



Resolving Disputes via Technology: A Challenge to Social Interaction

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Abstract: Alternate Dispute Resolution has always proved to be an effective method of resolving conflicting interests between the parties. With the advent of Information and communication technology, the trend of Virtual Dispute Resolution is beginning. Technology has done wonders and we have been able to start virtual society parallel to real society. Technology has touched every facet of life and law is not an exception to it. From real meetings of Arbitrators with their parties, the trend is resolution via email or chat rooms. It seems interesting but it poses questions as to how far the text based communications are appropriate in resolving disputes? The paper addresses this important observation and concludes that the trend of online Dispute resolution is a threat to our social and legal system as human beings are replaced with the electronic tool (digital technology).

Keywords: Online Dispute; Real Society; Virtual Society.

Introduction: Alternative Dispute Resolution Movement has become a need of the world today, specially looking at the interests of the parties. There is no disagreement that courts today are over burdened and most of the cases are in fructuous. The trust of the community in the legislative system to provide timely justice is questionable. Courts have become helpless in rendering timely services due to lengthy procedures. Amidst this darkness, the ray of hope is shown by Alternative Dispute Resolution (hereinafter ADR) mechanism. The aim of ADR is to provide procedural flexibility in order to save time and money, avoiding conventional trial. Progressing further, the advent of Internet has given a new dimension to the conventional ADR system. Unarguably, Information and Communication Technology is an extremely smart medium of 21st century, has revolutionized many areas of human life. It has the potential to fulfill many functions and as a common source of information, it has taken every social activity of human life in its fold. The formidable presence of computer on every office table shows the expansion of this technology and its implications (positive and negative) are worth debating. The global character of ICT has changed the way we work and has transformed the way we access information. The shift from Real shopping to online shopping; Real meetings to video conferencing; Real telephoning to text based communication; Real facial gestures to emoticons; real trading to online trading; real marriages to online marriage; Real dating to online dating; Real society to Virtual society is very exciting. The Virtual society has functions just like real society, rather more powerful than Real, so one may forget what is actually Real (Real society or Virtual Society). This is one of the characteristics of Postmodern society, copy looks more real than the real; virtual society is getting exciting than the real one. Virtual society is powerful as one possesses multiple individual identities and spaces (email accounts, facebook wall, twitter accounts, Instagram posts, etc.) which is not possible in the Real society. One might not have a house in real society but one has a space in the real society. With such interesting and exciting features of Virtual society that even one of the pillars of our legal system i.e. Judiciary is in its fold. The way disputes are resolved between parties is both interesting and alarming. Undoubtedly, the entire legal and justice system has to be party friendly (to both the parties), at the same time, there is a need

to ponder whether the convenience in the technological society is appropriate? In the wake of solving disputes, are we challenging the very basic nature of social interaction?

There is a need to understand the procedure of ODR.

1. **Online Dispute Resolution:** Online Dispute Resolution is an extension of alternative methods for dispute resolution. Abdel Wahab et.al (2012) mentioned that the term Online Dispute Resolution covers wide range of disputes both partially or fully settled via the internet, these were initiated in cyberspace but with an offline source . Online dispute Resolution (hereinafter ODR) is also known as eADR, oADR, iDR. The website generally offers the services functions like Arbitral Centre. The claimant sends email to the centre with necessary information about the respondent. The centre appoints an arbitrator and forward the claimant's request to him. Thereafter the arbitrator takes over and sends the mail to the respondent. The chain of correspondence is decided and arbitrator decides the final award. All is done in virtual setting without any face to face meeting with parties and arbitrator.
 - 1.1 **Similarity between ADR and ODR:** Where technology has changed the ways we interact, one aspect remains same in ADR and ODR i.e. the presence of third party. One finds the presence of third party is unchanged in both the real and virtual mechanisms. Here, the third party is a virtual firm (service provider) providing services of dispute resolution and reaching to a point where both parties agree.
 - 1.2 **Entry of 4th Party:** Difference between ADR and ODR is the presence of 4th party. The uniqueness of the 4th party is that it is 'technology'. This technology, popularly known as Information and Communication technology has unimaginable tools and applications which has made it possible to begin the Dispute Resolution virtually. Lodder & Zeleznikow (2010), mentioned the two branches of ODR viz., synchronous and asynchronous. In synchronous ODR, parties meet in real time, for instance, using applications like video meetings, chat rooms using messenger or skype. The space is virtual but the time is real. On the other end, in asynchronous ODR, the time is not same as in real society. Parties interact via email, submit offers and the other party responds according to their convenience of time. Spontaneity is not there, one gets time to think and react. The entire process of ODR is based on the convenience of parties.

The application of Sociological lens over the Digital resolution mechanism highlights that the entire process of resolving disputes between parties involves, "Social Interaction". In sociology, a process of social interaction has been studied and associated with Chicago School. Social interaction has been studied by the Chicago School. One of the strengths of Chicago school was the encouragement of interdisciplinary links. Interactionism was radical sociology that attempted to provide the means for people to improve their lives (Deegan and Hill, 1987:xi). George Herbert Mead of Chicago school argued that human interaction or Social Interaction is based on meanings and interaction gives meaning to the communication. Our consciousness has the ability to give meaning to communication. Not only this, but the shared symbols, gestures, language, etc. can be interpreted and manipulated with our consciousness (Dillon 2014:278). (George Herbert Mead followed pragmatism, which emphasized the empirical situations and practical implications of the action).

Mead further explained that our gestures indulge in conversation and this is an important part of our thought process. There is always some kind of internal conversation with our thinking, which makes the self social. We change our action according to the response the other makes (Mead 1934:173,140-141).

Online dispute resolution use 'wired' technology or wireless technologies, such as Information and Communication technologies. Video conferencing, can be used from telecommunications carriers. On line communications are popular viz. twitter,

instagram, facebook as these are highly interactive and non-interactive. The characteristics of Interactive communications include text communication such as e-mail, chats and chat groups, video and audio conferencing. Non-interactive communications include the provision of information on the host's websites, but do not receive information. Non interactive only sends messages whereas in interactive both the parties can participate in sending and receiving messages. ODR uses both the interactive and non interactive means of communication. When the parties look for online service providers for settling disputes, it is non interactive communication. When parties initiate their proceedings, the entire setting becomes interactive. The entire communication information by the service provider is managed by the specialized agency, having knowledge of wired world. The service provider, both the parties have e-identity and a virtual space and location (email ID, twitter account). Along with virtual identity and virtual space, communications also have 'virtual time'.

Digital communication encourages online relations, interactions and societies viz., On line shopping, online marriages, cyber crime, cyber fraud, cyber culture etc. Digital ADR has been particularly advocated for saving time and money, with high volume output of settled cases. Also, the use of ODR has been proved to be extremely beneficial in resolving matters related with environment and also, where large number of parties is involved (Perritt 2000).

Symbolic Interactionists advocate that no communication takes place without verbal and non verbal methods and the meanings of such interactions are always shared among all those present in a given social setting. In ODR, the social setting is not a real one but a virtual one with virtual time, virtual space and virtual identity. The communication between parties takes place through language, the written text. The importance of symbols highlighted by Mead is missing in the ODR. What kind of gestures are possible through ODR which are significant symbols to construct meaning? Interestingly, 'other' here is not any human being but a human is reduced to technology. The interaction is through a wired world where parties cannot communicate with the help of shared symbols. What one party says arouses responses in the other party happens in real society and it is instant. While ODR misses on to that part as it is free from prejudices since both the parties come to term mutually out of their free will without any fear of consequences of winning or fear of failure. In real life litigation or ADR, parties are physically present and in a face to face situation, the self feelings are developed only in connection to others. Feeling of fear, shame, pride, embarrassment take birth in social settings when parties communicate and interact. In ODR these feelings never develop. On one hand, it is a boon whereas the other side is the development of self feelings is necessary part of our interaction with others. Also, in ODR lot of time is wasted in waiting for the correspondence by the claimant and respondent whereas in ADR, the stimulus and response is instant.

Within this school of thought, Dramaturgy by Erving Goffman uses the metaphor of theatre to understand human interaction and behavior. Within this approach, social life is a 'performance' carried out by 'teams' of participants in three places: front stage, back stage, and off stage. The theatre performance is so real that the audience believe that the role one is performing actually belongs to him/her; the attributes of one's role are actually the actors and the consequences and task are meant for them. The theatre metaphor was a way to understand and explain our day to day structuring of social encounters (Goffman, 1959:254). Interestingly, he did not regard it as inevitable or universal in all social interactions. The central thesis of his phenomenal work "the presentation of self in everyday life" published in 1959 illustrated that we are social actors and present social roles in face to face interaction with others. According to Goffman, we all play our parts, and others believe that the

performance and role they are watching actually possesses the attributes she/he appear to possess, also, that the task he performs is going to have the consequences are totally claimed for it, and that, in general, reality is what it appears to be” (1959:17).

One of the interesting concepts used by Goffman is ‘Impression Management’, which is not intrinsic to the individual, but derives from ‘the whole scene of his action’ that hopefully convinces the audience of the self being presented. How actors create, maintain, defend and enhance their social identities through props, settings, assumptions, etc. (Dillard et al 2000, Goffman, 1959, Schlenker 1980). Across all social encounters, we engage in impression management, symbolic work that we strategically do to orchestrate a good performance in our various roles (Goffman 1969). And in some settings, it is a team performance that needs to be managed. For Goffman performance team is group of individuals, cooperating with each other in carrying out their single task. Any member of the team can disrupt the performance by inappropriate behavior. All members of the team are supposed to connect with the behavior of fellow members which further link them to bond of reciprocity and dependence.

A team can be a group of two...three or more persons. As mentioned earlier, Goffman distinguished between Front and Back Stage to emphasize that role performance is conditional on the presence of an actor’s primary audience. In theatre, actors are relaxed back stage as there is no performance pressure. Goffman (1959:121) notes, “one of the most interesting times to observe impression management is the moment when a performer leaves the back stage and enters the place where the audience is to be found, or when the he returns there from, for all at these moments, one can detect a wonderful putting on and taking off of character”.

Setting is very different in ODR. There is no front stage and back stage. There is only one stage and that is Virtual stage. There is no pressure of performance management when the mode of interaction is text based. The process of video conferencing is useful when an offender is in jail and it is not feasible to produce him/her in courts, the trials and pronouncement of punishment can be done via video conferencing. This is done to avoid the ruckus and violence in society. According to Goffman impressions are managed within context or settings. A magician or a teacher needs settings to perform the role, Also important is our personal front i.e. how we look, our age, hair colour, etc. play an important role in the construction of our settings. While performing our professional roles, we are displaying only the front stage whereas back stage is relaxed where one can be casual. Actors both on the theatrical stage and in real social life are seen as interested in appearances, wearing costumes, and using props. Poor performances are seen as threats to the social interaction just like in theatrical performances. The entire focus was on actors, action and interaction. In ODR, both Front stage and back stage are casual as there is no performance of actors. What is the importance of such a stage where there is no role performance. Roles are performed in the absence of each other. There is no audience, there is no one who will see the parties reaching to agreement. Contrary to this, Fligstein and McAdam (2012:9) mentioned how actors occupy position within a socially constructed order relate to one another in that space. They also mentioned that there is a shared understandings between actors as the there is a “sense of what is at stake” between the parties. Also, there is a shared sense of position of others and the rules that guide what is legitimate action in the field. In ODR too, the parties work in a shared interpretative frame as the parties not only have knowledge and sense of ‘what is at stake’ but also they both work in the guided, legitimate action in the field.

It has been realized that ODR is not much prevalent in India as the success depends upon the availability of technology. The system of ODR where one can indulge in video conferencing demands the inbuilt mechanism in computer (or mobile

phone), internet speed or other tools (modem) (Beal, 2000). Whatever the benefits are for online ADR, it is strikingly clear that it is challenging the already established form of social interaction and interpersonal communication. The readiness, truthfulness, management of impression, manipulation of situation, etc. are all missing in online dispute resolution system. In social interaction both verbal and non verbal ways are important. The interaction through virtual methods is social in nature but missing on to the verbal cues which are important determinant of social interaction. The importance of face to face interaction is missing in the virtual society. Social scientists are considering this technology a threat to social relationships. In the case of ODR, the real social settings where parties meet and discuss and submit their proposals to arbitrator is given a miss. Technology is magical and the society is amazed at its magic. But, the technology will become so powerful that people will not prefer to meet in face to face situation is socially pertinent. Time and money is important and the effort is towards the best utilization of these in a best possible manner. But, in the garb of time and money we are posing serious challenges to our social interaction. If the courts are burdened, then the need is to find a mechanism to clear out the cases rather than taking a shelter of virtual or digital society. Technology can facilitate the conventional justice system but not become the justice system. Arbitrator is like a judge and judges are given due respect and honor in any country. The over dependence to technology in resolving conflicts is to encourage the digital culture. It is assumed that the more the digital culture will develop, the more are the chances of threat to our real culture and heritage. There is a need to conduct empirical studies to see the success stories and failures of ODR. Conceptually seen, ODR is reducing the justice system and judges to mere technological puppets, which is inappropriate for the real society. We are enjoying the benefits of virtual communication and interaction, there the social scientists are warning us with the threats of wired society. Our justice system can use cyber medium as a facilitator in providing speedy justice but relying completely on digital form and ignoring the significant position of verbal and non verbal form of social interaction is a challenge not only to law and justice but also to society. It is a sheer mockery of justice in the name of Online Alternative Dispute Resolution. Also, there is no guarantee whether the parties indulging in ODR will really follow the judgment delivered by the wired world. There is nothing physical in this judgment (actors (parties and judges are virtual), judgment (no dictation by the judge, no physical document) are all virtual). What about the truthfulness, embarrassment, hesitation, impression management through verbal and non verbal cues? etc. are all given a miss in the virtual society. Are we ready for such kind of society where our theories of social Interaction are challenged? Have we accepted the ODR just like we have started interacting via various social networking sites? I feel there is a need to take pause and rethink that our entire legal and justice system boasts of Social Inclusion, and by adopting ODR fully will hit the spirit of Social Inclusion in both theory and practice. We are already facing the challenge of digital divide and by adopting ODR will further strengthen this divide. Social inclusion can take place through social interaction but it seems we are already living in the virtual society where no interaction is required in real terms. Fake, illusionary and false relations have started giving us happiness and now we are trying to make our Justice system also baseless and fearless.

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