

Arbitration from Soil to Space (On Line Revolution in Dispute Resolution)

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Abstract

India is always hailed as a repertoire of rational virtues, vivacious values and persistent principles. Being a land of karma, people all over the globe repose utmost confidence in the transactions generated on this land, believe in the integrity and honesty of the contractual and commercial obligations with the people on this soil. Indian system intends to resolve the issues and differences through bilateral co-ordination and mutual satisfaction. 'Adjudication' is given the ancillary place and 'pragmatic solution for the problem' is given the primary place in the Indian thought.

Mediation, Conciliation and Arbitration have been an insignia and characteristic of Indian ethos and culture. The so-called modern 'Dispute Resolution' through 'Alternate' modes is nothing but the vintage of our ancient problem-solving process known for more than 4000 years. The 'Village Nyaya Panchayats' of Indian Society may be construed as the genesis of modern A.D.R. system and the trigonometry of Arbitration, Conciliation and Mediation smacks of the judicial reasoning and the wisdom of our justice system.

The information technology has invaded all spheres of human life and legal field is no exception. Law being dynamic and organic has to live with both the science and sentiments of human race. In just a few years the picture has changed dramatically. Each year close to a Million disputes are resolved online and over a hundred online dispute resolution Providers offer their services worldwide. From a technology gadget, ODR has become a major phenomenon in dispute resolution. Admittedly, it may appear to lack any connection with international commercial arbitration yet, the day-to-day operation of Commercial arbitration cannot remain unaffected by such a vast phenomenon.

This article mainly focuses on the evolution and conceptual significance of On-Line Arbitration and its utility and futility in the present day national and international trade and commerce. This article refers to the techno-legal implications and their impact on international relations.

KEY WORDS:

Online dispute resolution, Indian Judiciary, Cyber Arbitration, Arbitral Awards.

The technology is there for widely separated parties to meet in cyberspace, exchange and analyze complex information on preferences and needs, do deals, and execute binding settlements. -Richard Shell.

INTRODUCTION

If body is a reality, Soul must also be a reality; if soil is a reality, space should also be a reality and if dispute is a real problem, then Resolution is also a real solution

– be it in substance or space. Philosophy might not have been acknowledged by all as a science, but none could assail it as a source of pragmatic reasoning – both legal and logical. Clash and conflicts occur not only in physical form but also in psychological form. If conventional mediation, conciliation and arbitration represent the physical form, On-line Dispute Resolution represents a combination of both physical and psychological forms. Neither space nor technology, like any other species, could march or lead new generations without the aid and assistance of Law and Justice. Technology being a part of science, created a new world known as ‘Cyber Space’ and Information Technology has become the nucleus of this imaginative but real world.

The tardy judicial locomotion compelled the evolution of alternate dispute resolution, though not displacing conventional court system, and the impatient litigation-gentry demanded the instantaneous solution and agreed-justice, on the soil and in the space.

INDIAN SOIL AND INSTANT JUSTICE

India is always hailed as a repertoire of rational virtues, vivacious values and persistent principles. Being a land of karma, people all over the globe repose utmost confidence in the transactions generated on this land, believe in the integrity and honesty of the contractual and commercial obligations with the people on this soil. Innumerable historical and epical episodes testify the morality of Indian kings and traders. To honour the word or promise made is a passion of Indian lives. Indian system intends to resolve the issues and differences through bilateral co-ordination and mutual satisfaction. Adjudication is given the ancillary place and pragmatic solution for the problem is given the primary place in Indian thought.

Mediation, Conciliation and Arbitration have been an insignia and characteristic of Indian ethos and culture. Even during the ancient Indian civilization, we could identify the instances of settlement of disputes by the parties outside the conventional court system. The so-called modern Dispute Resolution through alternate modes is nothing but the vintage of our ancient problem-solving process known for more than 4000 years. The ‘Village NyayaPanchayats’ of Indian Society may be construed as the genesis of modern A.D.R. system and the trigonometry of Arbitration, Conciliation and Mediation smacks of the judicial reasoning and the wisdom of our justice system.

No doubt, commercial arbitration has gained considerable popularity and prominence because of richness of the parties, both in national and international spheres. The information technology has invaded all spheres of human life and legal field is no exception. Law being dynamic and organic has to live with both science and sentiments of human race. The beneficiaries of On-line Arbitration all over the globe remain unflinchingly grateful to Robert Brinier, the master of Arbitration Avionics.

CYBER SPACE AND ARBITRATION – EVOLUTION OR REVOLUTION:

Computers revolutionized the 20th. Century scientific advancement and Internet ignited the pace of human interaction throughout the globe. ‘Citizen’ is dwarfed and ‘Netizen’ is magnified in 21st. century. Man is replaced by machine. ‘Documentation’ of human activities and human relations was the tale of yester years, and ‘wit and/or war in formless air’ is the unique pace of the present system of

negotiations and human connectivity, and we have moved from a world of calculation to a world of simulation, from an image of the computer as something that calculates and computes to an image of a machine that interacts with us continuously and helps us define our identities. With these whirl-wind changes, Law is briskly associated. Truly, Law is dynamic.

Cyberspace, according to computer scientist David Gelernter, should be viewed as a "mirror world," a place where institutions of the world are represented in digital form and where we can interact with these digital representations as if we were in the physical space. As computer software and networks become more sophisticated and pervasive, Gelernter envisions the development of increasingly complex online communities and institutions, places containing "some huge institution's moving, true-to-life mirror image trapped inside a computer," As a result, cyberspace, in the future, will be many spaces. In these spaces, we will engage and interact with each other, as well as with schools, banks, stores, and a wide variety of other kinds of institutions.

The concept of a "mirror world" or a "life on the screen" also provides a useful entry point and perspective for considering the issue of disputes that originate online. It represents conflict resolving behaviour of the physical world. New online or on-screen spaces facilitate the parties to interact, meet, form relationships, express opinions, pay money, and engage in many other familiar and not so familiar activities, will leave an impression on both and on the landscape of disputes. The mirror or screen world will contain and reflect many facets of the physical world, and will also contain and reflect much of the conflict of the physical world¹ Time is ripe to replace the traditional paradigms of conflict-settlement by need-based arbitration – on land and in space too.

Cyberspace as "Virtual Community"-Cyberspace differs from other technological innovations of the twentieth century in that it has, in and of itself, become a "community" to millions of people. Indeed, it has become a community that is separate from the "real" community in which these people live. Howard Rheingold writes: People in 'virtual communities' use words on screens to exchange pleasantries and argue, engage in intellectual discourse, conduct commerce, exchange knowledge, share emotional support, make plans, brainstorm, gossip, feud, fall in love, find friends and lose them, play games, flirt, create a little high art and a lot of idle talk. People in virtual communities do just about everything people do in real life, but we leave our bodies behind¹. Literally, thousands of "virtual" communities, such as the one described above, exist online².

WHAT IS ON LINE DISPUTE RESOLUTION/CYBER ARBITRATION?

In fact, INTERNET increased the pace of international trade and commerce and-E-commerce necessitated On Line settlements in making and breaking the contracts. **Online dispute resolution (ODR)** is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this

¹ Howard Rheingold, *The Virtual Community: Homesteading on the Electronic Frontier* 3 (1994); see also Lawrence Lessig, *The Zones of Cyberspace*, 48 *Stan. L. Rev.* 1403, 1403 (1996)

² .(Robert C. Bordone, *ELECTRONIC ONLINE DISPUTE RESOLUTION:A SYSTEMS APPROACH – POTENTIAL PROBLEMS- A*

respect it is often seen as being the online equivalent of alternative dispute resolution³ However, ODR can also augment these traditional means of resolving disputes by applying innovative techniques and online technologies to the process.

With this explosion of activity and collaboration in Cyberspace and with the corresponding rise of what many call "virtual communities" on the Internet comes the certainty of online conflict and disputes. Indeed conflicts are inevitable in any community. The fundamentally unique nature of Cyberspace, however, raises important and difficult questions for lawyers and policy-makers as to how to regulate this "virtual" space and how to resolve the disputes which have and undoubtedly will continue to occur in Cyberspace.

For many, Cyberspace is much more than a computerized Yellow Pages or a place to get a 24-hour weather update. Instead, it has taken on many of the characteristics of community, replete with community-specific customs, needs, and desires. It is crucial that the architects of a dispute design model study and understand these communities before transplanting a model of the "real world" dispute resolution into Cyberspace. Most residents of CYBERIA "would rather be subjected to the judgments of their own virtual community than the laws of a physical place far away from where they live." As a virtual community, Cyberspace differs from real space and those differences matter in the construction of an effective dispute resolution system.⁴ As on-line culture has become an integral part of modern existence, so has also emerged diverse ramifications of the same- commerce, regulations, exchange of money and thoughts, leisure academics. But another extremely important feature of net civilization and web behaviour is the emergence of tremendous disputes, differences, fights and controversies on the Internet relating to varied aspects of ON-LINEISM. The resolution of these cyber disputes has emerged as an extremely important challenge. Courts of law do not present a practical option for reasons more than one:-

- Firstly, because the world itself becomes a big courtroom
- Secondly, because of the global nature of the internet, the clarity as to which court would have the exclusive Jurisdiction to try the case is missing.
- Thirdly, litigation and the legal systems in different countries are different and can be extremely expensive and threatening to wipe out millions of legal entities into oblivion.

Cyber-arbitration is being considered inexpensive, quick and universally acceptable. At a time when the Julian calendar is being replaced by the concept of web-weeks, Cyber arbitration is the most effective, simple method for the best resolution of cyberspace disputes.

³ ADR Arthur M. Monty Ahalt, "What You Should Know About Online Dispute Resolution"(http://en.wikipedia.org/wiki/Online_dispute_resolution)

⁴ Robert C. Bordone, ELECTRONIC ONLINE DISPUTE RESOLUTION: A SYSTEMS APPROACH— POTENTIAL, PROBLEMS, AND A PROPOSAL- 3 Harvard Negotiation Law Review, Spring-1998.

Broad Elements of Cyber arbitration:-

- Cyber arbitration Agreement.
- Deposits of Opening costs Adoption of cyber arbitration procedures.
- Appointment of cyber arbitrator
- Claims or counter claim along with documents.
- Framing of contentious issues.
- Leading of Evidence by way of affidavits all on-line.
- Personal hearing, in the physical world if agreed by both the parties. Granting of Cyber award.⁵

During the past years, disputes concerning copyright, E-contracts, and privacy have resulted in judicial decision. Court litigations are lengthy and expensive. If consumer confidence in E-commerce is to be realized, swift and inexpensive mechanisms must be effectively developed to resolve controversies that arise from Internet-based commerce. Online Arbitration is an efficient alternative for transacting over the Internet. The European Union has taken several initiatives to promote alternative dispute resolution. Community legislation and Recommendations have been adopted to regulate e-commerce transactions and out-of-court. dispute settlements. However, online arbitration methods have raised complex legal issues with regards to its relationship with other community legislations⁶.

INTERNATIONAL COMMERCIAL ARBITRATION VIS.A.VIS. INDIAN ARBITRATION:

Though Ancient India is known as a traditional centre of dispute resolutions with humane techniques and objectives, the concept of Alternate Dispute Resolution in modern India is viewed with an age of 60 years. The replacement of the Arbitration Act of 1940 by the Arbitration and Conciliation Act of 1996 could not melt the mountain of pending litigation. The Arbitration and Conciliation Act of 1996 is conditioned by many adversaries, want of awareness with regard to the information and communication technology and the I.C.T. related issues etc. Resulting in certain lacunae in the effective implementation of the A.D.R. philosophy, Cyber arbitration is one such aspect. Cyber arbitration is popularly known as online dispute resolution O.D.R. mechanism. ODR is a better and improved form of ADR provided India is willing to encash its benefits. Unfortunately, there are very few O.D.R. institutions and there is great dearth of experts who can resolve technical, legal and other scientific disputes in an On-Line environment. Even the National Litigation Policy of India (NLPI) failed to address this issue.

The problem is there are very few ODR institutions in India. Even lesser are ODR experts who can resolve technical, legal and other scientific disputes in an online environment. Even the national litigation policy of India (NLPI) failed to address this issue.

Now business community is stressing more upon online dispute resolution *ODR* than ADR mechanism. ODR is the most convenient, efficient and speedier method of

⁵ (info@cyberlaws.net)

⁶ Sylvia Mercado Kierkegaard, Legal Conundrums in Cyber Arbitration,

dispute resolution. The parties are not even required to leave their places and they can resolve their disputes even while sitting at their homes or offices.

Sooner or later Indian arbitrators and mediators must learn to adopt and use ODR as the future belong to the ODR community. Lawyers or judges may consider the techno-legal training platform by Perry4Law Techno Legal base **PTLB** for getting good ADR and ODR training.

Global Development of Online Arbitration

The developments in Information Technology have ushered in a new era in the traditional arbitral practices and procedures. To match these developments, ICC took a lead and has issued guidelines on the use of Information Technology (IT) in arbitration, devised a web-based system for conducting and managing arbitration proceedings, and established an online clearinghouse system for small claims. Electronic submissions by e-mails or VoIP (Voice over Internet Protocol) or videoconferencing pioneered the IT-intense online arbitration. Arbitration agreements are concluded, proceedings conducted, and awards rendered by electronic means in online settings.

The issue is whether an *online arbitration* is fully admissible and effective under the current legal framework?

On-line arbitration issues can be divided into three major categories: -

- (i) arbitration agreements,
- (ii) arbitral proceedings, and
- (iii) Arbitral awards.

There can be three possible situations for submitting or referring a claim, dispute or Difference to an online arbitration.

- Firstly, an E-contract containing an online arbitration clause.
- Secondly, A written contract providing for online arbitration; and
- Thirdly, Reference to online arbitration after the dispute has arisen.

The agreement of the parties to refer their disputes to the decision of the arbitral tribunal must be intended to be enforceable by law and hence, it must satisfy the requirement of enforceability as prescribed by Section 10 of the Contract Act, 1872 with a clear intention of entering into a legally binding relationship and parties must be *ad-idem*. Arbitration Agreement has been defined under Section 7 of the Arbitration and Conciliation Act, 1996. If an online arbitration clause passes a test of Section 7 then it is deemed to be a valid arbitration clause. Exchange of letters, telex, telegrams or “other means of telecommunication” should signify an active assent by both parties and a demonstrable meeting of minds as to the arbitration agreements.⁷ Whether any agreement entered into through such other means of telecommunication is enforceable? What would be included in such other means of telecommunication? Can exchange of emails embodying an agreement to arbitrate be covered under Sec-7?

The e-mail exchange may also refer to a separate written arbitration agreement (“incorporation by reference”). The parties may also wish to reach agreement through a website. In such case, an exchange of electronic communications occurs through the party’s browser software. Either method (e-mail or website) will ultimately lead to the same question as to whether an electronic communication provides a required record of the agreement. The answer was given in affirmative by the Hon’ble Supreme Court

⁷ *Shakti Bhog Foods Ltd. V. Kola Shipping Ltd.*, AIR 2009 SC 12

in the case of **Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.**⁸ In this case, the Petitioner submitted commercial offer through e-mail for supply of bauxite to Respondent. Respondent conveyed acceptance of offer through e-mail and the Parties entered into contract. The Contract contained an Arbitration Clause for resolution of disputes between the parties. Thereafter, Respondent refused to honour contract on the ground that there was no concluded contract between the parties and the parties are still not ad idem in respect of various essential features of the transaction. It was held by the Hon'ble Court that if the intention of the parties to arbitrate any dispute has arisen in the above offer and acceptance thereof, the dispute is to be settled through arbitration. Once the contract is concluded, the mere fact that a formal contract has to be prepared and initialled by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialled.

Needless to state that Section 4 of the Information Technology Act, 2000 renders legal recognition of such electronic transfer of communication which is admissible as evidence.

Though, e-commerce laws have "legitimized" electronic communications in the light of traditional paper-based legal requirements, it does not mean that the controversies about arbitration agreement concluded online completely disappeared. Nor could one assume that every arbitration agreement concluded by an exchange of e-mails or electronic data interchange will be valid. The means of telecommunication applied must satisfy certain conditions, i.e. provide the agreement's record that is "accessible so as to be usable for subsequent reference".

REGULATIONS APPLICABLE TO INTERNATIONAL AND DOMESTIC LAWS:

A number of arbitration institutions have already opened the possibility to perform arbitral proceedings online. They have made an effort to either acclimatize their existing arbitration rules to the online environment, or to set up new sets of rules for online arbitration. The legal framework for online arbitration requires multiple layers of regulation at different level. The international commercial arbitration not only encompasses the institutional rules of arbitration and private contractual agreements but also international conventions, bilateral treaties, model laws (such as UNCITRAL model laws) and national arbitration laws. All these aspects need to be taken care of even in online arbitration. Entering into arbitration agreements in certain online settings may conflict with the basic principle of international arbitration law that the consent of the parties is a condition sine qua non to validly agree on arbitration. To give an example of a peculiar but common situation, when a single mouse click suffices to accept an offer with an arbitration clause, it may of course sometimes happen that an alleged acceptance does not reflect the fully informed consent of a party. It is important in an online arbitration that the contents of the arbitration clause are meticulously drafted and take into account, inter alia, the governing law of the arbitration agreement, jurisdiction of the courts (whether exclusive or nonexclusive), procedure for the nomination and/or appointment of the arbitral tribunal, place or seat of the arbitration, language of the arbitral proceedings and applicable institutional rules on online arbitration.

⁸ 2010) 3 SCC 1

Arbitral proceedings

Information Technology is already used rampantly in arbitral proceedings. It is indeed cost effective and convenient but involves legal questions of vital importance to be settled first. Parties are free to agree that the whole or part of arbitral proceedings are conducted online, with the use of whether asynchronous (e.g. e-mail) (Asynchronous electronic means are those where there is a time lapse between an initial communication and a reply.); or synchronous (e.g. video- or audio-conference) electronic means. It is pertinent to analyse the applicable mandatory rules of procedure as “place”, or “seat”, of online arbitration is literally “virtual”. The principles of tribunal’s impartiality and equal treatment of parties, enshrined in Section 18 read with section 12 of the Arbitration and Conciliation Act, are relevant. These online techniques can be used in arbitral proceedings, provided that their application does not prejudice.

It is suggested that in order to safeguard the fairness of online arbitral proceedings, the implementation of information technology, regardless of its scope, should be suitably and carefully codified in procedural orders issued by the arbitral tribunal or, preferably, by agreement between the parties at the outset. If parties agree on institutional online arbitration, applicable rules also have to be taken into account. Article 3(2) of the ICC Rules specifically authorizes electronic communication with the Court and the Secretariat of the ICC. If there is any conflict between the institutional rules on online arbitration and the intent of the party then such rules can be categorically amended/ deleted by an express agreement between the parties. The need for clarity may arise when provisions of applicable arbitration rules require inter alia, references in a written form or a physical appearance of the parties before the arbitral tribunal. As already stated above, many arbitration institutions have already adapted or supplemented their rules to include online proceedings. It will not be premature to say that such problems are gradually reducing. In online arbitration; parties may decide to conduct hearings online and to examine and cross-examine witnesses, or hear experts, using teleconferencing or videoconferencing technology. India has introduced Personal Data Protection Bill 2006 but it could not see the light of the day. Section 72 of the Information Technology Act takes care of the use of tele and video-conferences in court proceedings, is currently admissible in many jurisdictions. Probably the most innovative web-based broadband video conferencing system, that allows solicitors to conduct their court hearings from a remote source, has been set up in Singapore⁹ A major legal issue concerning electronic hearings in online arbitration concerns the legal significance of evidence produced online.

Many practitioners and academicians have mooted for a blend of both online and off-line methods for procuring or taking evidence on record. There can be online filing platforms where the parties to the online arbitration may file their documents and evidence through an independent and authorised third party provider. Such online filing is part of the institutional rules or necessary procedural orders passed by the Arbitral tribunal. Documents and evidence that are filed before the Arbitral tribunal may be scanned copies of the originals or can be protected and authenticated with the help of digital signatures. If a document bears a digital signature then it is presumed to be unaltered.¹⁰

The place of arbitration

⁹ see: online <<http://www.justiceonline.com.sg/index.html>>

¹⁰ R. Hill, *Online Arbitration: Issues and Solution*, Kluwer Law International, 1999)

It will not be an exaggeration to state that international commercial arbitration has achieved a considerable degree of independence from national courts. Nonetheless the whole arbitral proceedings remain subject to the laws of the many jurisdictions in which arbitration takes place and in which award is to be enforced. If arbitral proceedings are conducted entirely online at a distance, with parties and arbitrators in distinct places, *prima facie*, it seems difficult, or even impossible, to determine the place, or seat of the arbitration.¹¹ It is indispensable to ascertain the seat or place of arbitration which is online. The issues involving jurisdiction in online arbitration will be more complex as compared to conventional arbitration unless a formal seat of arbitration is decided either unanimously by the parties or by the Arbitration Rules or by the arbitral tribunal. Section 20(1) of the Act states that the parties are free to agree the place of arbitration, Importantly, Section 20(2) indicates that if the parties have not agreed to such place then arbitral tribunal would determine the place of arbitration having regard to the circumstance of the case including the convenience of the parties. Parties sometimes choose the place of institution to be the place of arbitration. Thus, deciding a place of online arbitration can be achieved through unanimous decision of parties (either directly or by reference to the arbitration rules) or by arbitrators if the rules are silent or if parties fail to decide the same unanimously. Case law allows the seat of arbitration to be “*a strictly legal concept dependent on the will of the parties*”.¹²

Arbitral Awards

There are legal impediments which have to be taken care of when it comes to Arbitral Awards. These can primarily be:

- a) Can an arbitral award be validly pronounced by the Arbitral Tribunal over the internet or online?
- b) Whether such online arbitral award be enforced by national courts within the existing legislative framework?

Sec. 31 of the Arbitration and Conciliation Act, 1998 deals with Form and contents of the arbitral award. Such an award must be in writing and signed by the members of the arbitral tribunal. Such an award must state the reasons upon which it is based unless the parties have agreed that no reason is required or the award is pursuant to the settlement between the parties. It is important to note that the Act also makes it mandatory to incorporate the date and the place of the arbitration so that it shall be deemed to have been made at that place. An arbitration clause contemplating an online arbitration must specifically fix the place of arbitration even though the arbitral proceeding would be held online. A section 31(5) state that after the arbitral award is made, a signed copy shall be delivered to each party. The New York Convention on Recognition and Enforcement of Foreign Awards (herein after referred to as “the NYC”) merely requires a party seeking enforcement to furnish the duly authenticated original award or a duly certified copy thereof. It is submitted that electronic documents can be considered „originals within the meaning of the NYC by invoking the doctrine of “functional equivalence”.¹³ Sections 15 of the Information Technology Act, 2000 deals with

¹¹ **A. Vahrenwald, *Out-of-court dispute settlement systems for e-commerce, online*** <http://www.vahrenwald.com/doc/part4.pdf> at 83.).

¹² The decision of Court of Appeal of Paris, 28 October 1997, Société Procédés de préfabrication pour le béton v. Lybie, *Revue de l'arbitrage*, 1998, at 399.

¹³ The “functional equivalent” approach is promoted by the Model Law on Electronic Commerce. See also: *Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce* (New York, 1997) at

secure digital signature. Electronic signatures can provide for both authenticity and integrity (they encrypt the contents of the message in such a way that its content cannot be altered without prior decryption and subsequent re-encryption). They are comparable to handwritten signatures and should carry the same evidential weight. Recognised electronic signatures should not be restricted to digital signature, but extend to all types of procedures used to electronically attach a signature to a document,

Provided they

(a) Identify the user,

(b) Are in the exclusive control of the user and

(c) Encrypt document in such a manner that any subsequent alteration is noticeable.

It can be inferred from the combined reading of Sections 15 and 11 of the Information Technology Act, 2000 that a secure digital signature can be attributed to the originator of such signature. Thus, if an award is digitally signed by the arbitrator then it can be deemed to have been signed by him. Further, if the arbitrators digitally sign the arbitration agreement and the award, the goal of the New York convention appears to be met. Would such a solution be recognized? This poses a double question: first, whether such certification is acceptable; second, who should be capacitated to certify.

The New York convention does not determine the law applicable to certification. This silence is usually interpreted as allowing the enforcing court to apply the law of either the Country of origin of the award or country in which enforcement is sought, at the option of the party seeking enforcement.¹⁴ The issue would be resolved if law of one of these two countries recognizes digital signatures as equivalent to handwritten signatures. In that event the enforcement court should hold that the arbitration and the award are validly certified by way of a digital signature¹⁴ These issues regarding the recognition and enforceability of online arbitral awards can be reduced if the online arbitration clause is drafted meticulously and with due care or if it refers to specialised institutional rules on online arbitration. Indeed the New York Convention is "the single most important pillar on which the edifice of international arbitration rests"¹⁵.

CONCLUSION

The "dematerialised" *arbitration* resulted in the increasing interest in the question of whether an online arbitration is valid within the Indian legal framework. Such evolved mechanism of dispute resolution which is *online arbitration* may run into complications in the application of traditional principles of international commercial arbitration law. An online arbitration is the change in platform rather than in essence.

20 (section 15).

¹⁴ See E. Gaillard and J. Savage (eds), *Fouchard Gaillard Goldman on International Commercial Arbitration* para. 1675; J.F. Poudret and S. Besson, *Droit compare de arbitrage internationa*, para. 920; and A.J. van den Berg, *The New York Convention of 1958*, para. 252-253).

¹⁵ See R. Hill *Online Arbitration: issues and solutions 1999* (published by Kluwer Law International), Pg 222.)

The application or use of online arbitration cannot be restricted merely by formal requirements. Online arbitration is now considered as an acceptable legal mechanism that is hopeful but it must be cautiously handled due to the above mentioned legal uncertainties. It gives a new dimension to the conventional form of Arbitration.¹⁶ Although the initial euphoria has subsided, turnover on the Internet continues to increase. Irrespective of the ups and downs in the global social, political and economic spheres, ODR has a growing role to play. Disputes arising out of large international commercial transactions, which constitute the major part of the traditional arbitration case-load, are unlikely to be referred to ODR.

These disputes will progressively assimilate IT techniques as a means of improving the management of the arbitration, but will never be entirely online. The amounts at stake will not act as an incentive to replace live hearings with e-mails and chat rooms. By contrast, small and medium-sized disputes, including B2B disputes, can very effectively be resolved by way of ODR. There is no reason to restrict ODR to contracts entered into electronically and no reason to limit ODR to disputes submitted to private justice. ‘The true victory of soft law’ is an established fact. There is a general trend in contemporary law, as a reaction to the inefficiencies of traditional justice, to sensitize and educate the present brothers in legal profession to appreciate the pragmatic results of Cyber Arbitration, and lead the law to CYBERIA. Particularly for small and medium enterprises, CYBERIA is a dependable shelter.

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¹⁶ . J. Wetter, “The Present Status of the International Court of Arbitration of the ICC: An Appraisal” (1990) 1 *Amer. Rev. of Int'l Arb.* 91 at 9 (<http://www.odr.info/Re%20greetings.doc>)

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