**India Arbitration Week 2022**
**Session: ODR and Mediation: a more sustainable form of dispute resolution?**

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## SPEAKERS NAMES:

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4. **Vikas Mahendra**        : Partner, Keystone Partners, Co-Founder, CORD
5. **Gayathri Kalia**        : Executive Director & CEO, CAMP
6. **Pranjal Sinha**         : Co-Founder & CEO, Sama

**Rohit Bhat**

Hi, everyone. Welcome this morning to the first session of ADR Week 2022 on 12th October. We have an excellent topic today, which is ODR and Mediation are more sustainable forms of dispute resolution, very relevant subject and we have a stellar panel. I'll make brief introductions. My name is Rohit Bhat. I'm part of the disputes team at Freshfields in Singapore, and also part of the YMCIA. And in that capacity as a member of the YMCIA, I'll introduce the panel this morning and handover straight to our moderator. Our moderator is Pramod Rao who is the Executive Director of SEBI. We have, along with Pramod, Kanchan Gupta, the co-founder of CADRE, Sukhsimranjit Singh, who is a law professor at Pepperdine University and Managing Director of Straus Institute for Dispute Resolution.

We also have Gayathri Kalia, Executive Director and CEO of CAMP, which is the Camp Arbitration and Mediation Practice Private Limited and we have Pranjal Sinha, who is the Co-Founder and CEO of Sama, and we also have Vikas Mahendra, who is a partner at Keystone Partners, and also part of the CORD. I think, with that, let me handover to Pramod to take this forward and I'll be listening into this fruitful discussion. Just before I handover to Pramod, just one other announcement to our audience. We have a dedicated website for ADR Week, it's called adrweek.in and the video and transcript for this session will be recorded and put up on the website. So, if you miss any part of it, please do log into the website and you can listen in later on. Pramod, over to you.

**Pramod Rao**

Thank you so much Rohit and good morning to all of you who joined us this morning, the third day of India ADR week and for the first session of the day. We have a sterling panel, as Rohit mentioned, which features up in coming Academy, couple of representatives of ODR Institution and a lawyer who dabbles in lawyering ODR and ADR right, because if I have that right. Before I move to the panelists and seek their thoughts, I wanted to make a few opening remarks. I do so both in my personal capacity, but also as a very, very interested person in the ODR ecosystem in that country and someone who's been part of it from at least 2018 December onwards.

So to me, ODR are a technology architecture, which brings together a combination of Negotiation, Mediation, or Conciliation and Arbitration. As a matter of choice for parties for facilitating dispute resolution in an amicable, inclusive and institutional manner is genuinely here to stay in our country. With over 10 plus ODR institutions of all shapes, sizes and hues, I always like to talk about MCIA as the role model for all of them. With a set of rules with an eminent set of dispute resolution professionals and really global and professional outcomes. To me in case of ODR, the institutions need to have special emphasis given the length and breadth of our country on really low cost, huge capacity and capacity to deal with large volumes of disputes which require resolution.

To me, ODR also comes at a juncture where, for instance, the COVID impacted, you know, ability to meet physically was something which ODR helped us overcome. But I also think, in terms of the convergence of technology in terms of convergence of the legal changes to the Arbitration Act and various court decisions, I think all of them made ODR just the perfect storm, so is to speak, you know, to actually bring together all of these to complement dispute resolution from the comfort of one's own desktop or laptop as it as.

To think about our larger objectives, even Lok Adalat's, which have traditionally been India's way of having the mediated settlements for matters pending in court, sometimes even Pre-litigation, adopted actually ODR platforms in at least 10 Plus states that I'm aware of, which lead to 100s of 1000s of cases getting resolved in that sense, and delighted both the citizens and consumers alike. ODR has also received policy makers attention, NITI Aayog during the Covid year first year of COVID convened at least 3 meetings. It commissioned a committee chaired by Justice Sikri, which penned the ODR plan for India.

Again, Agami in collaboration with NITI Aayog and other institutions published the ODR handbook, which is a simple and easy guide for adoption of ODR and which is also become a directory of ODR institutions, which people can refer to. To me, combined with the several digital public goods initiatives in the country and I speak of initiatives such as Sai Gems, Sai GST which makes available credit for MSME. But also Sahamati, which is aggregating the account educator

ecosystem, ONDC which is bringing the E-commerce **[inaudible 00:05:54],** I think all of them have embraced ODR as a natural complement to the digital ecosystem that they operate, and to me all of it also means that ODR gets entrenched at the very start of some of these ecosystems, and has only got to grow and scale along with that really portends quite well for the entire country. To me, and from the perch where I now sit at which is the securities market, I would say, we again have experienced the immense benefit of embedding, I would say independent institutional arbitration system, in our stock markets, all of the stock exchanges actually have arbitration embedded as a means of dispute resolution between brokers and clients and considering the value the volumes that get traded on our exchange.

Clearly, it is a system which is working and worthy of emulations. To me combining ODR therefore with that kind of institutional setting, whether over voice, video or text really removes the geography constraints, and limitations of where people have to travel to participate, really can do so as we said from the comfort of their own homes. Yet, there is a digital divide and some of our panelists are going to touch upon that as well. To me, whether our 4G rollout which has occurred in the country, the imminent 5G, which is coming plus with the citizens contact centers, service centers that exist, whether there is a case for digital infrastructure, providing individual access to the ODR platforms as we go forward, would also be something which we have to consider about.

This inclusivity, the removal of barriers so as to speak of saying that technology divides or technology can leave people behind. Instead, I look at it as a bridging function that there is voice or video through which people can articulate as they please, it need not be that you're submitting via lawyers or documents and that scares people. So, with that, let me turn it over to the panelists for their fascinating insights and learnings from the field, the concerns and cautions, and also the capacity building and further initiatives we should have. So, with that, Gayathri let me invite you to, you know, both make opening remarks and what you're thinking of this and of course, with the focus on mediation that can also has, but over to you please.

**Gayathri Kalia**

Thank you so much Pramod, I think that was a fabulous, overarching perspective that you shared. ODR for me, when we you painted those different pictures of ODR, right, that it is not just a zoom platform, it is any kind of a digital interface, which helps you leapfrog over, barriers or inaccessibility, expands inclusion. And from that perspective, the ODR initiative is extraordinarily important, and I don't think we can afford to ignore it, if you're going to mainstream Mediation, across trait of society, across various segments. My whole life and my work have been in taking e-governance through common service centers through e-seva centers, right up to where the citizens, access to services, especially essential services is made easier.

And I see a fabulous opportunity when we talk about sustainability. And like you said, bridging the divide if we were to open and see how the power of technology doesn't get limited to what is easily accessible to the usual few, but actually we design it so that it goes to all the people that we need someone in the most backward areas of the country or maybe part of a city like Bangalore, but the rural slums or people who cannot afford to pay for data. So wonderful way that could be done and it has to be done, for example, in case of Telehealth services, or reach is through the aggregation of technology through the common service centers, right.

So, can we use an embedded technology for justice access for participatory dispute resolution, within the framework, say a common service centre, that's one thought I would like for us to go with. But on the other hand, to this ODR, I also see it as a tool like we are doing today, a webinar, beyond the kind of wonderful work that people like Sama have been doing is to also where you need to have this more deeper in person, in depth, diving into the underlying interests, the underlying needs, which are the source of conflict and mediation. So, for that tool, which then enables and makes ease of access, and also makes mediators across the globe, available, you know, for a cross cultural solution, or for making mediation without borders, so to say, right, so all of these, the ODR makes that happen.

But for me, today, I see ODR being spoken as if it is completely distinct from mediation, and that I see that as an artificial distinction. While the processes of mediation could be embedded in an

AI, or algorithm, in some cases, and not all cases, but I see ODR as an integral part of the dispute resolution process, whether it's in a litigation system, whether it's an arbitration system, or a mediation system, but a very, very essential process that we need to work on, and design keeping inclusivity, that inclusivity at the center, because after all, mediation is about making justice accessible. So whatever we design as an accompanying tool should not then create its barriers I will stop here.

**Pramod Rao**

Thank you for that Gayathri. The key question, which always sort of comes to mind, and which I've often heard, is that are mediators ready for the online processes much, right?  We keep asking consumers then citizens and commercial enterprises to be ready. But do you think mediators are ready? Because oftentimes, it is described as a personal touch it is described as a personal conversation. Do you think that can happen on the online medium and our mediators there yet?

**Gayathri Kalia**

I think COVID has forced us to understand that it is more than ready, and the advantages outweigh our own. What can we say, our own dogmas and our own mental framework? So, I think COVID has helped reframe this question and answer to ourselves, and I would say CAMP has people who were 70, who have thanks to COVID, taken to online mediation, like fish to water. So, I would say yes, some amount of external push and one of the unintended better consequences of COVID.

**Pramod Rao**

Well said, well observed.  And to me, indeed, the COVID effect on this case, I do count as a positive, whatever else impact it's had on society notwithstanding. With that, let me just turn over very quickly to you Kanchan, you've again, been at the forefront of both ODR lead by document only, but you're also a recent person whose institution which has chosen now mediation as well.

So if you can both describe the document only and how mediation has come up and how it's working out for you?

**Kanchan Gupta**

Thank you, Pramod for that segue. And I think, you know, Gayathri has made some very, very relevant and interesting points over there. So, further specifically has been working on online documents only arbitration for the last 3 years, which has been a completely digital process. There is not a single piece of paper exchanged and to a large extent, we don't even do hearings unless absolutely required. So it is digital to that extent. So, you know, having gone through these experiences, we have realized and worked through many used cases. We've realized that this works beautifully in a lot of cases and in a lot of cases there is a need for a softer, non-adversarial kind of touch.

So especially we've come across, you know, certain use cases, like in business-to-business kind of situations where there are disputes, or even employment for that matter. Right. So, I'll talk about two aspects corporate India and the rural India. So the corporate India, when you have business to business disputes or employment disputes, there are relationships, you know, that kind of help the success of the organization or success of the individual, where something as clinical and as adversarial, as an arbitration or you know any litigating sort of methods can kind of have an impact.

So, that's where we see that mediations play a very important role, because it is all about interpersonal skills, it's a soft process, and it helps retain the relationships for the long term and the, you know, long term success, it takes away the unpleasantness of other methods. And given that, like our Pramod mentioned the incoming of digital networks, like ONDC or account aggregator systems, like Sahamati where, online dispute resolution is the starting point for dispute resolution, it is not an option.

Given that this is a great move from last year Pramod, some of us who were on the panel, last year we were just talking about making ODR mainstream, and I think it's a great jump in just 12

months to be talking about specific aspects of ODR and how they're specific. It's no more about making it mainstream, it is already mainstream. So that's, great to see. Finally, I think, my question would be that can ODR processes and technology given how soft and nuanced a mediators role as a mediation processes is you know, will they be able, will technology be able to give an effective and great solution to that?

My answer at this moment is a little mixed bag, right. So, technology, surely, we see can drive the awareness and adoption of ODR and specifically mediations. There is nothing that provides the kind of reach that technology provides, right. And CADRE especially has been driven with the mission of bringing dispute resolution to your doorstep. ODR itself comes in many shapes and sizes; it is not one specific solution that kind of works for all. So, with a combination of a hybrid, or a hybrid model of online offline hub and spoke, all those models can be used to reach the largest or the last village in India, when it comes to ODR and mediations.

Technology, as we see can also help create prediction models, that definitely requires a lot of data before we can get into that. I think, we are in that process, we are collecting a lot of data, we will collect a lot of data, it's only a matter of time, when these models kick in, start playing a role. Thirdly, I'd like to add is about behavioral change. Some things are not rather some things when they are implemented, the user is forced to change their behavior or the user has to adapt to the new way of working and once you're adapted to the new way of working after a couple of months, years, then you kind of build on top of that changed behavior.

So currently, we've moved from completely physical to people becoming open to doing these doing mediations or arbitrations online, that behavior change is happening has happened. Next year, we'll probably be talking about more at the arbitration mediation or just dispute resolution itself, we may not be talking about specific terms like this. So, the user behavior would have changed, which means, we are also thinking of what else to do as a service provider to make this entire process faster, easier, reachable to every last person that is available. So, these are my two sense on this.

**Pramod Rao**

Thanks Kanchan and again for the benefit of our audience, the document only is not unique, I think, at some level, even the WIPO Dispute Settlement Board for domain name disputes, for instance, actually uses and relies on the document only arbitration to resolve those domain name disputes. And that's been invoked for 20 plus years. So, it's just about I guess, as Kanchan said, mindset, where is it that you're going to actually start harnessing start using and to me the key aspect which remains, I guess unanswered is as we go into the digital domains as we make it naturally digital so as to speak that you are using ODR.

The key question if we say that AI and ML and so on algos, which Gayathri alluded to is some distance away, because we don't yet have workable data, we don't have insights we can draw from it yet, then it shifts really to around the capacity that we need to have in the sector and with that, let me turn to Vikas, both in terms of where do you estimate or gauge our current capacity to be? And what does it take to go to the next level? And what will it be? So Vikas over to you.

**Vikas Mahendra**

Thank you, Pramod. I think that's the elephant in the room that people aren't really addressing, even if you look at, for instance, the mediation period, when they talking about making mediation mandatory in commercial courts, in every litigation, or even an arbitration in that sense, the answer I mean, the problem that they're failing to address is, if you do tomorrow, make that live and push all of these to mediation. Where are the mediators? Do we really have enough quality trained mediators to address that problem? And unfortunately, the answer is no. There are entities like camp and who are leading the charge in getting more people in a train as mediators, etc. But I think that still very short steps away, if you look at the total number of cases that are going to come flooding to their doorsteps, that just simply not a workable option with the existing numbers.

If you add ODR to the mix, and if you were to think about mediation the same way, as we are thinking about mediation currently, then you're looking at a huge deficit of quality mediators. I think that's where we must start addressing the problem before pushing everything down the

mediation path. How does that happen? I think that must happen recognizing the fact that good quality mediators will necessarily have to be of different qualities. What do I mean by that? The kind of mediator that you might need for the purpose of resolving let's say, a dispute between an Ambani or whatever might be extremely different to what you might need to resolve someone who has a loan dispute says no, I don't have money to pay for the next 5 months, etc.

So, it's about recognizing that mediator training is not one size, that there are multiple gradations of mediators, and to start ensuring that we build that pyramid, where we get a huge number of people capable of resolving simple disputes, because a huge number of cases are simple. Then talk about narrowing the focus and making lesser and at least, aiming to have lesser number of mediators with that top notch quality capable of resolving the most complex disputes. I think it's that recognition that there are different kinds of disputes right and requiring different kinds of mediators, because otherwise, the reality is that you will not get the number of mediators capable of resolving complex disputes in the numbers that are necessary to resolve the simple disputes.

So, it's about matching that requirement with the skill set. And I think a corollary to that is also if you're adding ODR to the mix, rethinking mediation, more fundamentally, because a lot of times, people talk about how mediation is very flexible, about how you need to be nimble about how party's needs are requirements are adapt to them, ensure you give them enough airtime to speak about what they have to say, etc. But the minute you move in the context of ODR, and I'm sure in a Pranjal when he speaks about it in the context of Lok Adalat, etc, when they're talking about millions of cases, it is not an achievable goal, to give every person the airtime that they need to ventilate everything that they have to say. So, we need to start reimagining what mediation needs to be when we're talking about ODR and millions of disputes that needs to get sorted.

So, we may need to go as counterintuitive as it might sound, making mediation less flexible, making mediation more streamlined, and ensuring that there is some order in terms of how information is received from each party and reducing the role of the actual interface. So let parties submit their respective positions in writing, ensure that one round of what Kanchan was saying documents only happens so that the issues are narrowed down, focus down to one or two things that require actual mediation and let the mediator focus on those two matters. And even there

with maybe some amount of time bound, you know, guidance to people as this is how much time you have to resolve it because otherwise it's simply not going to happen. So, the hardcore mediation proponents will look down upon me for seeing it, but I think unless we do that, mediation is not a viable option for ODR and therefore, we must necessarily rethink it is very fundamental.

**Pramod Rao**

And I don't know whether that's exactly the kind of provocation Neeti was telling us that she was looking for from this dialogue. But if I had to reframe some of what you're saying Vikas. To me, even in the mediation bill that we've seen, at some level, there is almost a complete, I would say, ignoring of the reality that if mediation fails, what's next, right, somehow it has created almost like a self-contained bubble of what mediation will accomplish, and therefore the bill focuses just on that, in our earlier or in our current statute, I will say that at some level arbitration, and then the mention of conciliation was at least within the same statute, you know, it allowed for at least a logical construct of saying that one could lead to the other or vice versa.

And I think US practitioners talk about Med, Con, Arb**.** I'm sure you have lots of those in your lexicons, but at some level, to me, the question really, is that if technology can indeed put some of these things for people to articulate as to what they are expecting, and whether the mediator is indeed able to bridge that, is that something you've seen? Is that something which again, at the level that if there's scarcity, then we become more inventive, right? Would we then figure out here is where we can have chatbots, which can mimic what a mediator might ask and do for it to actually move forward?

**Vikas Mahendra**

I think I just want to say two things in response to that one, the second of your comments, I will address first, when I was talking about structuring data, and what Kanchan was talking about documents only? You're absolutely right, it doesn't have to be in the traditional sense of documents only where we file pleadings, or where we file written submissions of hundreds of pages. A Chatbot is exactly that. It is documents only because you're putting things in writing, and

you are streamlining data intake. So the Chatbot could ask very clear, directed questions. So let's say you're talking about a bank loan dispute, you ask about as a mediator would, what is the loan amount? What is your current inability? When do you think you might be able to repay this kind of loan? How much of a concession do you need, etc.

So those kinds of questions if they're asked, and if those questions are transmitted to the other side, depending on what could be transmitted based on confidentiality, and if a negotiation can happen, which will eliminate the need for mediation, that's perfect, but otherwise you streamline with ensuring that the focus is on that 1 or 2 questions the mediator needs to answer, that's one part of it. The other part of it is what you're talking about is the mediation operating in a bubble. And I've had this conversation with Gayathri actually, where we said, for mediation to thrive, I think arbitration must prosper, because at least in my experience, wearing my hat as Keystone Partners.

Advocate, we've had situation where, especially in the real estate sector, people have refused to mediate, because they know that there is no viable alternative available for people to enforce their rights. So they know that if a mediation fails, the party is about as worse off as he was otherwise, because even if he goes to court, or the RERA, or wherever it will take many, many years before anything can at all come if at all. So if you make arbitration a little bit more watertight, or court process a little bit more watertight, to say yes, if I don't settle in mediation, I know in six months, I'm going to have to pay out to arbitration or wherever, that's when I think mediation will really be more fruitful. That is when people will take mediation more seriously.

And that is correct, and for that reason, I agree with you, you cannot see mediation as a bubble, see it as part of that journey where every step of that journey is a viable option, which is when mediation becomes a lot more viable.

**Pramod Rao**

Thanks Vikas.

**Gayathri Kalia**

I think what Vikas is saying is very true. While the bill seems to be in a bubble, patience with people who have been part of the bill or the ministry itself, doesn't give that impression, they are very well aware of the reality of the continuum of dispute resolution into which mediation sits right. So, I don't think people who are practicing mediation are also seeing it as above right, it is a part of a continuum of processes and to see that at some point in time, certain aspects of it works well what really is fabulous is that about what we are talking is to be able to see mediation, take various avatars, and sometimes its avatars would also be sector specific write something for the financial industry and within financial maybe a certain structure and process for insurance as opposed to say banking, right, or a certain structure and process for maybe a family matter or family business.

So, within the overall principles, some nonnegotiable principles will emerge. And the process and structure would perhaps then start when we started using it more, start getting sculpted in a slightly different manner than what we perhaps think of it today.

**Pramod Rao**

Fair, just as both of you were speaking, there is also a few comments that have come in, and I wanted to read out one of them. And I think it's from Hassad, who says, why does mediation world insist that mediation is some metaphysical process that magically solves problems? It this puts off commercial dispute stakeholders, as there is no defined processes with some predictable outcome. If mediation wants to be a credible alternative dispute commercial dispute resolution method, it needs to have a more defined process on lines of commercial arbitration. And I suspect Hassad that a lot of the institutional mediation is moving towards that. And I think indeed, they're getting informed by how institutions like MCIA to International Commercial Arbitration or Domestic Commercial Arbitration.

But truly, I think you make a valid point, I think there is also this entire thing of and which I believe and I'm as guilty as the next person, that a consensually arrived at solution sticks much longer than a arbitrated or a judge made a resolution of a dispute. And I think that's the reason the

commercial world and of which I've been apart, also wanted still to experiment with mediation or conciliation, saying that if we can arrive at something which works for both the parties that maybe that is what we would like to adopt. It may not be perfect, and that is where this continuum that both Gayathri referred to which I have in my mind, that if that mediation doesn't occur or happen within a period of time, it should move on to the next, which is arbitration.

Or maybe some other form of dispute resolution, I think has also got to be both appreciated in the bill, which is in the making, but also in commercial reality. I think that's how I would react to Hassad. But before that, let me turn over to Pranjal, I'm hoping that for our audience, you will have far more both data about the noncommercial dispute resolution that your institution has been part of, but also the commercial side right. Because I think again, if there are fence sitters, if there are **[inaudible 00:32:54]** people who are yet to believe the ODR story, I have a feeling real life examples are what convinced them. So over to you with that Pranjal.

**Pranjal Sinha**

Absolutely. Thank you, Pramod. So, like I think, at Sama, our vision is to be the best at resolving conflicts and our philosophy has always been around "Suljhau, magar pyar se" is something which you keep reiterating. We have been operating for almost 7 years in the space of Online Dispute Resolution. But the first 4 years are very different from the last 3 years. The first 4 years, I think, we saw only one case getting filed on a platform that too my brother filed it. And they will even like the when I became a certified mediator, I think my parents are a little worried that is he entering spirituality, is he entering meditation to the last 3 years becoming more about Sama are crossing almost 1.2 crore cases and witnessing more than 25 lakh settlements in platform.

So, context of Sama, it is an Online Dispute Resolution platform which provides all ADR services mediation conciliation arbitration, Lok Adalats fully online. We right now work with 3 entry points. One is the police so criminal compoundable cases, family matters, dowry matters, get referred to the platform for online mediation. Then as people said, we work with legal services authorities for conducting online Lok Adalats. And thirdly, as Pramod was saying we also work with commercial

enterprises, almost 35-40 enterprises, insurance companies, banks, providing them online mediation, online conciliation and online arbitration.

Before talking about what kind of settlement rates we are seeing in these different use cases, or what kind of compliance we are seeing in these use cases, let me quickly highlight the challenges which you are facing and how the approach what is the approach being taken. So, first is with respect to when we will say digital divide, I don't think so, we fully buy it. Because when we are doing online Lok Adalats, we see settlements happening in tier one cities of Jaipur, Delhi, Bangalore, but also settlements happening in districts which are not tech savvy like Morena, Kota, Karoli, Chomu and Bihar.

So, these are places which are not known to be very tech savvy, but they're also people have not even a smartphone like a small Nokia phone and they're able to connect to the mediator and they're able to reach a settlement. So, the challenge is not that we are not being able to that they are not able to use technology, I think one challenge we are facing definitely is deliverability. The notices which you're sending out, and when we are inviting people to participate in ODR, whether it's via email, or whether it's via SMS, or whether it's via call, is it even reaching the person. So, a lot of people don't check their SMSs sometimes email goes in their spams.

So, there is a big deliverability issue of guessing the actual if you send out 100 invitations to participate in a mediation, only 30-40 are reaching out to the actual customer. So, we are also sort of taking support of now physical couriers, and we do physical RPADs to the customer so that at least it reaches him, and we can get a delivery receipt. So, one challenge is perspective, ensuring that the invitations get delivered, that is the beginning part of the process, because once they come on the table, once the consent is there, then the chances of settlement increases.

The second part is people who are speaking what is the capacity. So even though we have around 3000, neutrals, etc., case managers their usage, who we trust, respect to mediators and case managers, only 10 to 20% of them are getting cases. And that also has a con, like even the good mediators, we are feeling that they are getting overburdened with cases. So, it's one mediator at one time is handling maybe 25-26 cases. And especially when we do police mediation, there is a

small timeline of 7 days in which you have to close the case. So, sometimes we get complaints from the parties, parties have recorded to mediate on their phone call. And they're saying that look at this mediator. He's talking to me as if he's an arbitrator, or he's talking to me as if he's pushing me into a settlement.

And these are some of the top mediators, by the way, who are Supreme Court trained, who have done a lot of mediation, but I feel when the quantity is low of mediators and the demand is higher, they get burdened with the number of cases. So, we felt it was our prerogative to figure out how we ensure uniform quality and quantity of mediators. And that's why we have laid down a full framework with like the comprehensive supply plan, which entry barriers KYC being done of mediators, arbitrators, with them clearing a specific course with interviews with an ADR expert as well as a psychiatrist to figure out do they have the personality to resolve a conflict, which is the middle part of a mediation.

The third challenge the final challenges, I think, which e-commerce companies also faces for the last mile challenge, once everything is done, you have done a mediation you have reached a settlement, getting them to e-sign the settlement becomes a challenge. Some parties in India they are not comfortable with digitally signing a settlement agreement, we have seen that they are not really comfortable using an OTP to sign an agreement. So there, we tell them, Okay, you have an option, so full online Lok Adalat everything happened online. For signing, you can go to the Lok Adalat office, and you can sign it physically or for example, when you're working with police, you can do the full settlement online, but the signing can happen at the police station, so that the settlement can also be verified.

So that is the third, like the last mile challenge. How do you close the service so that everything from the beginning to end can happen one way? So I think these are three key challenges we are facing with respect to online mediation and these are tactics which are trying even in Bangalore, for example. Now, when we are sending notices, it's going on email, SMS, we are trying to figure out if you can get her WhatsApp integration, but WhatsApp integration is also a challenge. But if that can happen, maybe the consent rate can increase. We are figuring can someone from our

team go in person, you know and meet these people and give them notices even if that is something which will push these people to come?

I think deliverability, e-signing and capacity have been key challenge and these are the ways you're looking at it. But when we are tackling this, the settlement rates we are seeing across these 3 used cases are quite different. In police cases like in criminal compoundable cases, which are your family disputes, domestic violence matters, disputes between husband and wife, we are seeing like a settlement rate of almost 40%. So, we got around 4000 cases last month and we were seeing around 1500 cases getting settled. And the best part, like my favorite part was that after the settlement one month after the settlement, we follow up on the settlement that, are you okay, is the settlement okay, is the settlement standing?

Do you have some issues have resurfaced, and they say, no, we are very happy, we are complying with the settlement terms. So, we saw almost 80% of those 1500 settlements, getting fully complied. And that for me was end to end resolution. So, that was with respect to police mediation. However, the same we have not seen in enterprise cases, where the customer owes the money to the enterprise and talking about cases like credit card defaults, personal loan, if the customer has to pay the money to a bank, we are seeing a settlement rate of around 10%. In those kinds of cases, and there because what we are also doing we're not calling it mediation, we are calling it conciliation by virtue of the arbitration conciliation I've been there and giving a binding value to the mediation settlement agreements. So there is a 10% almost settlement rate.

And because some customers are not comfortable listening, it's not getting that binding value for conciliation work. But however, in those 10% settlement rate, it's a compliance is still higher.  So there we see online arbitration as Pramod was saying that for what about those 90% cases, which did not get settled in the first one month or 21 days, they will all be escalated to arbitration. And what we have seen either during an arbitration, they reach a settlement, or the award comes we have seen also a lot of them reaching a settlement after the award arbitration award coming out. So that's how the arbitration process is giving it a full and final closure.

But in enterprise cases, which is the third use case where the enterprise has to pay the customer, I'm talking about all the pending consumer disputes against companies, like, to give an example like Snapdeal, MaxLife, Bajaj Life Insurance, where they have to pay a compensation to the customer, or whether the insurance company has to give the insured amount to the customer, if it's the reputation of claim issues. So there we are seeing the settlement rate is around again, 30-35%. And because the customer is so frustrated for 2 years, he's fighting the case, he's not getting any response. And then when he receives a notice from us, saying that as an option to settle, it can be resolved, you don't have to come anywhere 20-30 days of mediation happen.

And so they are more than happy, convincing, their lawyer is slightly tough, but that happens. And then we are seeing around 30-35% settlement rate, their 100% compliance, because enterprises when they're signing the conciliation award, they ensure that they comply with it. So, I think I have across these three use cases, police, it's great insurance ecommerce cases, online mediation is great. The challenge comes when the customer has to pay to the enterprise, their online mediation is not at least till now, we are not seeing a very high settlement. And we are thinking something on us so we also have to figure out how we can make it more effective.

Because we do see maybe we're not able to reach them also, because the notice is only not reaching them, how will they participate in online mediation?  But, these are few of the statistics about different use cases.


**Pramod Rao**

wonderful Pranjal. The canvas that I want the audience to register, clearly ranging from whether matrimonial or family disputes, which otherwise the police is getting dragged into, to commercial to enterprise level, as you said, I think the canvas is so wide. And that is what is heartening about ODR. And to me, complemented by the folks at CADRE & CORD. There are different value segments, I think each of you are looking at the enterprise business level. And that's the takeaway I want our audience to have that indeed, it can range from both individual and personal, but also really to hardcore commercial matters.

And having said all of that to me, I want to turn over to Simranjit, both for international perspective. I do believe India is at the forefront of what we have done and adopted. And I do know, we also hear folks at eBay having 20 years plus back pioneered some of this. And yet we don't see it so often. In fact, I would say I was part of a couple of international organizations before where I am here. And every time I raised it with my counterparts, my colleagues in those geographies, it would appear that it was more on the fringes that something like this was happening rather than on the mainstream. Whereas I think in India, we've managed to at least bring it on the mainstream map, but over with that to Simranjit for his views and thoughts.

**Sukhsimranjit Singh**

Thank you, Mr. Rao. What a nice discussion here this is night for me and morning for some of you. I think what I'll give you is let me give you a little background on myself. I've been a practitioner for close to 20 years, I've started teaching. In fact, a few of the High Court justices and couple of Supreme Court justices of India were trained by me, including some of the sitting justices as of now, I will be training back in Agra in about 3 weeks at the Taj, along with some terrific human beings there. So my experience has been a lot of training, but I'm also on the James panel. So I believe I'm one of the very first Indian bonds to be on that panel. I'm excited to have done some international cases, including some cases online and in person.

So Mr. Rao, let me give you some positives and negatives of both right away. Right summary of what I've heard so far. And then talk from my experience on how can we apply this to cross border situations? What are the learnings in those cases? Let's start with ODR, Online Dispute Resolution. As my predecessors have spoken, this is a wide definition from eBay cases to Google cases all the way to mediating online, everything is ODR. So, cases that have platforms like Mr. Pranjal's platforms are terrific ideas. Whereas cases that people like me have done me online mediating during COVID, especially are also ODR.

And then ideas like the Supreme Court of Uganda, the entire Supreme Court, most of the judges are right now, my students in the Masters of Dispute Resolution is that ODR right, I'm teaching them online dispute resolution in a different country altogether in Africa. What about that? So let

me tell you about the positives of ODR just summarizing what I'm hearing the reach, the international reach, the comfort, the cost, the environmental impact. Last week, I was in Brazil, I spoke in Brasilia to about 300 federal judges, and I was honorary for their 100 award, the Honor Award by their kind National Judicial Academy, but it took me 42 hours to travel to be on the ground for 32 hours.

That's an environmental impact we have to think about. But of course, it was transformative experience to be there is something totally unique. And I'll talk about that in a second. And I think lastly, geographic constraints for people who have those constraints of not just the cost of travelling, but we have a fellow in a country that I won't name right now working with Judge Weinstein Tom fellowship. And we're trying to get into US for the last 13 or 14 months, and his visa is not getting approved. We have some sponsorships and what not. And it's just in a delicate international conflict situation. So there's many barriers to things that we don't consider that we should think about.

I'm hosting a conference next month on 11th of November, on diplomatic barriers, what we call impasse in diplomacy. And we're flying everybody in, for example, for that conference, except 2 speakers from Afghanistan, who are having a hard time getting out of Afghanistan. So there's all these issues of international travel. I think in terms of limitations of ODR, some of you have spoken the connection piece, the complexity piece, the power imbalance piece, the transformation piece are very critical. And let me speak about each one of them very simply, complexity. So last week, I was mediating a case in San Francisco, I have 100 parties, it's a large conflict, about $50 million in amount. And I have 17 lawyers involved.

And we booked two floors, entire floors of conference rooms, I was running between them. I was watching myself, I could use my body language, there's one attorney who would like to particular control. And I could tell him sir, it is time for me to hear the other side, I heard you let me just using the hand gesture. And your physicality can be very productive. And connection is huge in those complex cases. So I do believe that that physical presence, especially in those large, complex commercial, or cross border conflicts can be this in person can be truly effective. I also

did some religious conflicts, mediated some church conflicts where we say, of different phase, right, all the phase you can imagine. And those conflicts have always been in person.

People do not like to talk over phone for confidentiality, for the sake of shyness, emotional connection, but also for the idea that their deity whatever that is, is so pious to them that they don't want to discuss over phone that they want to talk to you in person, how they're feeling, how embarrassed they are. This is a conflict, so these are all things to think about. Now, let me go to a point that some of our colleagues previously mentioned context. So I have three projects I'm involved in right now special education, we have a grant of couple of million dollars. We are working with the entire state of California, teachers, administrators and leaders in this field called Special Education.

I don't know, my apologies how far India has gone in that idea. But kids who need special attention, right. And we have trained about 1000 of them. We are training more, more than ever. And most of them have been online had been very effective of got 5 out of 5 feedback for the entire faculty are put together. But we're still in California and we're still in 2022. And now let's move to law enforcement. And I think Pranjal mentioned police as well. And I'm dealing with just LAPD. I'm not even go to NYPD or Chicago PD just LAPD. We have trained 950 officers so far over the last 5 years. Each one of them have been in person. So think about context, which is very critical. Police officers prefer to be in person, special education teachers are okay to be online. And this is something to think about, right? This is critical.

There was a case I did about 3 weeks ago, before I have got a visit from George Lim from Singapore, Chairperson of Singapore International Mediation Commission. I was telling him about this case of the mediating between a Singapore client, Indian client and a US client. And I met the US client in person with the permission of everyone, all the attorneys involved. But it was so helpful just to sit on my desk in my office and finish the case over zoom. It took about 6 days still over several meetings, we did not do a 10 hour check we couldn't because of the time differences. But it was so effective. I've taught the caucus, the persuasion that we all do the negotiation, one to one, either distributive or integrative, was much more impactful over zoom, especially across time zones.

And so we can't get rid of either one. So, my conclusion I think, is Brasilia is doing when they took me to the Supreme Court, I had a chance to see the live proceedings before the Supreme Court justices in Brasilia just last week, what I noticed was something fascinating, 3 justices out of 5 were in person, 2 justices were online, and they were leading proceedings across the country of Brazil. One lawyer is appearing for example, Rio de Janeiro, another lawyer is appearing from Curitiba and the third lawyer is in the person in the courtroom. And I felt wow, I mean, this is the next stage. So, they have really given up the debate of online in person and they've accommodated both.

They have found a place where the future is, we have to have both at the same time, some people will be in person, and some will be online. So, we have to get over this debate online is better and in person is weak, we just got to role with what the future presents to us and learn from our mistakes and learn from the experiences like people like Pranjal are getting with the terrific work they're doing. So I will stop here. But I will say one last comment that my work in Japan in COVID, I went there in person, in Ghana I went in person, in India I went in person. But then I did some work in Italy did, some work in UK on online. And I believe all have been effective. But I do have more memories of the in-person visits to the places I could go in person. Thank you for having me participate today, back to you.

**Pramod Rao**

Thank you, Dr. Singh. And, indeed, what I would say is, there is truly nothing to do away with the in person. I think the physicality of both seeing people interacting with them and so on, indeed has its own merits. And indeed, I would say that as much as work from home became very popular, I think return back to office is also turning out to be, happening at least in commercial enterprises that I've heard of. But with that, let me sort of just do a quick you know, round dropping across Gayathri, Vikas, Kanchan, Pranjal as well, any takeaways, any quick insights? And then if there any questions, we will take them from the audience as well. So, Gayathri, if you want to go.

**Gayathri Kalia**

Yeah, see, I just wanted, it's been absolutely lovely hearing each and every one of the people in the panel and the symphysis is going to be wonderful for us to follow. But from the fact of sustainability, I wanted to park some points for all of us to work together and that's from an institute from where mediation is taken off. If you got to look at US or UK, US, the court system took leadership, right? They were judges who said that mediation has to happen, and they solidly put their weight behind it. If you look at UK, they've looked at it as a public good. It's been a part of the public policy measure for access to justice, right and we see Singapore, which is really sort of taking off in mediation and becoming a global hub.

The government is solidly behind you know processes of mediator development, supporting the institution in spreading awareness, education, enabling the uptake of mediation in a big way. So those apart from having the act in the law and the rules and regulations and clarity around it, so sustainability it requires these institutional actors to play a big role and institutional actors like SEBI as well because of your great **[inaudible 00:55:57]** and impact that you can have on the business community. So it's very important for us while we are all capitalizing that space, that we also work collaboratively to catalyze influences who can amplify and accelerate it in a much bigger manner. So I just wanted us to park this thought and over to you.

**Pramod Rao**

Thanks Gayathri. Kanchan?

**Kanchan Gupta**

Mr. Singh, do you want to go in?

**Sukhsimranjit Singh**

Yes, can I just follow up on that comment that Ms. Gayathri made, I liked that idea of she brought up UK and US history there. I think that reminds us of a simple humble point that cross culturally, we haven't had a discussion today. We haven't had time today. But cross culturally, we haven't applied the question of what is mediation? Because mediation also means different things across different cultures, right? I think Mr. Vikas Mahendra raised the question of capacity building? Do we have qualified mediators? Which is a very, very good question. Because ultimately, you have to see, a trained mediator doesn't become a good mediator, what kind of training it is, is also important, but a mediator from let's say, **[inaudible 00:57:06]**, village versus a mediator from Mumbai, you can imagine they're going to come out of the training the same way.

So that brings me to the last comment I'm going to make and stop. And that is, it's not about is online dispute resolution going to be effective in our minds, it is also the minds of the recipients, who are the consumers, I think Pranjal tried to raise that point, if the consumer is not ready, if they are not accustomed, if they are not satisfied, or they don't have internet access, or whatever. And they're not comfortable with the idea of presenting a dispute online. Even if they're sitting there with their cameras on that doesn't mean that it can be an effective dispute resolution. But anyways, you triggered that thought, want to share that. Thank you.

**Pramod Rao**

Thanks Dr. Singh. Kanchan over to you.

**Kanchan Gupta**

Yes, and I think this has been very, very interesting discussion, to say the least to see all the various views that have come across. So to sum it up, you know, from what I'm taking away from this is that or rather, what I want to give is 3 things. One is that, without awareness and change management, there is really little impact that can be had. So, that awareness, that deep awareness campaigns, the far reached out campaigns needs to come from where it has the

maximum impact, which is the regulatory bodies or government that is looking into the citizen matters as ODR and service providers you know, we can do a lot you know to spread awareness.

But when it comes like a "Swachh Bharat" mission or like a "Beti Padao", " Beti Bachao" mission, "Vivah Suljhao" mission, that's when it will have the impact when you know, there are widespread radio ads and things like that. So, I believe that awareness is really the first step, whether it is mediation, arbitration, ODR, ADR, any alternate dispute resolution methods that actually take it to that level that is where it all kind of starts.

Secondly, specifically towards mediation, my thoughts and, you know, as I said earlier, as well, CADRE itself is walking in with a little bit of an apprehension with a healthy dose of apprehension to mediation, considering what a soft and interpersonal process it is, and the online infrastructure it will require to be as effective as it is physically, and somewhere perhaps, we all need to look at it and see that, you know, what is the definition and process of mediation today? And is that something that needs to be the that I don't think it needs to be it has to be relooked into and come into a different form which is more executable and comes out with a binding outcome for the parties. The apprehension comes from the fact that you could go through a whole process of mediation and may not even end up with a resolution.

If we were to tweak the definition and process so that it could come to a logical conclusion for the parties, I think it would be greatly beneficial. And to the last point, I will not talk about capacity, we've already talked about it quality and capacity. The last point I want to make is slightly more tactical, is that we talked about digital means of sending notices whether we've been sending notices digitally via email, WhatsApp, SMS, you know, IVR based language specific IVR based phone calls.

But somewhere, perhaps, we need to make that pitch to the telecom department to update some rules. Because it's so quick to abandon since, it is so quick for people to just let it go that the notices don't even reach. So, in that case, no matter how complex technology we build. No matter how easy we try to make it but if the other party is not there to receive it. It's only as effective. So, these are my few things that I would like to kind of wind up to.

**Pramod Rao**

Thanks Kanchan, we are a couple of minutes over the schedule but I'm going to request both Vikas and Pranjal to take 30 seconds to summarize their takeaways or anything they want to impact to the audience, and then I'll do a wrap up quickly.

**Vikas Mahendra**

I'll try and make that 20. So, I think my only takeaway from this is there are horses for courses, I think it's not a desirable goal to make online dispute resolution as effective as in person, because it's just never going to be, but I think it's recognizing that it won't be but instead of going to say that I will not give you any option, give them the best option there is. I think there are options for all varieties of cases that people must explore.

**Pranjal Sinha**

So just I think it really be that there is no better time than now to be a founder of an ODR platform. I absolutely love the ODR processes, and I feel we are slowly building like a new justice system for India, which is rooted on two principles, collaboration, and efficiency and that's the hope.

**Pramod Rao**

Thank you, Pranjal. As I said, we are over time, but I'll just do a quick sort of thing for the audience. I think it is not any more a question of if I think it's a question of when in terms of adoption of ODR, especially by commercial enterprises, but I would also suspect, wherever we do have frequently occurring disputes. To Sukhsimranjit, I would only say that, you know, I am not mixing up this particular thing which we have going on in India with the courts adopting online or hybrid modes of hearing matters. Our courts have listened to that occasion, and in fact, done that. But I'm talking more about what is privately conducted mediations and arbitrations and I think there we had a large amount of success.

The mainstreaming is occurring thanks to the digital platforms we spoke off. And to me, the only sort of thing which I worry about, like Vikas mentioned is probably capacity. But again, human ingenuity being what it is, I would say that maybe there is scope for automated dispute resolution, there is scope for having chatbots, which mimic what a mediator might do, leading to at least a curated set of stuff for a limited set of people to then pronounce or give the outcomes. And yes, mediation has to feed into something more as a continuum. If it fails, or breaks down for whatever reason, online arbitration may be the solution may be going back to mediation after that.

So that combination is what really makes it worthwhile for us to you know, look at it and with that, let me sort of wrap it up and hand back to MCIA folks. Thank you so much for a very stimulating conversation, everyone. All the very best to you.

**Neeti Sachdeva**

Thank you very much to Pramod and to all the panelists. Thank you.