



INDIA
ADR WEEK
— 2021 —

Session hosted by:
CADRE, CORD & SAMA

Session theme:
**ODR: Bridging Distances for
Dispute Resolution**

Transcription of Proceedings



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Gaurav Sharma: Well, good morning one and all. I welcome all of you to the first session of the finale of the India ADR Week 2021 and boy what a captivating week it has all been. Today I Gaurav Sharma, I am your Master of ceremony and I will be bringing to you this session which is titled Bridging Distance For Dispute Resolution. Now this session is sponsored by CADRE, SAMA and CORD. In this particular session, as one would know, this is an absolutely unprecedented times that we are living in and we have all been challenged on various fronts particularly courts of justice cannot be closed nor could the dispute resolution mechanisms which is why with great pride, I have to introduce all of you to the online resolution revolutionaries who are Kanchan Gupta, she is the co-founder of CADRE. Pranjal Sinha, he is the co-founder of SAMA and Mr. Vikas Mahendra, who is the co-founder of CORD. Lastly and more importantly, I have to introduce Mr. Pramod Rao who is the Group General Council ICICI. Now Mr. Pramod Rao will be the moderator of this particular session and I would encourage all of you to question us as and when you are possibly need and find the need so that we can then answer and address all your queries particularly in the last 15 minutes. So this session would go on from 10 to 11. Even in the meanwhile, if there are any queries that you may have, please feel free to text us in the Q&A section and our panelists will endeavor to respond to you quickly. I now hand it over to Mr. Rao.

Pramod Rao: Thank you. Thank you so much Gaurav and indeed my thanks to both Neeti, Madhukeshwar, the MCIA team that has got us all together in this finale to the India ADR Week. We hope to do justice to the topic which is really bridging distances for dispute resolution and we have three pioneers from the ODR space here, Vikas, Pranjal and Kanchan. Before we sort of dive into the conversation, I thought I will just do a minute of context setting. I think ODR for all its various forms, permutations and so on has been around for at least 20 plus years. It's just that probably in the last one year, we have discovered far more of it because of the COVID situation but also because I think all of us are in some senses searching for means to actually have dispute resolution resolved faster, resolved in an equitable manner, in a fair manner. I think a lot of what you will hear from the pioneers today is going to be how they have both conceived of it, thought of it and what they have brought together and I know there will be issues in any form of dispute resolution platforms that are used, institutions that are used. I am also hoping the conversation today informs us about how these pioneers see those issues and hopefully we will be able to resolve also your queries, clarifications, doubts because it is a nascent area in the country and I am quite looking forward to these conversations. Very quickly, if I can just move around the table in terms of, maybe beginning with Kanchan you first. In terms of that what is it that you see ODR as and certainly that it is seen as

something little more than just providing video conferencing facilities. That over to you Kanchan.

Kanchan Gupta: Thank you so much Pramod. Very good morning to everyone. First of all, a big shout out to MCIA for organizing the India ADR Week and even more so thank you so much for having us new kids on the block, participate amongst so many other august participants that you have already had. So thank you so much. Coming to ODR, the definition lies in the term itself, dispute resolution right. Now getting into a dispute is worrisome enough. The process of resolution should not be painful and that's where I think the genesis of doing something simpler, easier, hassle free, kind of came about and we started CADRE. So ODR, I believe is about bringing dispute resolution to your doorstep, right. So it is online, law is just a framework and technology is the vehicle that carries it forward. We should see ODR as more of solving a social and economical problem versus a legal or a tech problem and that's really the basis of what we think of online dispute resolution as.

Pramod Rao: Thanks. Thanks Kanchan. Pranjal your thoughts on ODR and what it connotes?

Pranjal Sinha: Thank you so much Pramod and thank you again MCIA for hosting us today. I think first of all like ODR owes

like a debt of gratitude to ADR, Alternative Dispute Resolution because in principle, ADR made it acceptable to resolve disputes out of court but ODR at the same level is like an evolutionary leap from what ADR is and like very obviously its fully technology driven. So end to end resolution is online. It's also fully data driven. There is a lot of data which you get when you are running cases on an ODR platform. You can look at patterns and you can actually solve for disputes and actually prevent those disputes from happening in the future again and also at the same time it's you who get access to high quality mediators, arbitrators conciliators across the country. So that pan India access to one litigant in one city is also something which is exceptional component of ODR and talking about video conferencing, I think the 80% of ODR which SAMA does is actually not video conferencing. It is actually a lot of asynchronous conversations, where conciliators speak to the parties and they are able to get proposals and then the other party sits in the evening in response to a proposal. So ODR is as we say evolutionary from what ADR was and is definitely a future of dispute resolution in India.

Pramod Rao: Thanks Pranjali. Vikas your thoughts?

Vikas Mahendra: Echo that has been said both in terms of, thank you to the MCIA and in terms of what ODR is. And just in

terms of what the process itself entails. Like Pranjal was saying, it's like lego blocks, the way we see it, right. ODR is not one framework where everything has to happen. It is what you want to pick and choose and make part of online dispute resolution. The minute you are using technology, the minute you are using an online medium to communicate with the parties, the minute you are using it for storing documents, case documents, etc, you are making it ODR and the greater the use of technology, the more full-fledged the ODR offering is going to be but even if you are using technology to the simple extent of using emails for the purpose of serving copies, that's ODR and I don't think we should take away from it. I think what we are seeing as a shift is embracement of a slightly more holistic concept of ODR where right from the time a dispute arises. Sometimes even before a dispute arises sort of call center level. From that time, till the time you get either a settlement where parties have agreed and walked away from the equation or there is a binding resolution, you are seeing everything end to end being resolved on an online medium. That's where ODR has transformed itself in the last year and a bit. In fact, we are seeing a lot of pioneers even experimenting with automatic dispute resolution where there are not even physical neutrals who are present there. There is a whole host of options that are available, so to straitjacket or bucket them into a definition in my view would be

counterproductive because that would be stifling innovation. What we are doing is only one subset of what ODR can be.

Pramod Rao: Thanks Vikas and I suddenly became conscious that all of you are co-founders of one institution and the other. So maybe a quick roundabout from all of you for our audience as well as to what is it that uniquely probably your institution is doing. I know there will be a lot of commonalities. So probably just calling out a few aspects and Vikas maybe I will start with you and if you can describe it and then we will hand over the baton to the next.

Vikas Mahendra: So CORD is Centre for Online Resolution of Disputes. We are a dispute resolution institution. So we do everything from mediation to arbitration to any modification of that process that parties want. We are like I said, we are lego blocks in the true sense of the term that we offer our offering in a piecemeal fashion. If people want us to simply appoint a neutral, we provide that service. If they want us as a simple virtual hearing room that they use for their arbitration proceedings or for transcription or for witness observers, anything there the various stages in a dispute resolution, I think we will provide those services in a piecemeal fashion if parties so desire it but if parties so desire, we have a platform which is designed to take a case

through the entire lifecycle of it and provide parties the solution that they need.

Pramod Rao: Thanks Vikas. Kanchan?

Kanchan Gupta: Thanks Pramod. CADRE was set up with a mission to democratize dispute resolution and we are built on the principles of user first, usability first and arbitration first. Therefore, we have kept the disputing parties, the arbitrators in the middle of this entire process in the way we thought about how we want to build this and the way our entire system is designed and we focus on arbitrations primarily. We run always on arbitrations and our USP lies in completely eliminating paper and of course if at all, we may need to use paper but we have been strong proponents of the fact that true justice does not need paper. We have been able to build a very good curated capacity of arbitrators by training existing lawyers, non-lawyers, retired professionals, women returning to work, by putting them into a training program which helps them build a progressive mindset, a digital mindset to how to resolve disputes giving them decision-making skills on what to look at disputes and how to come to decisions. So those are the frameworks that we have been training people on and we have had reasonable success with it. Recently, CADRE also launched a SAS platform, a software as a service platform for arbitral institutions, for law firms, for any organization

that wants to run their own dispute resolution platform without having the end to end ecosystem service that we otherwise provide and I think the USP lies in the fact that this is coming from a place of experience, right. So we have built the system. We have run 300 plus claims on this successfully in the last two years and we have taken out all the Kings from it and build a system that is tried and tested and yeah that's what CADRE does. I think that's what required now in the real world as well.

Pramod Rao: A very important takeaways that at least I have. Documents only, the training that you are doing of including people. I will come back to some of these themes a little later Kanchan but over to you Pranjal, if you want to sort of describe SAMA.

Panjal Sinha: Yeah. Thank you Pramod Sir. We started only five years ago with the intention to help people to resolve their disputes collaboratively and efficiently. SAMA is a neutral and independent ODR institution recognized by Ministry of Law and Justice. We have more than two thousand mediators, arbitrators, 1500 case managers in the last one year. So we have handed more than one lakh sixty thousand disputes with a settlement rate of 25 to 30%. It's again, operates at two levels. We have the institution, our own rules and procedures to provide online mediation, online conciliation, only

arbitration services but simultaneously we also offer our platform to legal service authorities and other neutral dispute resolution agencies. Moto has been "Suljhao magar pyar se" and that's what we are committed to. Thank you.

Pramod Rao: Thanks Pranjal. Quite a lot of statistics that I heard there and again we will come back and probably hear some of it. What I wanted to do and especially both my own position as in-house counsel but also several of you are, I know Vikas, he is a part of a law firm as well. If we could hear some of the success stories, some of the things which will warm the hearts of both the community but also probably those sitting in law firms or in-house teams to sort of say yes this will make me embrace ODR. If you would have examples to call out, maybe Pranjal if this one I can ask you to start with and then we will go around.

Pranjal Sinha: Sure. Okay. Let me divide into two parts. First with respect to enterprises. I think so like recently we saw e-commerce cases which were filed by consumers against the entity in consumer forums which has been pending for two to three years for electronic items. The case got resolved through online conciliation in a matter of less than 10 days and then the conciliation award was enforced in that consumer forum and the case was withdrawn by the complainant against the enterprise. I think from an enterprise perspective, they

were doing it because they said that we still care about the customer and that consumer has been against us for the last two years. The consumer was fed up to continue that litigation for two years. When he got a notice from SAMA, to say there is an opportunity to settle that case and these are the kind of waivers, offers you can get and they were able to reach a settlement. I think in a very true sense like this was, today e-commerce companies run on being customer centric. So dispute resolution also need to be customer centric. It makes sense for in-house legal teams to adopt such a customer centric dispute resolution mechanism. Similarly, I think one of the B2B marketplaces we are working with even when they when the pandemic hit, a lot of people were facing troubles due to cash flow crunches in repaying the loan amounts or whatever credit they have taken from the logistic arms etc but again due to online conciliation processes with the help of a neutral conciliator, they were able to reach a common ground which worked for their cashflow situation. At the same time, it was acceptable and within the policies of the enterprise and the customer got retained and when you are taking feedback from the customer, he said it's like SAMA as a godsend. Like we weren't expecting such a thing to happen. So when you hear those things, like it gets validated that it's about thoughtful technology. It's about empowering the litigants, both the enterprises and the customers. I think the third is online Lok Adalat for us also because online Lok Adalats for

us was not just that online dispute resolution works in Tier 1 cities of Delhi, Jaipur or Delhi, Jaipur and Patna but it also works in tribal areas of Churu, Mungair where people were from these tribal areas they were able to come on the platform and they were able to settle their electricity disputes, they were able to settle their insurance claims, they were able to settle their loan disputes, accident insurance claims all through an online platform. Making technology comfortable with people instead of making the person comfortable with technology, I think that was the intent. These are few success stories which really validate and show that ODR can work in India.

Pramod Rao: Thanks Pranjal. Vikas from your both view point, both ends, I know you are a qualified arbitrator as well but more in terms of the institution CORD if you can.

Vikas Mahendra: Yeah. I will share a couple of stories. The first one I think is similar to what Pranjal was saying which is sometimes when clients come to us, one of the difficulties that expressed is that inability to reach out to their customers because a lot of times, they probably had emails sent, they probably had couriers in postal sent which have not been responded to. They simply lost touch with their customers who may eventually come back to them, get their accounts regularized and go ahead and do things. What we have been able

to achieve and that's something that the companies have been really grateful to us for is actually make that connection because we use for instance email, WhatsApp, telephone conversations everything. There is about six modes of communication that we use to reach out to the litigant. That bridge that we help built as part of the services that we offer has been incredibly helpful to people. Just the communication channel has automatically resulted in a lot more settlements than they would have been able to achieve otherwise. That communication channel is one. That is as an institution but as an arbitration service provider, we have had a lot of success with a variety of parties. For instance, we have had mediations conducted where parties were all across the globe, like literally dotted all across the globe. People participating in a video conference platform with a breakout room that they can use with the main hearing room that you can use. All of those things that they were able to access maybe because of the pandemic became the norm. They were actually able to do it with such little cost to the parties that they were incredibly happy about it. Equally we have had situations where we have used our platform for resolving disputes which has nothing to do with India. So we have had one dispute for instance, it's the two Mauritian parties, Mauritian arbitrator who is resolving that dispute showing clearly that boundaries don't matter and the technology that you offer, if you are sticking to your core principles of data privacy, security,

consistency of the quality of information that is there, people will embrace you and people are willing to adopt you. That breaking down of barriers was a huge success story for us which actually made us feel quite happy about things. In this context, I will probably take one of the questions that has been asked also by Ashwin, a dear friend of mine also as to why is it that we can't integrate with existing platforms and that in fact something that we actually do and very consciously do. For instance, if someone says I am more comfortable with zoom and rather than force our video conferencing engine on them, rather than force whatever solution we have on them. Let me say use zoom but you want transcription service providers. We will provide you transcription and we will plug and play because we have identified certain existing popular frameworks which can take our services on board for them. We plug and play the transcription, witness observer services. We provide that support network which would otherwise be available. We work with the people to try and figure out what they are comfortable with and sometimes if they don't want to use a video conferencing and they just want to pick up the phone and speak to people, we do that. We have had our institution have in a conversation over phone where people simply don't want to have access to a video conferencing engine and that has been fine as well. It's about working with each individual, each

case in each situation and trying to adapt ourselves to what is the needs of that community.

Pramod Rao: Wonderfully said Vikas. And Kanchan over to you. Your own experiences, as you said, spending 300 cases in the last two years and I was particularly smiling because it happened during COVID. Really when people had to sort of think of alternative as such.

Kanchan Gupta: Yeah and I think you have given me a nice segue there Pramod when you said that this happened during COVID. So one very heartening instance that I can share in continuation to what you said is that, way back in 2019, when we were reaching out to organizations to adopt ODR platforms or an online arbitration platform, there was a ton of skepticism and apprehension that will this even fly, will this be recognized. We don't know and there was very little uptake really and come COVID and come April, 2020, the same people were coming back saying that okay you know what let's give this a shot. Looks like there is finally some credit to it. So, I think that was very heartening to see all those people who were sitting on the fence to kind of take the plunge and come to the other side of the fence. The couple of incidents that I would like to relate that kind of makes you feel humble and very thankful for what we are doing. During our arbitrator training and empanelment process, we have been because it is virtual and

because it is online because everything can be done from the comfort of your homes or whatever other place you find comfortable. We have been able to reach out to arbitrators across the country across all strata right, so tier two, tier three cities. So, I particularly remember this one thing that a lady she is a lawyer based in a tier two city in Gujarat and she had come to us for being trained and impaneled and when she went through the process and she actually handled the cases, she was in awe saying that at 50 plus you have taught me a new way of working and I am so grateful that I don't know if I would have ever seen something like this in my lifetime. I am very happy to see that all this progress is being made. Being in tier two or tier three cities, we don't even apart from going to court and filing of few papers and coming back, we don't get to see the rest any other part of the world. So that was very heartening and the other thing is we have been fortunate enough to work across different segments right. So starting from e-commerce to housing, to logistics, there was some call center disputes, we have had consumer disputes. Banking and NBFC is really the most common. Given that we have been able to traverse across all those segments, there is one, not one, there have been a few but this is one which was very heartening. We had the respondent based out of the US, right and I think that's where we saw how efficient our platform became. What we like to refer to as always on arbitration, you can put in your response any time, you can file your documents

at any time, you do not need to wait for a time and place to do it. And that I think is so powerful when it comes to online dispute resolution. So given that we started off our initial claimants were mostly organizations, right companies whether it is e-commerce companies or B2B companies, logistics companies and NBFC. To see actually, even though it's a small number of case going in favor of the respondent and for us to get the feedback that initially when I started getting this communication from CADRE and from XYZ company, I thought you were working together against me but we have got the confidence that it is a neutral organization and it is not working in favor of anyone but working the term they used was working towards resolving disputes and I think these are things that make it worth every challenge, every trial that we go through during this process and most importantly this pandemic has given a lot of people, while it has given an uptake to a lot of people, it has also given a downslide to some. People have lost jobs, they have lost pays and we are proud and yet very humbly say that in about six months of time, we were able to see money exchange hands between parties. We were able to disburse more than four hundred thousand INR fee in arbitrator fees in a period of six months and I think that kind of humbles us and makes us feel proud at the same time. So yeah, all of this makes it just worth everything that everything else that we go through.

Pramod Rao: Quite so Kanchan and I think you all have reasons to be proud of having and that's why the topic also sort of resonates with me bridging distances. You were saying, Vikas said around the globe. You are saying across in the US and Pranjal talking about even the hinterlands of Rajasthan. So to me, I think indeed the potential of this platform and the technology is really marvelous. To me just for the benefit of the audience, again Niti Ayog has become a big proponent and supporter of ODR. We had Justice Sikri who chaired the committee and the title itself of the report, Future of dispute resolution is ODR, I think is one of the biggest endorsements that I have seen come from the policymakers. Very quickly and probably again with how the law also keeps changing, right. I wanted Vikas to begin with you in terms of both talking about the moving finger of Supreme Court pronouncements, decisions, have they been good, bad, how have they impacted the ODR institutions? and similarly, if there are any changes in law that have been either supportive, retractive. So over to you.

Vikas Mahendra: Thanks Pramod. There has actually been a mixed bag there in terms of laws and how the courts have interpreted. I will talk the positive first and maybe next the negatives. The first one is on the support for institutional arbitration which has come from the legislature without mixed signals there. There has been a clear law commission report

followed by an amendment to a legislation, followed by MCIA is a big beneficiary of that also and a proud beneficiary where the Supreme Court's appointed the MCIA as the appointing authority in a number of arbitrations. That is great testament to the fact that as a country we are moving towards recognizing institutions which can help people resolve disputes and therefore assisting the court system in solving some of the backlogs. So that has been the biggest positive so far as I can see from the legislative side. On the sort of flip side are couple of judgments which I would like to point out. One of them is Vidya Drolia where unfortunately they suddenly say that any dispute that can go to a DRT is no longer capable of being arbitrated which goes against the grain of a number of earlier judgments where parties had the option to choose. So a bank for instance, could choose whether to go to the DRT or to go to arbitration but now with one clean swipe Vidya Drolia has made it impermissible for banks to do that. So that's taken us a few steps back because if you look at actually the arbitration landscape in India. What people see in your courts, what people see in your journal articles is 0.01% of the number of arbitrations that happened in India. The 99.99% of the arbitrations are actually done behind the background by mostly your banks and non-banking financial institutions, your lending institutions and even a number of government agencies and all of those are no longer. Firstly, they are not recognized and the Supreme Court with

one clean swipe has done away with a number of them as being non-arbitrable. I think that's one thing that's certainly pinching a lot of the institutions which will hopefully go back. The other one is on this appointment, a unilateral appointment of arbitrators which is probably a mixed blessing. I don't know if it's positive or negative but hopefully there would be some clarity on it which is the Perkins Eastman judgment where we know a number of contracts in India, Government contracts, private contracts included and in fact if you look at a lot of your like Vakil search, right, if you look at their standard form contracts, they have unilateral appointment clauses because that was the norm. If you look at India, about 90% of the contracts have unilateral appointment of arbitrators. Now, suddenly all of them have gone vanished because Perkins Eastman which say that it's no longer a valid practice. Now that might be a blessing in disguise because what it might be is, it might empower institutions to make that appointment on behalf of parties but some certification there would be helpful. But as things stand that's again one of those judgments which has been a little bit a stumbling block for the ODR institutions because the number of contracts at least we see are contracts where there is a unilateral appointment of arbitrator clause. There is still some uncertainty as to whether it is enforceable what's going to happen in the future et cetera, so it's a little bit of a question mark but maybe at sandwich this with some good news

is so far as online hearings are concerned, there has definitely been a positive uptake. There is in fact an Andhra Pradesh High Court Judgment where an International Chamber of Commerce award which was done entirely online was enforced and security granted, so recognizing that courts also don't see physical hearings as being necessary anymore. That way it has been a bit of a mixed bag but hopefully over time we will all turn towards the positive.

Pramod Rao: Thanks Vikas. Pranjal, Kanchan anything to add to Vikas's outline of both the mixed bag that law and Supreme Court decisions have been?

Kanchan Gupta: I just have something very small to add. I am not a lawyer but in the overall scheme of things I think whatever is coming has been very helpful. If not today, maybe tomorrow things will kind of get better and there will be more in terms of such judgments which aid in making dispute resolution accessible to everyone. As an entrepreneur and a business owner we just need to keep working with what we have and then just keep moving on making that dent.

Pramod Rao: Quite right said Kanchan and to me the point Vikas made about Perkins Eastman, I guess before Perkins Eastman we all looked at it as that once the person is appointed as an arbitrator he has to function neutrally. It really doesn't

make a difference in terms of who appointed and so on. If the law will change, thanks to the Supreme Court pronouncement in saying that since the person appointing is also a party to the dispute is why it should be taken out. I guess some of these we will continue to see as to how both the law continues to evolve. Pranjal you have something to add. Yeah. Please go ahead.

Pranjal Sinha: I think two aspects. I think recently there was a Supreme Court Judgment, Justice saran, I believe they have said that if you are settling matters through private mediation, you can still recover the court fees. I think that helped us in making the case to enterprises that not just your pre-litigation cases but even your post litigation cases you can try to settle it outside court. That judgment sort of gave a push for that. I think secondly, I think big credit to the work being done by Niti Ayog and Agami and pushing for the ODR ecosystem in India. Hat's off to them, I think they have played a major role in creating that level of awareness and we are having a hand book launch. Supremely exciting.

Pramod Rao: Quite so Pranjal.

Vikas Mahendra: There is just one more point that I wanted to mention which I missed out was the Ministry of Law and Justice initiative to recognize ODR institutions. Now we have seen a

lot of reports but what is also come in that there has been some concrete action taken on the basis of those reports. So where the Ministry of Law and Justice invited all of us to say what are you guys doing and that's recognition from the government levels which is very encouraging because obviously once there is a list put out, hopefully soon and that list recognizes the ODR players as a distinct actor recognizes as valid actors in this ecosystem that will give a huge boost. I think that's also something that's worth specifically highlighting when we talk about laws.

Pramod Rao: We should. I quite both while I called out Niti Ayog, I think indeed the embrace from the ministries as you said has been great. The Supreme Court justices, several of the High Court justices, I think they have equally been big supporters and proponents of ODR and to me that is where you know at some level the naysayers. I have ended up hearing sound bites from both law firms who end up telling their clients hold on or hold off. So, that's one part. The other is to saying and indeed some folks have told me when we use zoom or we use WebEx and isn't that ODR, to do connect their arbitrators or the neutrals on the platform. How would you respond to that? Maybe Vikas first with you and then around the table.

Vikas Mahendra: I would say that is ODR but is that enough of what can make out the system is the question, right. So if you want to just fall for the purpose of a checkbox, if you want to say I am using zoom, therefore I am doing ODR, fine. I mean, I don't know what that achieves but are you realizing the full potential. I think the answer is no because if you look at it, even the courts are doing significantly better than that. Look at the e-filing system that the Supreme Court themselves have launched. If in a court system where across India, across the diversity, the district courts, the complexities of the matters you are able to file things online, why can't you do that in an ODR setup? If you are filing it online, why is it that you can't have a repository online? Why can't you have a properly searchable format? If you are not able to do all of that, why can't you use it to serve people? If you are able to serve people, why can't you use that online record as an evidentiary chain for the purpose of any subsequent proceedings? So it's all small logical steps that will follow and if you take it then you will come to the conclusion that maybe this video conferencing is a small part of it. It is a part, maybe if you are doing, it is ODR in some senses but it's certainly not realising its full potential.

Pramod Rao: Quite so and again I saw one of the questions, so let me try and tackle that. Why I keep bringing up law firms, is that law firms end up advising the host of clients and to

me as many clients that they recommend the ODR institution to the use or harnessing of it for dispute resolution is much more flip I believe to do the ODR systems. Again, it is Justice DY Chandrachud who actually said that we have to start thinking of justice as a service. That it can't be just seen as merely resolving disputes but in fact rendering justice is what ODR institutions also enable. I think that's the real beneficiary or the boon to the society as well. Pranjal would you like to sort of have anything to say to those who are fence setters thinking about why should they embrace ODR?

Pranjal Sinha: Right. So that's what. I think a lot has changed in the last one year. Like not to cheer leader on the pandemic but it has really pushed. I know there is enough data for you to see that these are the number of cases referred. These are the number of cases settled. Out of the cases settled, this is the compliance rate of the conciliation award and arbitration awards. Don't go by what we are trying to sell you. Look at the data and you can make a much more informed call and yes video conferencing is there but I think ODR is like a business intelligence decision. It's a smart business decision to make because you can solve a dispute. You can ensure that fewer disputes happen in the future. It's very important that law firms and lawyers look at it in that manner like law firms while they are advising their clients and also lawyers started looking at it more from a supplier perspective

also. They can also become mediators, conciliators, arbitrators and meet the demands of the enterprises or the people who want ODR services.

Pramod Rao: Thanks Pranjal and indeed that's something Kanchan had touched upon. I think some bit of interest that I can see in the questions as well that is that given that our number of people who graduate as lawyers but equally those outside of the legal field too who can train up to be neutrals, who can participate in this ODR systems. I think each of you has something going on in that space, right. So maybe Kanchan if you want to again elaborate for the benefit of audience and for us to amplify thereafter.

Kanchan Gupta: Right. So completely agreed Pramod and I think when I entered as a non-lawyer, started working on CADRE about two and a half years back. I saw that mostly whatever existing arbitrators were there either lawyers or judges and when I started reading up on the Act, I realized that there was no such requirement. It is about having the right moral compass. It is about having sufficient worldly knowledge of how things work and having the soft skills of people management and decision-making skills, right. Judgment and decision that's what you need. It's actually more common sense than anything else. Therefore, we did, we set up two training programs, a digital arbitrator program for lawyers and become an

arbitrator program for non-lawyers. Right. So both of these programs have seen a good amount of uptake. We have had on our arbitrator panel, we have CAs, we have teachers, retired school principal, we have ex-CXOs, right, CFOs and CEOs who have kind of now call it quits with their full-time and this is something they are happy to kind of add to towards their second half and banking professionals, retired banking professionals. These are people who have trained with us and continued to be part of our arbitrator panel and I think that's the way to grow this, to grow the breadth and the depth on this capacity building and there is enough and more to be tapped. There is enough and more out there in our country to be tapped when it comes to skills and capacity.

Pramod Rao: Thanks Kanchan. Pranjal?

Pranjal Sinha: Right. I think I agree. Again, I agree what Kanchan says. So capacity for an ODR service provider is a challenge even I think when we are able to say that we have 1500 mediators, arbitrators or 1500 case managers, I think there is still a challenge with respect to quality of them and I think there is a tendency to keep going back to those 50-60 mediators, arbitrators who we know they have proven themselves. So we also don't want to risk it and the cases keep going to them but the challenge for them, it becomes that they really have to recontextualize because they are handling

one use case for seven days and then immediately next week, there is another use case and there is another set of people. Another enterprise another set of customers to coordinate with. We see that it becomes challenging for the same person to continuously work on multiple use case in the same period of time. I think that recontextualizing is important for us to provide those trainings or maybe have subject matter expert panel of different mediators, different arbitrators so that whenever different use case comes we can accordingly appoint neutrals to deal with. But again saying that I think it's a brilliant career, so even for a lot of law students and young lawyers to be attending this program. There is a great opportunity to make a career in the field of dispute resolution. You can start as a case manager, you can start as a shadow mediator, shadow arbitrator, work yourself, work your cases, do 10-20 cases, get good feedback from the parties. Then start doing co-mediation, co-conciliation, get good feedback from the co-mediator, then become a full-time mediator, conciliator on the platform. We have also seen like conciliators, mediators making above one lakh in a period of one month. So this is not a pro-bono profession anymore. This is not an evening activity to do. This is not something to do on Saturday, Sundays. You can really think of this as a full-time profession. So that's all I want to say.

Pramod Rao: Thanks Pranjali. Vikas?

Vikas Mahendra: I think both of them have hit the nail on the head in terms of one what is the offering and second what are the skills necessary. But I think I just want to take a step back and tell people what really is the demand, right and people may not appreciate it. One single entity, if you take a non-banking financial type of entity, one single entity churns out in the region of about 5,000 to 6,000 disputes a year and you are talking about one entity, you extrapolate that you are talking about hundreds of thousands of disputes which are there which need dispute resolution professionals, which needs quality dispute resolution professionals who can do the job. The kind of up-scaling that they are talking about is not one seminar where we do it for 20 people and that's done because we have our arbitrators, we have mediators. It's a constant journey. It's a constant process like Panjal was saying quality becomes an issue. You want to bring out core quality. You want to ensure that you keep good people there, remunerate them well. These are all huge challenges that ODR institutions are facing but that's also an opportunity for a number of younger professionals especially you are looking at the number of law schools across the country, the number of lawyers they are churning out. The kind of salaries that younger junior lawyers earn is abysmal. It is truly worth considering other professions and being a dispute resolution professional for plain vanilla simple disputes to start with and then like

Pranjal says make your way upto more complex one. It's a fantastic opportunity that's available.

Pramod Rao: I quite agree and I would supplement with two sort of statistics which keep on striking me. I think one is that we graduate almost one lakh law students every year in this country. To me, where do they find employment? Where does they actually go and practice? I think ODR institution offers at least quite a lot to many of them becoming a dispute resolution professional. I think the other more striking factors that the Indian judiciary, top to bottom Supreme Court right up to the Sub-Courts have a sanctioned strength of probably 25,000 judges and right now we have about 17,000 judges in office, right. That gap itself reflects up in the pendency and the burden that the judiciary carries but to me equally the statistics that Vikas was narrating, the kind of volume of cases that is already there and the pent up sort of thing which the ODR institutions can address, then requirement of dispute resolution professions in my view will be in lakhs to be able to cope with those volumes and really that I think is real sort of opportunity ahead. What I can see and which I am very conscious of we have lots of questions flying in and I think that speaks to the success of at least the first 40 minutes that we have spent. Maybe if I can just pick up some of those questions and pose them as we go along. So the first question which I am picking from the open questions here is,

how do we make ODR platforms accessible to people with visual impairment, colour-blindness and so on. Anybody who wants to sort of raise your hand on this. Yeah Vikas, please go for it.

Vikas Mahendra: I am not going to say that we have experience of assisting people but I am just going to say that we are working towards making it as inclusive as possible. That's why when we talk about multimodal communications, that's when it comes in. For instance, one of the things that we use is the telephone, the good old telephone. An audio call can actually make a significant difference, not only for visual impairment, but also for illiterate people. There you are bridging that technology gap in a significantly more forward-looking manner than most other institutions offer. Is that a full solution? No, because you still talking about your notice of arbitration going out in written texts etc, but we are making some efforts to try and address that issue. Hopefully we will get to a point in time where we have an app which will speak out and read out aloud what is there in the contents of things etc. We are not there yet but those are some of the options that can be used but talking about accessibility which is I think another theme when one of the other questions is languages and other accessibility barrier which exists, not in high value disputes. In high value disputes everyone speaks English but when you are talking about taking it regional, taking it to different parts of the world, people don't understand what it

is that we are trying to do. What we are consciously trying to do is have case managers who can speak the local language. We are trying to have even your written texts that is sent to them in the vernacular language in addition to what is there in English. That way institutions are not acting as on behalf of entrepreneurs. We are genuinely trying to bridge this knowledge gap, bridge the literacy gap to ensure that justice is truly affordable and accessible.

Pramod Rao: Thanks Vikas. I can see another question which is in terms of while forming rules what conventions or sets of laws have you sort of reference? So maybe Pranjal, if you want to answer that.

Pranjal Sinha: So, we have two sets of rules which have come out. We try to revamp our rules according to the latest judgments. We have 2019-20 set of rules and we have come up with modified rules of 2021. One is we definitely fully in consonance with the Arbitration Conciliation Act, all the amendments till 2020 and then we also look at international standards which have been given for ODR platforms. I think the ICODR international standards on online dispute resolution which have been given ICODR is some of the guiding, even when we tried to make our rules in consonance with that, it talks about confidentiality, it talks about neutrality, competency

of the neutrals, all those things we make sure it's integrated in our rules and procedures.

Pramod Rao: Thanks Pranjal. Kanchan would you want to supplement or add anything to that?

Kanchan Gupta: No, I think I echo what Pranjal said, I just want to add one thing to your previous question Pramod, if I may about making it accessible for differently abled people and I think Vikas kind of said it very succinctly when he said that while there are a lot of it is as of date we may not have like the most comprehensive solution but there are definitely big leaps being made in that direction for something as simple as we work in 10 languages as of today, our platform works in 10 Indian languages. You know, we have IVR based notices. So, somebody gets a phone call and they have the ability to just hear and respond to a well-crafted IVR saying that what they can do in there in the language of their choice. I think, that is where we believe will be breaking barriers to saying that you don't need to know English or only Hindi to come and be able to resolve a dispute. Dispute can be resolved at your house in your language at your convenience. I think that is the most important.

Pramod Rao: I think. Thanks Kanchan. Sorry. I was just about to just add. I think for the three institutions that are here

but also those that are outside. I think that technology is a great leveller. You should take it indeed into the disabled category as well for people being inclusively enabled to participate and to me ODR is exactly that. For instance, I heard somebody talk about asynchronous or being able to look at documents only. To meet the challenge would be that can you for instance do it as voice calls. Do you necessarily need to do video and voice in a way transcends quite a lot of language barrier which written communications might sort of have. Similarly, being able to sort of offer choices which people might not have even heard of or understood and probably coming out with those. I think those become really the mechanisms but very quickly moving to a few more questions. There is one question which goes to the heart of what I guess are issues for enterprises maybe. So here's the question. What are the issues of cost effectiveness, flexibility and convenience that the ODR institutions bring and how do you sort of balance it out with the rules of fairness and neutrality? So maybe Vikas you want to go at it first.

Vikas Mahendra: That is a loaded question and I think it's a very very important one. I will talk about two kinds of disputes and will answer them. Let's talk about high value complex disputes, the amount of efficiency that we can bring in is enormous, percentage wise, absolute numbers wise is enormous. For instance, you are talking about high value

complex disputes, let's take transcription as an example, right. If you take a high value complex dispute which is currently to be transcribed in India, there are no transcription providers in India. You fly someone from a Dubai or a London or a Singapore. You make them stay in five-star hotels. That person comes charges whatever \$200 an hour to do whatever they are doing. It is ridiculously expensive. That is being bridged by technology by making it significantly more accessible to the more complex areas disputes, just by service providers who provide that service to people including the same category of disputes appointment of arbitrators etc which and there again we are doing it at a more accessible, affordable prices simply because people need that service and their questions of neutrality simply don't arise because you are doing it at a kind of level as a third party service provider so issues of those don't arise. Those issues certainly arise when you are talking about low value disputes. When you are talking about high volume disputes, there for instance, invariably the person who is giving you the cases is likely to be an enterprise because your contractual clauses for CORD or CADRE or SAMA have not percolated down to a level where disputes are being churned out of institutional rules. So you are referring cases which an enterprise is referring to you. There it is extremely important to tow the line very carefully to maintain that independence and neutrality. I think there is a number of ways of doing it. One is to ensure

that your financial incentives are not aligned with the outcome of the dispute, that I think is a crucial barrier which has to be clearly spelled out to parties to ensure that they have that sense of feeling. Second one is all of the things we are talking about is accessibility. It's a perception issue. If you communicate to people. I think in one of the examples that Kanchan gave where the respondent one, it's a huge kind of a milestone in that institutions journey where if a person feels that I am not acting against the service provider and the enterprise but I am actually using the service provider to achieve justice that is a huge milestone. That can only be done through a number of ways of making a party feel that we are enabling it and that I don't want to go into specific examples of how one or the other institution does it but I think overall that's how you need to achieve.

Pramod Rao: Thanks Vikas. I can see still many very number of interesting questions. For instance, here's one. Would you say the use of ODR system has created a preference for India being chosen as a preferred seat of arbitration? I know we have MCIA which is sort of our flag bearer but for ODR institutions, do you think you have made a headway there?

Vikas Mahendra: Sorry. I seem to be hearing myself speak quite a lot but I will keep this short. I don't think it's a factor

of an institution, it's a factor of the judicial system, it's a factor of laws. Indian judiciary has made huge strides in the last 10-15 years to make it more attractive as a destination. I don't think we are there yet. We still are in a situation where foreign arbitration for international arbitrations parties don't want to choose India because they don't see it as a sufficiently neutral enough forum. They still feel that there is a lot of judicial intervention etc that is being addressed to a great extent by the judiciary trying to limit it. But Parties still prefer foreign seats if there is an international element to it. Again, I just want to say we might be missing a whole host of domestic disputes that India is an inevitable arbitration seat for when we are answering those questions because frankly the number of Indian arbitrations that are there in the millions. To focus on this 10 or 20 or 30 cases of international arbitration that will come and seat themselves here, I don't know if you are missing the wood for the trees there.

Pramod Rao: Fair enough. Fair enough Vikas. Just for the benefit of the audience, I wanted to just add that, I think there is a great sort of opportunity even there in terms of especially the cross border services or businesses that are carried on from India to have ODR as the means of dispute resolution. Again, when you think about it, they might be multi parties located in different jurisdictions. For me, for

instance, as a bank, we end up providing services to NRIs, would we want dispute resolution to be centred in India because this is where our seat, this is where actually the product or service is getting delivered. I would say yes and in that sense having ODR which is anchored in India would probably make a lot of sense. There is another loaded question and please don't be shy at all. The question is what's the highest value of dispute which has been handed over ODR institution platform. So whichever of you feels comfortable sharing the highest possible number, please feel free.

Pranjal Sinha: Right. I think two examples here. One is when SAMA as a platform to a Lok Adalat where we saw an insurance claim worth 82 lakhs being dealt with and one is being seen a home finance, housing finance case of 1.8 crore being coming on the platform. I think these are the two high state matters but they are not the norm, they are the exception. The general cases, the general value of claim has been under 15 lakhs.

Vikas Mahendra: Yeah. So Pramod so far as call is concerned. That's why this question for me is a little unclear because are you asking me as an institution or are you asking me as a service provider? Because we do both. As a service provider, the highest value of the dispute that has been handled is in the hundreds of crores for us because we have done mediations and arbitrations of very high value including one of an

arbitral tribunal president sitting in Hong Kong parties in Bangladesh and India. That's just as a service provider. As an institution, what Pranjal is saying is correct. It depends on your sector. So if you are looking at, say for instance, housing properties or loan against mortgage kind of situations, you are looking at a few crores. We have had as an institution being used for two, three, five crores to resolve those disputes quite regularly but when it comes to, let's say your e-commerce people or when you come to lease disputes, the value tends to be much smaller, but the cost efficiencies are still there irrespective of whether we are talking about a few lakhs or whether we are talking about a few crores or a few hundred crores, the cost efficiency is obviously there.

Pramod Rao: And very quickly to supplement. Vikas you had mentioned about automated ODR and to me really those are even resolving disputes of a few hundred rupees to a few thousand. So, I think the potential as you said is immense and we shouldn't get constrained by thinking in value terms. I posed it because it was posed by one of our audience. I just now want to ask MCIA, there are still a few questions out there. Yeah Kanchan please.

Kanchan Gupta: If I may just quickly take a few seconds to add to that. I think an interesting question in the framework of ODR or ADR generally would also be that what is the lowest

value dispute you have handled. I think highest, we all know they go to arbitral institutions. At Cadre considering that we specialize in the low value, high volume kind of dispute category. We have handled cases in the range of 500 rupees. Right. Five hundred rupees, thousand rupees, seven hundred rupees we have got. We have been able to handle disputes at that level. I think that is where the power of ODR comes at. Even for such small, you don't find it an overkill to do dispute resolution and before ODR it would be an overkill, right. Think hai you know for five hundred rupees where am I going to go breaking my head with courts, lawyers or hearings and all of that. With online platforms, with fast processes, with easy processes, you are able to solve all of this in days at a fraction of a cost and I think that's what that I would like to add. Yeah.

Pramod Rao: Thanks Kanchan. I think I will pick up couple of more questions from what is posted in the Q&A. One is with government being a major litigant, the curiosity is around where the government bodies from central, state, local whether on property tax, electricity matters have been able to engage on this platform and what's the experience of SAMA, CADRE and CORD on that? So Pranjal do you want to go at it first?

Pranjal Sinha: Right. So again a few aspects here like one is the state legal services authority is trying to use again as a

platform SAMA to host online Lok Adalats and that happened like we saw it with five States which is Delhi, Rajasthan, Gujarat, Kerala and Bihar and hopefully now as we are shifting back to the pandemic, I think most States will start bringing it up again. That was one. We see like this there is a technology onto the West Bengal Government which is trying to use for their electricity disputes. Even the notification which Vikas is talking, about the notification which came in 2017 Ministry of Law and Justice. It was actually a push to the government departments like that notification was specifically saying to government departments telling them that here look at this there are 10 institutions if you have disputes, make use of them to settle disputes. It gave us legitimacy but that notification as such was not used, maybe did not get any uptake of cases from the government departments post that. But again, another example is the MSME payments portal which is the Samadhan Portal where any payment disputes with respect to MSME, it's not fully ODR but payment disputes can be handled. So the MSME model. So there are some examples of governments trying to adopt online dispute resolution.

Pramod Rao: Thanks Pranjal. We are probably going to be little overtime but I will probably just ask one more question which is really around the theme of that we talked probably, maybe to this focused on how the neutrals, the dispute resolution

professionals themselves is an opportunity. The question is that is the need of our focusing on that versus focusing on the benefits that ODR institutions can give. Very quick action that I wanted to offer is that I think it's a bit of both. I think there needs to be that the institutions have to get fostered, get supported by enterprises, by consumers who can avail of their services but equally those who provide that service, it's not the institutions themselves but it is those dispute resolution professionals. I think we need to excite them, interest them and get them into this as much as the people who will choose to get their disputes resolved. So I think it takes both. I don't know if that answers the question which was sort of post there. Very quickly, there is a question around if unless digital payments are automated and integrated, none of the ODR references would qualify as an IST, how will ODR rules mold to Arbitration Act in relevant judgments? Vikas I will need to refer to you. I am not even sure what ISD means but if you can just tackle that.

Vikas Mahendra: Sorry. To be perfectly honest, I don't quite fully understand that either but when you are talking about trying to take payment gateway systems and integrating them at ODR, there are two ways in which that might play out right. First one is to pay the fees of the ODR institution itself, pay the fees of dispute resolution. That's one way of looking at it. The other way of looking at it is the end to end

resolution where enforcement also happens on the platform. For instance, there is an award that is rendered or the settlement entered into and you allow a digital payment gateway there so that payment can be made, received at the same point in time etc. Both of those are laudable goals and objectives. The first probably most institutions have already tried to achieve that by allowing payments to be made onto their own systems. The second, there are some which have done it but it's still a work in progress for a few others but I certainly think that it would be necessary in the eventual goal of trying to make ODR a self-sustained institution. So enforcement is one bit that in one hour that we have talked about. We have not really touched upon because that is still has to go back to court but if there is some way we can pull it into the ecosystem, if there is some way that we can make that also happen here, it will be a phenomenal boost to ODR but that's not yet happened to the scales that we want it to.

Pramod Rao: Thanks Vikas. Again being conscious of time, I will just move around the room maybe starting with you, Kanchan as to what is the one change that you want to see for fostering ODR for it going deeper?

Kanchan Gupta: Right. I think all disputes where the government is a party, they should all go on ODR. That is one big change I would like. I think in terms of awareness, in

terms of reach out, nothing can define the arriving of ODR more than that. The second thing I want to add is that while it's a slight corollary to the question Pramod is that we have seen in my various conversations with people I have done over a hundred, more than perhaps a hundred, I don't know I have lost count now sales calls. So, we have seen collections teams, we have seen operations teams, finance teams, embrace ODR with open arms. The one skeptical person in the room is always from the legal team. We are thankful to the 14 or odd organizations who have taken the plunge and come join us with ODR but there are 28 others who are still skeptical. I believe that law is the one that changes that law is the one that brings about change and change brings about law. It is a humble request to all lawyers to embrace this with open arms. So those are the things.

Pramod Rao: Thanks Kanchan. Well said. Well said. Pranjal?

Pranjal Sinha: So I will keep it short. Two things. I think one is that, as Vikas said, if we can do something about enforcement. I believe our responsibility is like a case is dispute is not solved just because an award came or a conciliation award is issued. There is post settlement requirements which need to take place so that parties can actually get the benefits. There is some kind of enforcement solution we can figure out in respect to ODR that will be

helpful. Second is I think there is a challenge we face in respect of e-signing. The enterprise can e-sign, the arbitrators, conciliators can e-sign but the consumer genuinely depending on the demographics of the enterprise we are serving, they are not always from the tech-savvy demographics and they are not really comfortable with the e-signing. They will follow the settlement terms but they will not e-sign. So that then becomes like a challenge and I think we are still trying to figure out how to seamlessly integrate the e-signing into these various use cases from the general public perspective.

Pramod Rao: Thanks Pranjali. Vikas?

Vikas Mahendra: I have said quite a lot of what I wanted to already. Just to going ahead. I think it's about being open. I think that's the one message that I would want us to take forward which is be open to use technology. Don't be averse to the idea. We use technology in every single realm of our lives. Our smart phone is now an integral portion of what we do. It really is beyond me why people are hesitant to do it in the dispute resolution realm where the stakes are so high, where an accessibility is that much more important. I think it's just about being open and being willing to accept some change in your lives.

Pramod Rao: Well said. Well said Vikas. I think whether it is the march of the law which is about change whether it is about technology that has become a great enabler across spaces. The couple of things that I wanted to sort of just highlight for everybody. I talked about how the policymakers have sort of ODR has captured their imagination. I think, the judiciary is supportive, endorsing, in fact Pranjal mentioned it but just for the benefit of the audience. This afternoon, we will be having a session where Niti Ayog along with the Agami and ONI are releasing the handbook on ODR giving the several illustrations and examples of how enterprises, how civil society organizations have embraced ODR and I would really commend it to all of you. I think there are enough and more practitioners. There are institutions as the three of which are on this panel. To me, each of that should be capitalized on. There is nothing to lose but really all of what we confront as a society, what our judiciary confronts, I have heard it being said that if no new cases are locked to the judiciary, it would take 300 years for disposal of every case that is already there. To me, ODR institutions can supplement that whether it is taking out matters that are already pending or diverting those that are fresh matters which might go into the judiciary and yes challenges of neutrality, challenges of making sure that there are qualified neutrals on these platforms and indeed that the judgments get enforced, the awards and the orders get enforced as they do in the judiciary

would be the critical aspects. With that, it's been a great one hour plus session. We have had lots of questions pouring in. I know a few unanswered but maybe you can continue the conversations with the three institutions. I will request each of them to just put up their website or contact links and in the meantime hand over to Gaurav. Gaurav thank you so much for the patience.

Gaurav Sharma: Not at all. In the same way I would like to thank all the learned panelists for their thought-provoking discussions and great insights and Mr. Rao particularly for bringing out such a stimulating and engaging discussion on the issue of bridging distance for dispute resolution. I am confident that after hearing this session all the stakeholders we will definitely appreciate that the online dispute resolution platforms are a necessary paradigm shift and the need of the hour. I also thank all the attendees for the overwhelming response and interesting questions that have been posted to all our panelists who have really endeavor to address as many as they could within the timeframe that we had to do and making this session really productive and a success. I would like to inform all the attendees that this session has been recorded as also will be transcribed and all your friends, colleagues and acquaintances can very well view this session on the MCIA website and on YouTube. And on this note, I would also like to inform that we will now be continuing

with the next session at 12 o'clock which will be on war stories and lessons from virtual hearing in 2020. On that note, I would like to thank everyone. I hope everyone stays safe and everyone takes care.