act of 1996 (INDIA, 1996).

In the recent instances of the Supreme Court of India and sitting judges are identifying the importance and need of ODR mechanisms to be present across the courts in India. Present Supreme Court Chief Justice N. V. Ramana has stated that area such as consumer, family dispute, business and in commercial cases ODR can be successfully implemented and disputes can be resolved. In the same line, retired Supreme Court Chief Justice Bobde reiterated that in the light of present Covid 19 situation, Court must take forward steps in making virtual courts to overcome from shutdown of the courts including Apex Court. In the

past, Justice Bobde also reiterated that pre litigation meditation agreement must be made binding to gain many benefits in dispute resolution and use technology such as Artificial Intelligence in arbitration as an alternative mode and introduction of SUVAS (INDIA, 2019) i.e., Supreme Court Vidhik Anuvaad Software for translating judgement from English to various Indian vernacular languages. In fact, Nilekani Committee in 2019 has recommended for setting up of formal online dispute resolution system for resolution of disputes arising out of digital payment. The said ODR system will have two modes i.e., automated and human with appeal provision. In recent time NITI Aayog (2021) (An apex public body think tank to foster investment and participation in the economic policy-making process by the State) organized a meeting on catalyzing online dispute resolution in India with all key stakeholders to ensure collaborative efforts are put into scaling up online dispute resolution in India by pointing out the great potential of ODR in resolving small and medium values disputes. Above scenario is a clear indicator that judiciary is simultaneously moving towards integrating technology in resolution of dispute and relancing on ODR as a one of the Alternate Dispute Resolution mechanisms in India.

Indonesian judiciary is also pushing similar trends in Indonesia. This can be seen through civil court practice in 2019 introduced an e-court system through SC Regulation No. 1/2019 and SC decree No. 129/2019 (GERUNGAN, 2019) wherein parties are partially allowed to conduct hearings via electronic means. Under this system parities are allowed to submit pleadings through electronically on the mutually predetermined dates. On certain hearing agendas like 1st hearing and

submission of court documents, parties through mutual agreement attend it through teleconference hearings instead of physical attending. If the judges panel agrees, then verification and cross examination of evidence and witnesses can also take place by teleconference. As this system is at nascent stage, it's a long way to become a full proof and overcome from its short falls. Similar trend can be seen through "SC Circular Letter No. 1/2020" (INDIA, 2020) which empowers 'the examining panel of judges' discretion to minimize physical meetings in present Covid 19 pandemic and allows civil cases hearings to be held by teleconference. Additionally, in criminal cases also court in criminal proceedings are fully authorized to use the teleconference by virtue of a Cooperation Agreement signed between Ministry of Human Rights, Supreme Court and the Public Attorney in 2020.

The Indonesian National Board of Arbitration i.e., Badan Arbitrase Nasional Indonesia (BANI) has issued a Decree in 28th May 2020 paving the way for Electronic Hearing can be conducted through audio or video conference in upcoming or ongoing arbitration proceedings under BANI. This Decree however has put conditions that in the emergencies like natural/ non natural disasters occurrence or in a situation where parties are not able to present in person at the hearing before arbitrators (BANI, 2020).

Other Indonesian Quasi-Judicial Bodies such as Business Competition Supervisory Commission (KPPU), the National Agency for Consumer Protection ("BPKN") among other began implementing electronic hearings by the medium of teleconferences during pandemic situation. KPPU has issued Regulation on 6th April 2020 for handling of electronic hearings which enables reports, evidences and other

documents can be submitted through designated electronic system as well as conducting hearings through teleconferencing. The National Agency for Consumer Protection (BPKN) is conducting online procedures for consumer cases for addressing breach of contract grievances due to situation surrounding the Covid-19 outbreak.

Analysis of present laws and implementation of ODR in India and Indonesia

Enforcement of online arbitration awards

Both the countries are using arbitration, consultation, negotiation, mediation, consolidation and expert assessment for the dispute resolution on the existing laws. Arbitration award importance is rest on the legal effect to it. If there is no recognition and enforcement then there is no legal effect to online arbitration awards. This status of online award poses challenge to online arbitration, as there are no executorial powers with arbitrators to recognition the award and enforcement of the award. As recognition and enforcement is performed by local courts having jurisdiction over it as per their governing laws. Let us understand this proposition with the help of present legal work framework of India and Indonesia in table 1 below which revels that Arbitration and IT laws of both the countries supports online arbitration.

***Table 1**. Online Arbitration Phases and Interpretation of Present Legal Framework*

Online Arbitration Phases	Online Methods	Indonesia		India		
		Arbitration Law	IT Law	Arbitration Law	IT Law	Evidence Act
Agreement	Electronic mail & various online communication devices, electronic signatures	Art. 4(3)	Art. 11	S. 7 (4) (b)	Ss. 4, 5, 10A and 11 to 15	Ss. 65A and 65B
Proceeding	Video conferences	Art. 31 (1)		S. 19		
Awards Recognition and Enforcement	Online awards, digital signatures	Art. 54 Offline (Article 59 and 67)	Art. 11	S. 31 Offline (Ss. 35, 36 and 47)	S. 15	

***Source:** Data analyzed by the author (Compiled).*

Whether online Dispute resolution & related agreements are legally valid in the India & Indonesia?

Before answering the above question, we need to understand the existing legislations of India and Indonesia relating to the Arbitration and Conciliation. Indian legal framework of arbitration is based on UNCITRAL model laws (UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 2017) and governed by the Arbitration and Conciliation Act (ACA) 1996 followed by amendment in 2015 and 2021. The said Act facilitate framework wherein arbitration is conducted by self-governing rules of arbitration institutions or be ad hoc with parities themselves deciding proceedings of the arbitration. Section 7 of the ACA 1996 mandates that there must contains arbitration clause while entering into a contract by parties to resolve the disputes through arbitration or there

can be a separate contract on it. Other key points of Section 7 are that the seat and venue of the arbitration proceedings must be specified in the arbitration clause or separate arbitration contract between the parties. Section 7 (4) (b) states that parties can enter into an arbitration agreement by exchanging letters, telex, telegrams, or other forms of telecommunication. Other means of telecommunication includes communication through electronic means by virtue of Amendment Act 2015. Section 19 also states that the parties are free to determine the regulations of arbitration process to be accompanied by the arbitral tribunal in conducting its proceedings. Aforementioned both sections are having wide scope for incorporation of ODR, if parties are interested to adhere and follow it in the arbitration proceedings. Aforementioned present framework of legislation would be used to implement ODR in practice. Similarly, Arbitration in Indonesia is being governed by (Undang-Undang Republik Indonesia Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa) know as Indonesian Arbitration Law (IAL) (Law no. 30 of 1999) (INDONESIA, 1999). The scope of the said law is to deal with arbitration, mediation, conciliation, consultation, expert assessment and negotiation in eleven chapters comprising of 82 Articles overall. According to Article 1 (1), arbitration is a method of dispute resolution in civil disputes outside of the general courts in accordance with the arbitration contract is entered into by the parties to the conflict. The Article is silent on the type of method that can be used in conducting the arbitration processes. It can be interpreted broadly to include both traditional and online processes aided by technology. Since online arbitration includes internet, emails, online

conference etc. Another important Article is 4 (3) which states that there must be a written agreement in between the parties with their signature to resolve disputes through arbitration. Aforementioned understanding of both countries main legislations clearly shows the scope wherein Online processes in alternative dispute mechanism can be accommodated in existing provisions of the arbitration legislations.

Furthermore, the question of entering into an online arbitration agreement by parties is also required to answer. The appropriate response can be found in Article 4(3), which states that parties can enter into a dispute settlement agreement through other forms of communication, including the exchange of letters, the sending of telexes, telegrams, faxes, emails, and so on. Only condition is that parities must receive communication accompanied by a record of receipt. Thus, the interpretation of this Article shows that it is permissible where parties through emails in written form entering into an arbitration agreement and treated as evidence in this regard. The answer to the requirement of signature can be found in Article 11 of the Law No. 11 of 2008 Concerning Electronic Information and Transactions (INDONESIA, 2008). Article 11 states that when a digital signature meets the requirements listed below, it has legal bearing and legal force. Signatories or signers must be associated with electronic signature creation data and have power at the time of electronic signing. If there is any alteration after signing, if it is knowable and has followed the method of identification to identify the signatories and indicates he is consented to the electronic information. This is further supported by the amended law in 2016, which states that electronic information and documents can be used as evidence in

accordance with Article 5(1) & (2). As the Indonesian government is increasingly going online itself and the Indonesian court are known for their preferred choice of hard copy documents as evidence, the amendment law simply re-emphasizing the concept of accepting e-evidence, and contract are binding and can be used as evidence in court as an alternative to the hard copy documentary evidence. This simply ensures that Indonesian courts are accepting e-evidence and contracts in their proceedings. Above interpretation of provisions makes it clear that electronic signature is at par with the manual signature and enjoys same legal force and effect. This strengthens the case of online dispute resolution where it can be described that parties can come to the term of using technology to settle their dispute in arbitration by adopting an online arbitration agreement. In the Indian scenario, the appropriate response can be found in the Indian Evidence Act of 1872 (INDIA, 1872) and the Information Technology Act of 2000 (INDIA, 2000). Under Indian Evidence Act, two sections namely, 65A and 65B enables sharing of virtual documents and virtual hearings. Both sections i.e., 65A & 65B is a complete code in itself as far as evidence relating to and admissibility of electronic records during the course of court trial. In order to prove the originality of documents, if contents of documents are fulfilling the requisites of Section 65B then such electronic records shall be treated as primary evidence under section 65A. If a party wishes to use computer output document evidence as primary evidence instead of secondary evidence, he or she must submit a certificate declaring that all of the requirements listed in section 65B (4) for a computer output/document have been met. Thus, throughout the trial, a computer output document

shall be considered as document/primary evidence under Indian Evidence Law. The Supreme Court recently affirmed the production of a certificate before having to submit digital evidence under 65B (4) in Arjun Panditrao Khotkar vs Kailash Kushanrao Gorantyal (NARIMAN, 2020).

Similarly, Sections 4, 5, 10A and 11 to 15 of Information Technology Act provides validity to electronic contracts. Under the chapter title ELECTRONIC GOVERNANCE, Section 4 states that if information is required in writing, typewritten, or printed form under any law, and it is provided in an electronic form which is accessible for further reference. Then it is deemed to fulfilled all requisites and such electronic records are legally recognized. Section 5 states that in any law, if details or any other matter is validated by affixing the signature or signed or bears any person's signature and is authenticated by adhering to the rules of digital signature affixed, it is presumed to have been satisfied and therefore is legally recognized.

Most pertinently, if a contract party communicates, accepts, or withdraws proposals in digital form or through digital records, such a contract creation through digital communication is a legal contract and enforceable as an electronic contract under Section 10A. Under the chapter title “Attribution, Acknowledgment and Dispatch of Electronic Records”, Section 11 asserts that an electronic document shall be credited to the originator if it has been sent by him or a person appointed by him, or if it is instantaneously sent on his behalf through a programmable information system. If originator has not mentioned any clear method for electronic record receipt acknowledgment by addressee, then he can use any communication mode including

automation mode which sufficiently indicates that he has received electronic record from originator as per Section 12. If the originator specifies that the digital record shall only be conclusive if a specific requirement, such as receipt of acknowledgment, a specific time, or agreed within a reasonable period of time, is met, therefore the intended recipient must meet that particular requirement. Otherwise, the electronic record shall be deemed to have been not received or it has been never sent by the originator and not banding on him.

Section 13 states that dispatch of an electronic records time and place can be determine by parties mutually and it will be treated as dispatched once it is out of the control of originator and enters a computer resource of addressee. If the parties' consent on the time and place of delivery is of an electronic record, it takes place when it enters a computer resource that is no longer under the control of the originator. When there is no reference of the particular time and assigned computer resource, the time of receipt shall be considered when the online record enters at the designated computer resource or when said record is tracked down by the addressee. Except as otherwise agreed between both the originator and addressee, it'll be assumed that a digital record is dispatched and received at the corporate headquarters, regardless of additional locations. In absence of place of business, addressee's residence shall be treated place of business and in case of companies its usual place of residence as per registration record.

Section 14 states that if a security treatment is administered in an electronic record, the record is considered secure until the verification time. Section 15 discusses digital signatures, which are considered

secure if they are under the unique control of the signatory and are based on the signatory's creation data at the time of appending them. If parties are agreed to follow a security procedure where it can be verified the identification of subscriber, unique affixation. The digital signature is then considered secure. If tampered then invalidate digital signature. Aforementioned analysis of present legal framework has ample scope to incorporate and implement ODR in practice. These existing provisions also support the virtual/ online hearing and sharing of documents having a legal backup in dispute resolutions. Similarly, validity of digital signature in online contracts are also recognized by the present IT Act. This was facilitated by the adoption of the UNCITRAL Model Law on E - commerce in 1996 and the Model Law on Digital Signatures in 2001.

Whether existing arbitration process support the process followed in ODR or required a new one, seat of arbitration & jurisdiction of local courts?

As mentioned in earlier discussion both the country's main legislations do not have any problem on the process that is going to be followed by parties in ODR so far these processes are aligned with the existing legal framework and in compliance with it. The issue of the seat of arbitration and the jurisdiction of local courts is significant because it is a critical step in determining the nationality and legality of the award, and the recognition of the award by courts or the setting aside of the award is a matter of concern in both countries. It is important that, prior to the online hearings and proceedings, parties and arbitrator are required to decide the seat of arbitration and arbitrator required to mention the seat

of arbitration in its award. When the parties are silent on the seat of arbitration, the question becomes how to determine the seat of arbitration. This question is answered by Article 31(3) of Indonesian Law No.30 of 1999 (INDONESIA, 1999). If parties have not finalised the timeframe and venue as per para (1) then it will be finalised by an arbitrator or arbitration panel itself. Thus, as per aforementioned interpretation, there shall not be any problem for determining the seat of arbitration in online arbitration and moreover Law no 30 of 1999 do not prohibit proceeding and hearings of the online arbitration so far, they are in compliance of principle of equality, due process and transparency. So, the online arbitration award is having legal effect and recognition under the Law of 30 of 1999. India is a signatory to two international treaties: the New York Arbitration Convention (1958) and Geneva Convention… (1927). Indian Arbitration and Conciliation Act 1996 (ACA) is very much clear about the seat of the arbitration & local courts jurisdiction for setting aside the award (INDIA, 1996). Part I is applicable to the domestic awards if the seat is within India and Part II is applying on foreign awards where seat is outside the India. ACA 1996 and the Code of Civil Procedure 1908 (CPC) (INDIA, 1908a) are the two legislations which governs the enforcement and execution of decrees procedure of Arbitral awards. Domestic and international awards, along with consent awards, have been enforced in the same way that Indian court decrees are. Below mentioned some important steps must be taken in order for awards and decrees to be executed and enforced successfully. These crucial steps are the opposite party has received order/ judgement/ attachment/ notice/ arrest / appointment of receiver to avoid objections raised at later stage

by opposite party because natural justice principle is evenly applicable in execution proceedings before courts. For the domestic award, award holder is required to wait for 3 months from the date of receipt of the award before proceeding further with execution and enforcement. The purpose of this interval is to enable losing party through separate application challenge the award and seek stay order on execution of award under S. 34 of the Act. Once this stage is over then enforceability of award cannot be further challenged and will be proceeded by competent commercial court/ High Court commercial division having jurisdiction as per subject matter, resident of losing party or at place of business will be executed and enforced. Likewise, foreign awards are enforceable in India if the award's seat is announced by the signatory country to the two aforementioned conventions. Foreign award is required to follow two-stage process for enforcement i.e., filing an execution petition for Court determination of adherence of requirement of ACD Act is there or not. If the award is found to meet all of the requirements of the Act, it will be enforced as a decree of a competent court. Other requirements are the same as those stated in the domestic award in order to avoid any objections from the opposing party before the court. Section 47 sets out the requirements for enforcing a foreign award in an Indian court i.e., i. Submission of original authenticated award copy must be submitted ii. Original certified agreement of parties, and iii. Proof of evidence showing that the award is a foreign may be provided at the time of application for enforcement.

Whether the award obtained in ODR mechanism are enforceable in the present legal framework to see its logical conclusion in justice delivery system of both the countries?

As online dispute resolution (ODR) proceedings are taken place online and award is obtained online this possesses pertinent question of enforceability of such award in the local courts. Arbitrators do not have executory power to enforce arbitration awards as a general rule. As a result, it is the responsibility of the concerned State judiciary to follow the laws of the land and the processes that will govern the process of award recognition and enforcement. So is the case of enforcement of online arbitration award. As per Law of 30 of 1999 National arbitration awards and international arbitration awards are the two types of arbitration awards. If the Indonesia is the seat of arbitration, then it will categorize as Domestic arbitration awards and if foreign arbitrator/ arbitration institution whose jurisdiction is outside the Indonesia then it will be treated as international awards as per Article 1(9) of the Law of 30 of 1999. Thus, it is the seat who determines the enforceability as mentioned earlier. Article 59 (1) of Law 30 0f 1999 will also be applicable on enforcement of award by online arbitration. it is also required that true certified copies of the award be registered by the arbitrator/his proxy and submitted to the Clerk of the District Court of Jakarta within 30 days from the date of award. Failing of this will render the arbitration award unenforceable by virtue of Article 59(4) of the said Act. Above analysis show that except last phase i.e., enforcement of arbitration awards is going to be implemented in traditional ways in the form of printing awards and signing

of it by arbitrator. All other phases can be conducted through online arbitration process under Law No. 30 of 1999.

Indian ACA 1996, clearly laid down the conditions for enforcement of domestic and foreign arbitral awards. Section 48 states that awards could be refused, and Section 34 states that awards could be set aside. Both the sections lay down following conditions if proved then award may be refused or may be set aside. Parties were incapacitated, there was a failure to provide notice, the appointment of arbitrators/arbitration proceedings were unclear/undecided, or one of the parties was unable to present his case. The award is ultra vires to the agreement, or the scope of the decisions exceeds the authority of the arbitration, or the procedure is not in accordance with the laws of the country where it occurred. If a foreign competent authority hands over an award which has yet to become binding or has been suspended or set aside under the law of the country where it has been made. The subject matter of the award would be unenforceable if it violated public policy or was not amenable to resolution through arbitration in India. Apart from above legislations there is another piece of legislations called The Indian Stamp Act 1899 (INDIA, 1899) and the Registration Act, 1908 (INDIA, 1908b). If the obligation of stamping and registering an award/document is not met, the issue may be brought up at the stage of enforcement by another party underneath the ACA 1996. Both these legislation talks about the stamp duties and registration of domestic awards for admissible and validity of award in India. The Stamp Act 1899 provides specific stamp duties for arbitral awards and Section 35 state that unstamped or insufficient stamped is inadmissible for any purpose under Section 35. These issues can be

resolved on making payment with penalty. The penalties would differ from state to state depending on where the award was made and validated. If the award affects immovable property, it should be registered in compliance with Section 17 (1) (e) of the Registration Act of 1908. The Supreme Court (INDIA, 2003b) made it cleared in the case of M. Anasuya Devi and Anr. v. Manik Reddy and Ors that it is within the purview of the CPC and Section 47 deals with the precondition of stamping of awards and registration rather than Section 34 of the ACA 1996. Stamp duty is not applicable to foreign awards, according to Supreme Court decisions and various High Court's Judicial decisions. The Supreme Court has made clear that award enforcement is governed by the principle of asset location and the concerned court having jurisdiction in that location. As per the Commercial Courts Act 2015 (INDIA, 2015) would have a jurisdiction in award execution proceedings. In the domestic award, whether it has been awarded by India seated arbitration, i.e., international commercial arbitration, or not, the High Court commercial division in which the opposite party's assets are located will have jurisdiction for applications for enforcement of such awards where money is the subject matter. For any other aspect of award enforcement, the principal Civil Court of original jurisdiction in a district or the commercial division of a high Court in which the opposing party lives and works on business/personally works for gain shall have jurisdiction. When it comes to foreign award enforcement, if the issue is money, the commercial division of any High Court will have jurisdiction over it, regardless of where the opposite party's assets are located. The aforementioned court jurisdiction shall have jurisdiction over any other subject matter as if the

subject matter of the award were a subject matter of a suit. As arbitral award is deemed as decrees for the enforcement so Limitation Act 1963 will be automatically applicable and limitation period for domestic and foreign awards is twelve years.

Conclusions

Aforementioned comparative analysis of both the countries laws, it shows that there is an ample scope of interpretation of present provisions of the arbitration legislations read with information technology laws of both countries to cover traditional as well as online arbitration. As stated in Article 4(3) of Law No. 30 of 1999 and Section 7 of Indian ACA 1996, the issue of entering into an online agreement for online resolution through the use of emails or any other form of communication is resolved. The validity and legal enforcement of digital signature/ documents under Article 11 of Law No 11 of 2008 (INDONESIA, 2008) and Indian Information Technology (Amended) Act, 2016 (INDIA, 2016) Ss. 4, 5, 10A and 11 to 15 provides validity to electronic contracts which allows parties to enter into online agreement through exchange of any online mode and the validity of the digital signature. Both countries aforementioned legislations do not have any provisions which prohibits ODR proceedings and hearings as long as it is adhering to the due process, transparency and principle of equality with the existing laws. On the enforceability of the ODR awards is concerned it shall not be a problem. As ODR awards can be printed and signed by the arbitrators and submitted to the Registrar to the District Court of Central Jakarta in Indonesia. Similarly,

in India, if ODR award is stamped and registered can be enforced under the Commercial Courts Act 2015 by respective courts. Furthermore, to strength above propositions it is suggested that Indonesian and Indian Arbitration Act should be amended. The amendments should include arbitration/conciliation proceedings that are entirely or partially administered through the use of information and communications technologies or any online mode. There may be separate regulations drafted to put things in more detailed manner while using ODR in ADR. Overall, ODR in Indonesia and India can be utilized by people for various platforms as present legal structure support the usage of ODR along with amendments in legislations to clear the doubts and boosting of this new way of dispute resolution mechanism.

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