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INDIA ADR WEEK DAY 1: BANGALORE

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SESSION 2

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Mediation, ODR- will they emerge as new and efficient mechanisms for dispute resolution in India?

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12:00 PM To 1:30 PM

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Speakers

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Tine Abraham, Partner, Trilegal

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Akshetha Ashok, Co-Founder, Sama

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Rajneesh Jaswal, Co-Founder, CADRE

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Vikas Mahendra, Partner, Keystone Partner, Advisor, CORD

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Tara Ollapally, Co-Founder, CAMP Arbitration & Mediation Practice

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TINE ABRAHAM: Good afternoon, everyone and welcome to the panel discussing mediation and ODR. Will they emerge as new and efficient mechanisms for dispute resolution in India? So, while alternate dispute resolution as a concept is something that we've all been discussing for years on the go there are a few aspects which keep evolving with every new year or every new season. And one of the aspects that is getting discussed a lot these days when you're talking about alternate dispute resolution is or dispute resolution through online means or online dispute resolution. And we have got some excellent panellists here to speak about online dispute resolution. So, let me start with Rajneesh first, which is that you do hear a lot about online dispute resolution these days. There's a fair bit of discussion surrounding this. Now to start with, it will be good to understand from you as to what are the reasons for ODR emerging as the new buzzword in the dispute resolution space in the last couple of years and

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1 also to follow that up. How is it really different from the other modes of dispute resolution,
2 particularly, say, an Arbitration that you go through virtual hearings and what gives it a unique
3 space in the whole realm of dispute resolution? So, to start with so that we can all get
4 familiarized with the concept.

5 **RAJNEESH JASWAL:** Understood. Thank you. Firstly, a big thank you to MCIA. I think
6 this is a third year running. They've been doing this session on ODR. Very thankful to them
7 for recognizing this so many years ago. This is at least the third one I'm attending. So, thank
8 you so much for that. I will answer the second part of your question first. There are three ODR
9 founders, and Tara has been in the mediation space as well. I think it's been a journey for us
10 for at least four to five years. I know Akshetha has been there since for a very long time. So,
11 ODR is not something new. ODR is not a buzzword, for us it's been a journey, and we are now
12 seeing it get recognized. But what I would say from an insider's perspective, ODR is here, and
13 the trains left the station. All of the discussions in the last session around the rules of
14 Arbitration and who writes the awards and how data is collected. A bunch of the ODR
15 platforms are already practicing them. When we do ODR, and I will talk about what ODR is.
16 ODR is the same as ADR. It is normal. It is essentially doing arbitration, mediation or
17 conciliation through online means. But certainly not just... it's not enough to put a camera on
18 a device and talk to people. It is definitely more than that. We've got TERES here, which CORD
19 has been pioneering for a while, which is transcription. And I know that at CADRE we've been
20 trying languages to bring inclusivity. And so, there's a lot of these things which go into ODR.
21 It's an extension of alternate dispute resolution channels, with much more inclusivity and
22 getting people into it. So, I think it's not something new. It is not a buzzword. As I said the
23 train's left the station. A lot of the things are already happening, for example, the use of AI and
24 things like that. So, it's no different from any other means of dispute resolution. It is using
25 technology, it is using... let me give an example right, UPI. Nobody today talks about, why UPI,
26 why not cash? And I think the day today is now where ODR, why not? And it's literally that
27 moment for us in the ecosystem. So that's my answer to this. It's no longer a password. It's
28 normalized. It's arbitration or mediation or conciliation or any form of dispute resolution
29 using technology to do a lot of the low-end tasks and I would dare say also to do the decision
30 making and that is not far.

31 **TINE ABRAHAM:** Thanks, Rajneesh. That does set the context with respect to online
32 dispute resolution as an extension of any other form of dispute resolution. Just again to set
33 the context with respect to mediation and if I may come to Tara, you on this. The way Rajneesh
34 mentioned that the train has left the station for ODR. What do you think about mediation?
35 Because mediation is something which has been there forever. The idea of using mediation or



1 amicable means of finding a solution to disputes is something which has always been part of
2 the dispute resolution culture whether you had it many... you were looking at codes or even
3 pre codes. Always the idea of an amicable resolution was part of the system. But with the kind
4 of complex contracts which were there, with the kind of the adversarial nature that has come
5 into the dispute resolution in general when you look at dispute resolution in India particularly.
6 Where do you see mediation in the sense that how is it evolving with the times? Is it something
7 which is there or is it something which still needs to catch up and just the whole ecosystem of
8 mediation. How would you look at it at this point in time?

9 **TARA OLLAPALLY:** Great question Tine. I've been in the mediation space now for the past
10 seven years or so. And as I reflected on this process it's clear that this is a process that's not
11 new to our culture historically our, the way we resolve disputes was through collaborative
12 processes. It's when the British came in and set up formal systems of the courts that the
13 intuitive process that was in our communities flipped and changed into formal processes of
14 the court-based system of the adversarial processes. If you reflect, your great grandfather, your
15 great grandmother were all sitting under those trees and actually mediating, that's what they
16 were doing. There was the role of the respective village elder that was there in every
17 community, working with parties in dispute conflict, being an inevitable necessary part of
18 human interaction. Systems were in place to manage these conflicts. But somehow along the
19 years, over the past 35400 years, we forgot those systems that were a part of our cultures and
20 our communities. And now we are in this mission basically to bring that back into the
21 understanding of our communities. And cognitively too I believe that we are at that change,
22 we are at that place of our human evolution, where collaborative dispute resolution processes
23 where parties are able to understand what happened. Why you are seeing this the way you are
24 seeing it? Why am I seeing it the way I am seeing it and how do we figure out a way to find a
25 solution. Our brains have also evolved to that point to be able to engage in these processes
26 effectively. So, looking ahead, this is the way to go. It's not to say that the other process, the
27 other adversarial process doesn't have a place in our dispute resolution landscape. It's an
28 important system and process to have as part of the resolution process. But it cannot and
29 should not be the only way society manages conflict. We have to be able to for the greater good
30 of mankind if I may say, it's a big statement, find ways to bring in these processes as part of
31 our dispute resolution landscape. And it's amazing from the time that I started in 2016, where
32 really didn't know the difference between mediation and meditation. We are at a place where
33 we have an act in place, that's unbelievable. In a seven year span we have moved to having an
34 act that recognizes the mediation process that gives the mediator settlement agreement the
35 same validity is a court decree. That's huge progression in a short period of time. So, I fully



1 concur with Rajneesh, the train has left the station. It's picking up momentum very, very
2 quickly and then watch the way it [UNCLEAR].

3 **TINE ABRAHAM:** Just again on mediation, and Tara and Akshetha, both of you can add in
4 here, which is that... the way... you have legislations which have come in over the years to sort
5 of bringing ease to an adversarial dispute resolution process, be it saying that commercial
6 courts or be it saying that arbitration to be done in a time bound manner, be it you finding
7 other ways of finding a solution to your problem. How do you think these enactments, which
8 is specialized legislations focusing on aspects of dispute resolution? How do they interplay
9 with mediation as a concept or mediation as a tool for dispute resolution?

10 **TARA OLLAPALLY:** Any specific thing that you are referring to?

11 **TINE ABRAHAM:** So, I would say that both, to the particular points that will come to my
12 mind is that one of the reasons why people say that I would like to explore mediation is because
13 it's quick. You see that it's people's... with the help of a facilitator, you are trying to find a
14 solution to the problem quickly and it's also considered to be cost effective because you're not
15 going through the entire process which can be heavy on the pockets of the people. But when
16 you try and bring in say timelines for conclusion of an adversarial process be it arbitration, be
17 it the court process, would that weigh down mediation as an option as against the adversarial
18 processes where people will start thinking that the reason why I was looking at adversarial
19 process wasn't looking at adversarial process was because it is going to take ten years for me
20 to get a solution there. Let me find a solution in mediation. But if you were to get a quicker
21 resolution in an adversarial process, would parties be willing to come forward with
22 medication? So, I'm essentially trying to say that the developments and law on the adversarial
23 space would that pull down mediation?

24 **TARA OLLAPALLY:** If an adversarial system was more efficient would that create less
25 incentive to mediation?

26 **TINE ABRAHAM:** Yeah.

27 **TARA OLLAPALLY:** You are right. At this point in time one of the biggest reasons why
28 people try meditation is because of the time and the cost factor of the formal process. But to
29 me, yes, that's a distinct advantage of the process. But that's not the only advantage of the
30 process. The advantage of the process is it supports resolutions that come from a place of
31 understanding the needs of the party's dispute. It's a needs-based process. And when you're
32 talking about a needs-based process that's being engaged the solutions that emerge are
33 sustainable and transformative. So, the ability could be transformative but sustainable



1 solutions emerge from a needs-based process. When you're looking at relationships that need
2 to be preserved and most especially if you are talking about the commercial world, most of
3 these relationships need to continue. So, if you're looking at solutions that, (1) allows
4 sustainable outcomes (2) support relationships that are preserved in continued business
5 relationships (3) allows expansion, allows the possibility of creativity, allows the possibility of
6 innovation. All of that is possible through these kinds of processes. So, yeah cost and time are
7 key factors as to why these processes are engaged. But there's much more than just that. The
8 practical aspects of that that merit, the need for us to consider these processes more seriously.

9 **TINE ABRAHAM:** Thanks for that, Tara. Moving back to ODR and this is more to Vikas.
10 The whole point is that in the recent past you've had the [UNCLEAR] consultation paper on
11 ODR and one of the aspects which comes out in the context of ODR and consultation paper or
12 otherwise in discussion is the question of what is the right amount of regulation that can go in
13 when you're talking about ODR? Does it need to be codified? Does it need to come with strict
14 rules or procedure to govern the process? How would you address this dilemma? Because at
15 the one hand it's important to keep the process a lot more agile to meet the needs of the
16 businesses and meet the needs of the hour. But at the same point in time we all understand
17 that certain processes and procedures are important to secure the interest of the parties in
18 terms of each party getting the ability to present their position in the best manner they
19 consider necessary for themselves. So, therefore, where do you see this right balance being
20 drawn between keeping it agile and not procedure driven versus having the right amount of
21 procedure in place to balance the interest of justice or procedure, whatever you want to call it?

22 **VIKAS MAHENDRA:** Thanks, Tine. I think we need to start with the realization that ODR
23 is a spectrum. That what Rajneesh was saying, doing an arbitration or a mediation online is as
24 much ODR as automated dispute resolution, where an AI based solution is telling you this is
25 the outcome of the dispute. While recognizing ODR is a spectrum, I think it's also worth
26 recognizing that different ends of the spectrum will require slightly different degrees of
27 regulation. So, for instance, if you're talking about just using virtual modes for conducting
28 ADR maybe no regulation is necessary. Maybe the Tribunal or the mediators are more than
29 capable of regulating process to adapt it to online means. And I think that's what's happening
30 today with the high value arbitration. So, if you look at all the work that the IBA is doing, what
31 UNCITRAL is doing, et cetera you are looking at protocols coming in for the purposes of
32 conducting virtual hearings. Of course, there also there are certain safeguards that need to be
33 taken, which becomes more relevant for ODR than ADR and these would be things like data
34 protection, data localization. It could also be things like witness coaching and tampering,
35 which becomes more possible in an online setting than it would have been in an offline setting.



1 So certainly, there are traditional safeguards that are necessary. But I think that's on the end
2 of the spectrum, where regulation can maybe wait because I think the Arbitration Conciliation
3 Act is a fairly wide canvas which has enough safeguards that they can be tailored to the needs
4 of ODR as well. And similarly, mediation because the mediator has far greater flexibility in
5 terms of setting the boundaries. And so long as confidentiality, privacy are at the heart of it,
6 you don't need extra regulation. But the minute you talk about the other end of the spectrum
7 where you're talking about decision making, which is automated there certainly you need a lot
8 more regulation. And a lot more regulation which you will... I mean... the difficulty there is you
9 don't yet know what the technology is and you're trying to regulate what could be. And that is
10 a challenge and that we see as a challenge across sport, not just ODR, whether it be regulation
11 of aggregators, whether it be regulation of technology, the way it is done in the intellectual
12 property space with generative AI, there will always be a catch up that law will play with
13 technology because a lot more resources are being pushed into developing technology than
14 developing law to cater to that technology. And I don't think that's something that we can wish
15 away. There also, I think there is great need for broad guidelines and processes. So, a lot of
16 what was being discussed in the previous panel on how do we reduce biases? I think
17 eliminating biases is impossible. So, I don't even think we should aim for it. It's about
18 acknowledging that there will be bias and it's to account for it and ensure that that doesn't
19 come in the way of substantive outcomes. It is about creating regulations with safeguard tools.
20 How does all of this interplay with where we are in ODR? I think with ODR, we are somewhere
21 in the middle of that spectrum with some people closer to the end of automated dispute
22 resolution, some closer this way. But there I think, there will definitely be need for regulation
23 in some aspects. For instance, we have in ODR ecosystem now certain ODR players who might
24 be promising results to certain people based on who their clients are, say, for instance, you
25 have ODR players who will go to say, a bank and say, I will resolve all of these disputes for you.
26 I will take my fees based on your recoveries. Now that's a no go. Right. And that's the kind of
27 spectrum where you can't say, let's allow self-regulation in the space. Let them do whatever
28 they want. You need to set boundaries. And this becomes particularly relevant because you are
29 now going into this ocean of not hundreds of disputes, not thousands of disputes, but millions
30 of disputes. And unless you have some sort of ring fencing to say, these are bright lines, you
31 cannot cross them there will be a problem. But I think that's what they should be. There should
32 be bright line ring fencing, rather than detailed regulation of every single aspect, because that
33 will stifle innovation. So it is that really careful balance of ensuring due process, ensuring
34 justice and fairness while also allowing for innovation. And I know that's a difficult balance.
35 But I think it is possible. And that's where some endeavours that ODR institutions are taking,
36 something that Rajneesh has been taking some lead on, which is to create an ODR alliance for
37 some degree of self-regulation might acquire some importance. Because we know what we are



1 doing, and we know what can be regulated a little bit better than regulators who are still
2 playing catch up to what the technologies are doing.

3 **TINE ABRAHAM:** Thanks, Vikas. In fact I was about to come to you to request you to step
4 in and add on the self-regulation piece, because that's something which is extremely important
5 where you have a lawmaking that is coming from the stakeholders rather than the regulators
6 being the catching up game. And so where is that headed to and where do we see the right
7 balance coming there?

8 **RAJNEESH JASWAL:** I'm just adding to what Vikas has just said. Self-regulation definitely,
9 ethical boundaries definitely and I think that's for the industry to do. But I think from a
10 regulatory perspective and somebody who deals with tech law fairly often, I think the current
11 state of the Information Technology Act and the Data Protection bill will add already have
12 significant layers of security and protection to cover an ODR regime. We don't need anything
13 more. Think of it, today digital payments on UPI are governed by the Information Technology
14 Act. That's super, super important things for our ecosystem. Same thing for ODR. Why can't
15 the existing just the Information Technology Act, the act today covers everything else.
16 Similarly, the Arbitration and Conciliation act, as Vikas said, is already wide enough to
17 embrace ODR, though I think it is already a part. So, it's a natural progress. But I think the
18 current state of the law with the Information Technology Act, with the Arbitration Act, and
19 now with the DPDP Act is sufficient regulation for this sector. You don't need anything more.
20 What you do need is for the ODR players to sort of get together, have a self-regulation code
21 like any other industry. So that's the only thing I wanted to add.

22 **TINE ABRAHAM:** Thanks, Rajneesh, for that. So Akshetha just coming to you, and you are
23 again uniquely placed in the sense that you do deal with mediation, you deal with ODR, and
24 you try and have a unique combination of both also offered, right. So where do you see in the
25 future in terms of when looking forward with respect to where you can have that right balance
26 being drawn or depending on the nature of disputes the interest of the parties etc. Where can
27 you... is it possible for parties, there are two parts to really what I want to understand from
28 you. One is that parties now provide for in their contracts that they will explore mediation
29 before going into any other forms of dispute resolution. Similarly, how far do you think it is
30 possible for the regulations or the regulatory framework to provide for that as a mandatory
31 requirement like before you go file a suit? You necessarily need to have mediation, it's a part
32 of the law. How far that has really worked? And again, so where you bring in these
33 requirements to have a mediation either contractually or by law, where do platforms like the
34 ones that each of you represented, would come in and provide the necessary framework and
35 support? Because it's important to have a quick means of providing that solution. It's also



1 important to see that you're getting the right way of having it mediated or having an online
2 solution for the problem. So, looking a bit into the future, where do you see all of this going? I
3 know it's more like looking at the glass crystal ball and seeing where it is headed.

4 **AKSHETHA ASHOK:** Okay. So, I think there were a few questions in there. So, one was it's
5 a very hotly debated topic on whether it should... should mediation be mandatory? Should it
6 continue to stay because it's a voluntary process? Should we just allow it to stay like that? And
7 to be very honest, I'm still figuring out where I lean. I think maybe 60% is not mandatory and
8 I would just love to share my thoughts with the room and would be happy to take conversations
9 or opposite opinions later. The one thing going to my mind is, hey, does India actually need
10 that push right now to just make it mandatory so that everyone has access to the mediation
11 process. And then we see how India and the relationship with India and mediation can really
12 flourish. Taking from even where Tara was saying of how this is something that we used to do.
13 Do we just need to go back to our roots and for that, do we need a push? But then the other
14 side of my mind is just so far, even at the work that we do in summer. We have managed to
15 convince people to do mediations without there being a mandatory mediation requirement in
16 place. And I think where that's coming from is, the process in itself is so wonderful. What it
17 offers for the parties? And if you just bring it down to conflicting parties, do they want
18 cooperation? Yes. Do they want good relationship? Yes. Does anyone want to stay in their
19 conflicts? The answer is more often than not been, no. No one wants to do that. So then when
20 you're looking at this, the principles of mediation really encompass taking care of these
21 aspects. So even with commercial courts being mandatory, I personally... has it really helped
22 immensely in making sure that mediation has been adopted? I'm not very sure or I don't know
23 if I just thought it would make a really, really big splash and it could just be my expectation
24 setting. So, I think mediation is just going to go forward irrespective. I think the faster we all
25 realize that I think it's just going to be easier and that's where everyone's headed, whether
26 that's your enterprises, whether your banks, whether it's individuals. So that's one piece of it.
27 And with regards to I think the ODR players, to be really honest what we all have in mind for
28 ODR is the vision is so much bigger. And we are just at the tip of the iceberg. And we had to
29 actually spend a lot of time demonstrating that there is a case for ODR. So, the only thing I
30 would say is to just watch how this space unfolds what we all have in mind. We haven't been
31 able to put that into action day one because we really had to set the foundation to show there
32 is a use case for ODR in India. And I think we have now reached that space where it's very clear
33 that there is. So now moving forward, the true potential of what ODR can be and what these
34 platforms can do, where all they can be integrated. It's not necessarily only an enterprise or a
35 bank or just government bodies, but use cases that we've never thought of, right? With all the
36 services that are coming forward which are enabled by technology, it is just obvious that you



1 will need to have a technology enabled dispute resolution process as well. So, we're going to
2 be taking care of disputes that we probably have never even looked at till date. By we, I mean
3 all of us in the room. So, I would just say that keep the excitement for ODR. We've
4 demonstrated that hey, ODR is here to stay. And now is when we're going to have access to
5 really, really good technology and collaborative dispute resolution processes into really, really
6 smart and wonderful use cases.

7 **TINE ABRAHAM:** Thanks, Akshetha, for that. Now I think, I'm going to have a question
8 open to all of you here which is that... and we spoke about biases earlier. I mean, maybe
9 because of where we stand with respect to the understanding about ODR or just how it is being
10 used until now. There is this perception that ODR is good for certain kind of disputes. So, you
11 perceive that an online dispute resolution, whether it is you having an AI coming in and
12 stepping in and doing the work or doing away with oral hearings etc. is good for certain kinds
13 of dispute. You think that oh, it's good for a small value dispute under a loan agreement, but
14 you may not think that that's the best one to adopt when you're having a complex dispute
15 under a technology transfer agreement. So where do you stand on this particular bias or
16 thought process, which is there. And I'll follow it up to also raise this with you, which is that
17 what has been your experience as practitioners in this field on what are the kind of interesting
18 or disputes or what you otherwise don't think is disputes get results through an online mode
19 that you have come across which sort of broadens the horizon for this mechanism? And we'd
20 like to hear from each of you as to where you stand on this.

21 **RAJNEESH JASWAL:** No, as Akshetha said, the horizon and the possibilities of ODR are
22 immense. And we've got to get out of this mono thing of saying, it's only good for lender and
23 debt recovery disputes. And I'll take an example. There are folks in this room who are used to
24 filing their tax returns in paper form. I think seven, eight, nine years ago, tax returns became
25 digitized. And now you get a digital notice from the Income Tax Office. Some of it may be nice
26 with a refund, some of it may not be but that is ODR. It is a machine looking at all the data
27 that was filed with the government and it's collecting from various parts on your income tax
28 and sending you a notice. That age came six years ago. It's already here and it's working fine.
29 All of us get refunds on time and all of us pay up the extra tax on time as well. So to me that is
30 also a form of ODR. You've also got to think of ODR as not just an arbitration consideration,
31 even though I made that definition earlier. For us, we look at ODR as grievance addressal and
32 dispute resolution as well, and it will continue to go into those spaces. Some examples we've
33 seen. SEBI talk about ODR in the securities markets. It's a very sort of... it's a sleeper cell there.
34 It's going to be one of the biggest areas of ODR in the days to come. I mean all the three ODRs
35 are part of that process have contributed in creating that. So, the securities markets where I



1 told my broker to book my shares at X Rupees and sold it at X plus 1, and I made a loss. It's
2 already happening. Those disputes are already coming in. You will see them get debt recovery
3 of course. I don't know from the social media site, if any of you follow that industry and I think
4 it was spoken in the earlier section as well. Social media disputes where you are fighting why
5 did my tweet or a coup or a Facebook post get deleted? Today they are being sent up to the
6 Grievance Appellate Committee, which is using ODR to do this under the DPDP Act and most
7 of my fellow ODR folks already know this. There are already calls from the government to use
8 ODR in resolution of data protection disputes. So, the canvas is massive. Employment
9 disputes. Wherever you need to do confidential disputes where you need to provide access to
10 folks using technology, languages, translations, absolutely right for ODR. Yeah, these are some
11 of the matrimonial disputes, can you put ODR around it? I certainly think you can with
12 mediation coming into the fore. So, these are some of the examples I had. I would let others
13 fill in as well.

14 **TARA OLLAPALLY:** I would like to kind of respond to your question in two ways. One, is
15 the kinds of cases that they're seeing in mediation. There is a bias that mediation that
16 mediation is largely for matrimonial disputes. High emotion disputes or low value small claims
17 kinds of disputes where... that's where mediation is actually used and as part of the used case
18 scenario that we have experienced over the past five years, we have seen complex commercial
19 disputes being mediated, IP disputes being mediated, maritime disputes being mediated,
20 bankruptcy cases that we have mediated. So, the idea that mediation is only for high emotion
21 matrimonial kinds of cases or for small value, small claims kinds of cases is where mediation
22 works. I can very strongly and confidently say, no, they work extremely effective from a
23 perspective of positive outcomes, positive user experience, psychologically kind of satisfaction,
24 highly, highly effective. Bringing the ODR... a piece of it in our kind of practice up until Covid.
25 We believe that you needed to do these processes in person. But it's been completely
26 transformative. It's changed the way we practice. The ability for participants from various
27 parts of the country, internationally participating in the process, using technology in the form
28 of onboarding etc. has become so easy. Storage of documentation in a confidential, secure way
29 is so much more... so much easier, efficient, secure. And in our practice while we don't... we
30 haven't gotten to the point of using AI and a lot more technology and the way we resolve. These
31 are aspects where our practice can move. So, ODR has also found its place strongly in our
32 practice and very successfully.

33 **VIKAS MAHENDRA:** I'll take on from there. And I think I'll talk about some of my
34 experiences as a lawyer and then maybe we'll talk about my experiences as CORD. In the last
35 two years I've probably done about four international arbitrations, none of which I've had to



1 go physically anywhere. And I think that echoes with everyone here in the room who've done
2 the most complex matters in the most challenging environments virtually. And if we in this
3 room, even in our limited experiences here, don't see any reason why that can't happen. I think
4 that's a very automatic answer to whether ODR is suitable for high value disputes. Now again,
5 I go back to a point I made earlier, which is that ODR is a spectrum. So, the question really is
6 not whether ODR is relevant for high value disputes, but to what extent can technology start
7 replacing the hither to routine norms and practices that were adopted. So that would mean
8 physically assembling in a place, that would mean manually doing various tasks including
9 decision making. And I think that is where the more controversial questions will be. So, for
10 instance, you talk about civil law countries. In civil law countries, there's no question of trial,
11 right? There's no question of cross examination. There's no question of oral argument.
12 Everything is in written. Now, if 60, 70% of the world resolves every single one of their disputes
13 through documents only basis and if ODR can enable that to happen far more seamlessly then
14 wouldn't ODR with everything that it offers not be amenable to resolving all kinds of disputes.
15 And I think the answer is yes. Of course, there are disputes for which people will still want that
16 personal element. And I'm sure Tara will also echo that where there is a personal touch, there's
17 a personal connect that makes a difference. And I think those will remain. Even in those,
18 technology will start playing a role even in those, for instance, what we talked about in the
19 previous session in Document Review for instance technology will start playing a role in terms
20 of filing of documents, notification, issuing summons to parties, getting them all on board. All
21 of those will still have technology penetration. Maybe that last mile of actual decision making
22 there might be some hesitation, and I think that's justifiable because there are complex areas
23 of law where you don't want a machine to decide everything. So, there will always be space for
24 that. But I think even ODR players allow for that. It is about in the most appropriate cases, if
25 you think online doesn't work, please by all means go back to physical. But it's about changing
26 the status quo. What is the default mechanism? You can opt out. But what is that, the default
27 and that is online, and I think over the course of time, more and more disputes will start
28 jumping into this bucket of what is online. And in this context, I actually want to talk about a
29 little bit of what MCIA has done, which is well before COVID. If you looked at MCIA's facilities,
30 they were among the first institutions, I am aware of, which came up with an extremely high-
31 tech video conferencing system that was set up in their Bombay offices and Madhu Keshwar
32 will correct me if I am wrong and that was with the vision of saying that this is what the future
33 is going to be. So, it's not even COVID. COVID obviously accelerated it. But even without that,
34 even the best of institutions across the world are looking at ODR as the way of dispute
35 resolving. And I think that gives you some flavour as to what the future might look. Certainly,
36 for a whole ocean of disputes there is no option but ODR. Take for instance, if I have a problem
37 with my Uber driver, I have Rs 50 of a dispute between this. You can't expect that to be in a



1 physical mode at all. So, I think for those kinds of disputes there's just no option but to go
2 online. And even slightly more complex disputes where the requirement to come physically far
3 outweighs the benefit of coming physically is there. There, again, ODR will become the default
4 mechanism. So, I think more and more disputes will fall within that bucket. But I certainly
5 think that the canvas is wide enough that ODR portrays for all disputes to be in it. There will
6 always be space for some offline resolution, whether it's in mediation or whether it's an
7 arbitration. But I think that ocean is shrinking.

8 **TINE ABRAHAM:** Akshetha, would you like to add something more?

9 **AKSHETHA ASHOK:** Yeah. I think... I find it so amusing when we are asked this question
10 and we are always usually asked this question about, is it for small value? So again, I think the
11 one thing I just want to say is a lot of time has been spent in demonstrating that ODR works.
12 So, use cases that we had access to is what a lot of us have worked on. But that does really does
13 not mean there is no space for it. And it logically makes so much sense, right. If you are worried
14 about ODR, like the 'O' is what's bothering, high value mediations have been taking place
15 forever. High value arbitrations have been taking place forever. So, what is the worry, right?
16 Is it that will it be secure? Will it be safe? Honestly, a counter argument for maybe it's in fact
17 safer. Who's to say that is not true in some cases. So really, I think it's just the idea of either
18 our definition of ODR might be something that's a little constrictive so we are a little worried
19 about it. Or because again from what Vikas said, I remember when Madhu Keshwar had shown
20 us how the documents are kept very securely and that was way before it's time. It was insane
21 the level of security that's taken care of to a point where I remember walking out thinking I
22 feel like this might be safer than offline. So, it's really the 'how' can always be figured out. You
23 can use correct parts of ODR and correct parts of technology to create the best possible result
24 and outcome that you want. So, you don't need to see how a small value dispute is being
25 resolved and assume that the exact same process and technology is going to be used for a large-
26 scale dispute as well. So, there are so many moving parts. And it's not just enterprises. You
27 have government bodies. You have this transcription being used in the Supreme Court by
28 Teres and there's just so much movement there. This was such a big move. I remember all of
29 us celebrating it. So, there is... you can think of it as ODR has a lot of pieces that you can use.
30 And you can integrate it into maybe smaller parts of your dispute maybe larger parts of your
31 dispute. But definitely, please take it from us that large disputes can be solved with ODR. It's
32 not something that is shocking or that's new. So, it's just a matter of sort of what you want,
33 how you want to integrate it. So, I think the only request I would leave with, is the 'why' is
34 strong. It's just the 'how' that we might be confused about. And that can be figured out. That's
35 why we all are here. Together we will be able to tailor make a solution that works with



1 technology and leveraging collaborative dispute resolution. So, let's not question the 'why' and
2 the 'how' is something that we can always evolve. There's no issues there. Tech evolves really,
3 really fast. So, we will have to catch up. All of us will have to catch up. So, that's just something
4 I wanted to add.

5 **TINE ABRAHAM:** I have two follow up points that come from the few bits that all of you
6 mentioned. One, is that one of the factors that all of us as lawyers very... and Vikas you touched
7 upon this briefly. At least as common law practitioners, one of the best that we all hold very
8 close to any dispute, any adversarial dispute resolution process is... the whole process of
9 recording of evidence. Now, moving towards an online dispute resolution be it in terms of...
10 wherever it fits in the spectrum. I'm not saying that at the higher end of the spectrum or lower
11 end of the spectrum. Wherever it fits in in that spectrum, do you think that relevance and
12 importance of recording of evidence is going to come down with these processes?

13 **VIKAS MAHENDRA:** Tine, my own personal sense is I think evidence, oral evidence is, the
14 importance of it is overstated, at least in the kind of work I do. I do a lot of construction
15 arbitration. Your case is decided based on documents, not based on whether a particular
16 witness remembers a particular instruction having been given. And I think that holds true for
17 most commercial cases. Of course, when it comes to expert examination, maybe there is some
18 element to the importance of cross examination because you're trying to discredit them. You're
19 trying to find some lacune in their case, which is more properly done in an iterative process.
20 But I think, barring those cases generally across board, I think the importance and relevance
21 of oral examination is coming down. Even in existing Arbitral Tribunals if you ask arbitrators,
22 are they swayed by what the documents said or what happened in that three days of cross
23 examination, 80% of the time, I think they will say they are still going by what the documents
24 says. And maybe that four days or five days or what I recently heard 21 weeks of trial are more
25 to appease the lawyers than really for the benefit that it is deriving. With that sort of
26 background, I think if you do go into online dispute resolution, number one, it's not that online
27 dispute resolution is reducing the role of witnesses. It's just making it easier for them to
28 participate in a proceeding. There are concerns like is there witness coaching, tampering. And
29 I think over the course of COVID, people have developed solutions for that as well. Give you
30 an example, we in some of the higher value disputes we did. They wanted someone like a
31 witness observer. So, we send someone to sit physically in the room. The question is whether
32 you will send a low value resource, low-cost resource, or whether you will ship the entire
33 Tribunal with the paraphernalia to that hearing. And what ODR enables is for you to
34 economize. So, I don't think inherently that the role of witnesses, the role of cross-examination
35 is going to reduce any more than it is already reducing. If anything, it's probably going to make



1 it more efficient because people now have shorter attention span as well. So, if you're doing
2 the cross examination in zoom, you can only see the screen for that amount of time. So, people
3 are also trying to reduce their questions, keep it to a little bit more specific questions that they
4 need to attend to, et cetera. So, I think, if anything, that changes in the positive direction of
5 making it more efficient. I don't think it's doing away with that process like I said beyond what
6 is already happening.

7 **TINE ABRAHAM:** Yeah, I personally agree with you completely there which is that the
8 relevance of oral evidence is definitely diminishing with time. The other follow up bit that I
9 had was Rajneesh you had mentioned... made a reference to the whole SEBI framework for
10 online dispute resolution. Where do you see this going? Because that's of particular interest,
11 given that there is a large kind of disputes that can emerge in that space, and it may not be
12 cookie cutter boiler plate disputes that come in in that space. So, what do you see or what do
13 you envisage is going to develop from that and is it going to set a platform and is going to
14 improve the credibility of this process all together. Your thoughts?

15 **RAJNEESH JASWAL:** I think kudos to SEBI for doing this. It's the first regulator anywhere
16 globally to adopt ODR for resolving important disputes. And these are the value of these
17 disputes can be from and I saw a dispute for 16400 rupees last week and it could go up to
18 crores and crores and crores. And severely complex disputes and algorithms are used to buy
19 and sell securities in the Indian markets to ranging from shareholder's rights and things like
20 that in some of the smaller things. So, I mean, it's a supremely progressive step. I see it as my
21 other panellists also said as confirming the fact that ODR can be used. There is no reason for
22 ODR not to be used for complex disputes. And just adding to what Vikas had said about witness
23 and witness coaching. Today, you already have technologies and it's used in the education
24 space of proctoring where you are trying to figure out if a student is fudging their exams. It's
25 already there. You have face reading already prevalent. So, I think all of those technologies,
26 when you bring them into the legal system, there is a space and a time, and they will definitely
27 also come into the SEBI disputes as well. SEBI has a three-tier dispute process. You do
28 conciliation, number one, in 16 days or 21 days. If you don't finish, you move on to an ODR
29 and then within the ODR, the third stage is, if the value of the dispute is above a certain
30 amount, below a certain amount it is documents only arbitration. Above a certain amount it's
31 a single arbitrator. And then it's a Tribunal of three arbitrators. And they can choose to have
32 parties go to any of the centres to give their evidence or whatever else they want to. And then
33 you start adding technologies like, face reading, recognition, proctoring. So, a lot of the biases
34 go out. So, I think what SEBI has done only affirms the power of ODR, and it's only going to



1 grow. I mean, it's not going to stop. It's a regulator betting on the future of the Indian securities
2 markets. I don't think any of us are going to let it fail. We are completely glued into that.

3 **TINE ABRAHAM:** Great. I think I just have one point to raise, which is more on the
4 mediation side. Because there's a lot being spoken about the new mediation law, that has been
5 in the works. How do you see that bringing about a change to the whole practice of it? I mean,
6 what are your quick words on whether it is good, bad, ugly? Where do we go?

7 **TARA OLLAPALLY:** I'm sure everyone has a thought on it and I'm not going to bring it
8 down to good, bad or ugly. This is something that we've all worked hard towards and it's pretty
9 amazing that we are at a place where have an act in place. And it's a huge step forward for the
10 mediation movement. It puts mediation on par with arbitration and of course our court system
11 in terms of legal recognition. But in terms of embracing, it as a community we still have a long
12 way to go which is where actually measures like... I don't like to use the word the mandatory
13 mediation is not what I subscribe to but more efforts where parties are being pushed to
14 understand what the mediation process is. So, like a first information kind of meeting is
15 something that would have really benefited the mindset shift that the larger disputant and
16 legal community needs to use more mediation. But the big steps forward are, of course, the
17 fact that this legal recognition of mediated settlement agreement has the same validity as a
18 court decree, that's huge. All the fundamental tenants of the mediation process are recognized.
19 Confidentiality, voluntariness, self-determination, tick mark there. It promotes private
20 institutional mediation, which I think is huge in supporting the practice to improve. I do
21 believe that we're going to see better mediators coming out of this legislation. It explicitly
22 speaks to government disputes going to mediation and I think that's a big step for the
23 mediation process. But it's also been a huge, missed opportunity in a couple of various areas
24 as I mentioned in in supporting mindset shift. When we are in dispute our first response is
25 freeze, fight, flight, right? That's the inherent response to... in a dispute situation. There is also
26 a response that I don't know how many of you are familiar with, called tend and befriend,
27 which is a response of sitting across the table and building understanding to find resolution.
28 It does not come as intuitively as the freeze, fight, flight response. And therefore, we need more
29 of push to be able to engage that path of our response mechanism and sit across the table and
30 find a consensus in moving forward. So, I think that's a big miss. And to a large extent, the
31 Commercial Courts Act did not work because there were big loopholes in the structuring of
32 how do you get parties to understand this process? So, if we came up with a mechanism that
33 was well thought through, I do believe that the law can do a lot in orchestrating mindset shift.
34 The first schedule is problematic to me. Many mediatable cases are excluded, disabilities,
35 environmentally disputes, couple of other professional malpractice kinds of disputes. I think



1 these are great mediable disputes and they shouldn't be automatically excluded from the
2 mediation table. So, and then of course the fact that we have not used this as an opportunity
3 to harmonise with the Singapore Convention and get international mediations as well under
4 the wing of the current act. So, there are some big gaps that do need to be filled, but overall,
5 it's a big step forward for the mediation movement in India.

6 **TINE ABRAHAM:** Great. Akshetha, anything further you would like to add on this aspect. I
7 think it was a very engaging discussion where not only did the panel take us through the
8 practical considerations, but also where the future, what the future looks like and where we
9 are headed to. With this I think, we can open it for the audience to raise any questions, and
10 I'm sure the panel will be more than happy to engage on those questions.

11 **MAYURI:** My question is actually, I am Mayuri, and I do arbitration, more international
12 arbitration and international dispute resolution. And my question is an extension of what
13 Akshetha said. And I think that makes it... it was bang on the point that let's not question the
14 'why' but let's figure out the 'how'. Now, the 'why' we've been talking about in the last two years
15 post COVID, that okay ODR is here to stay. It's here to stay for certain kind of disputes, small
16 value disputes, certain disputes where... I think we all have... whether we like to acknowledge
17 it and accept it or not ODR is here to stay. We all know that it works for certain kind of disputes.
18 Small value disputes where documents only work. Securities disputes, your dispute with the
19 Ola, Uber drivers, et cetera. My comment or question is for us to make ODR an absolutely non-
20 negotiable when it comes to all kinds of disputes and when I mean disputes, including disputes
21 which are more relevant for mediation or arbitration disputes such as investment treaty
22 disputes, construction disputes, high value joint venture disputes, shareholder disputes, fact
23 specific dispute. Isn't it important for the proponents of ODR, every one of you on the dais and
24 all of us here to change a pitch a little bit to say that ODR is effective in all forms of dispute. It
25 could be in document preservation. It could be in our disclosure requirements. It could be in
26 ensuring that through the process until the time of cross examination or the final hearing,
27 ODR is here to stay. Now, at that moment, the parties need to decide whether it's going to be
28 documents only ODR based or it will be a physical hearing. So, I don't know the terminology,
29 but I think the way it would work is ODR, it would be almost like... there was this notion of
30 hybrid hearings, which was coming up during COVID and like Vikas, most of my hearings last
31 two years, except one of them, has all been online. So, to make ODR, sort of a staple in all kinds
32 of dispute and for all practitioners and for all stakeholders to sort of accept it as a mechanism
33 for redressing all forms of dispute, isn't there a need to sort of change the pitch? Because as
34 soon as you say, ODR, a practitioner understands that yeah, it's a small value dispute perhaps
35 not for the kind of disputes I do. I'm just challenging a... sort of the notion of how to pitch it?



1 **VIKAS MAHENDRA:** Hi, Mayuri. Thank you for that question. Let me talk a little bit about
2 the advantages of ODR. And let us see if that applies to all disputes. And I'll give you an
3 example from our experiences so that there's some anchor around which we can discuss. With
4 ODR we file documents online. Does that work for all disputes? Even today, in any
5 international arbitration, all documents are filed online. It's a different matter that you spend
6 thousands of dollars couriering it to arbitrators across the world and burning down rainforests
7 in the process. But there is definitely an online filing. Today online filing is not secure because
8 you're doing it using drop boxes of the world, your Gmails of the world because they're not
9 tuned for this. Would you prefer an institution which has as its core technology, which ensures
10 that document filing is safe and secure? I think all of us will do. Number two, once you initiate
11 arbitration, what we do is we try and appoint the neutral in our case within 48 hours. That
12 again is done because we have a database of neutrals with their specializations with over the
13 course of time, them updating their availability on a real time basis will therefore make for
14 faster appointment of neutrals. Is that something that people would prefer across disputes? I
15 think they would. Of course, it depends on what your panel of arbitrators of the neutrals sum.
16 If you have a good enough, a broad enough panel with the most experienced of neutrals coming
17 in, I think there is no reason why people would not go to that institution simply because they're
18 using online mechanisms to vet and appoint this specific neutral. If anything, it increases
19 institutional memory. Today, why is it that someone like a MCIA is a preferred institution? Is
20 because of their knowledge of various arbitrators, various mediators. They know who's good,
21 who's bad, what kind of disputes do they handle? And it is that knowledge that you're actually
22 paying for when you're choosing that institution. Technology just makes that a slightly longer-
23 term investment of knowledge so that as and when disputes come, you're able to draw on that
24 knowledge at a point. Thereafter, during the course of arbitration, you've already talked about
25 it. I'm not going to go further into everything from filing of documents to document disclosure,
26 something that you identified. Every time there's a red fern's schedule, there is production of
27 documents. Where do you produce those documents? Do you have a data dump? Do you have
28 a data room that you maintain? And if an institution can give you that sort of data localization
29 security, would you not prefer that? I think you would. Then comes down to the actual hearings
30 itself or even before the hearings the procedural orders. How do procedural orders get
31 generated? How do attendances get tracked? How are they sent to the parties? How do you
32 ensure that the parties have received all of them? If you're able to get technology to enable all
33 of that to happen and track it centrally, I think that's good for all disputes. Go then to the
34 hearing itself. Conducting hearings physically, I think all ODR institutions allow for it. But
35 even if I were to for the sake of argument, assume that you only do it online. What category of
36 your disputes are you going to say, absolutely impossible, I cannot do it online. I think like I
37 said earlier that ocean is shrinking. So even there, even if ODR did not allow for it, which is



1 not the case. ODR permits it if the parties wanted, if the Tribunal wants it. But even in that
2 case, I think ODR has the tools for video conferencing facilities, for transcription facilities, for
3 ensuring that that entire process is seamlessly integrated with all of your documents. Imagine
4 during the course of your arguments how much money you pay Epiq and Opus to bring up
5 your documents on screen the minute you refer to it. Imagine, if all of those documents were
6 on that central repository. You have made all your notes. And whenever that document comes
7 up on screen for you, you see your notes for everyone else they see the common document
8 that's shared. Isn't that a significant advantage? Is that something that even more complex
9 arbitrations can't do with? I think they will. Generating the award. What ODR institutions also
10 help doing is, we help... at least a lot of us help create that fundamental draft, which has your
11 basics, like when was the dispute filed? Who are the parties who attended? When were the
12 hearings conducted? What happened in each of the hearings? They're pre-populated. Would
13 that not also be beneficial to most arbitrations? Of course, with the ability of the Tribunal to
14 change that if they want to, because it's in an editable format that it's given to them, I think
15 that will also. So, I think it really is about going step by step. I think what really is ODR and
16 checking does that meet the requirement of complex disputes and I think it does. And I'm
17 sorry it's a much longer answer than I would have wanted to give, but I thought it was worth
18 taking you through the journey.

19 **MAYURI:** That's the point I was making that isn't it then that the pitch should not
20 somewhere... the pitch has to be that ODR is relevant for all disputes and it's really a hybrid.
21 So, in certain situations you may not want to hear, you may want physically but ODR works
22 for the entire course of the arbitration. So, I think when we use ODR, there is somewhere a
23 sort of mental mind block that it's only certain dispute somewhere. We as the [UNCLEAR]
24 users of ODR have to change the pitch, that it works in all situations.

25 **TARA OLLAPALLY:** I'd like to kind of add to what you just said. It's a great point. We as
26 human beings like to bucket and label things and when we say, ODR we have preconceived
27 notion of what ODR is when actually as practitioners, the task before you when you are
28 meeting with a client is to understand what is the forum that fits this fuss? What is it that your
29 client needs? And the process of strategizing a plan that incorporates all of these, it might
30 incorporate some amount of time with a mediator and then Arbitrator and how do... it's the
31 'how' before we get a sense of what is the need of the party and what are the forums that you
32 have the various tools that you have in your toolkit to be able to customize it to that need. And
33 ODR is the 'how' of the various options that are available to you.

34 **TINE ABRAHAM:** I think there was a question on the back there.



1 **PAVAN SRINIVAS:** Hi, firstly my name is Pavan Srinivas and I'm an advocate in Bangalore.
2 Vikas that is extremely cool to see TERES working in real time. And just before anything else,
3 I'm really glad that TERES is a lot cheaper than Epiq and Opus. Unfortunately, this is the
4 problem I want to highlight. There is a big inertia amongst some of the senior most judges and
5 arbitrators in accepting ODR forms like this. I've suggested this in arbitrations I've done and
6 the feedback I've got is look, no XYZ, Chief Justice of India is uncomfortable with the whole
7 idea. And you know this Vikas, you've had this on your side as well. So, I think the question I
8 have is, Akshetha mentioned, we need a push... we need a push towards ODR. Now, especially
9 given that we're talking about mediation. We already have mandatory pre-institution
10 mediation for commercial disputes. Have you examined a push in that sense? If so, can you
11 talk about the how? How do you get the push? Especially when there is an inertia amongst
12 some of the senior most members of the country's Bar. Because this is a problem with India,
13 in specific. I have worked in London with Allen & Overy, and I know that there's a lot more
14 acceptance over there. But out here it's very different and having come back, I just wonder
15 what you guys do? How do you market yourselves?

16 **RAJNEESH JASWAL:** No, I think... so there will always be detractors and there will always
17 be supporters. And I think they are at least in the case of ODR it's been equal on both sides.
18 We've seen ONDC, like... this is driven by sort of forces within the Government to set up the
19 Open Network Digital Commerce. ODR is sort of native to the ONDC platform. We are already
20 looking at Sahamati Account Aggregator, which is what six months old, I think. Dispute
21 resolution through ODR is native to this. In the latest and I think this happened about three
22 weeks ago, 13 September if I'm not wrong. In the e-code project, there is a significant amount
23 of money set aside for ODR. So, if you look at the visual of that being right in the centre, there's
24 a yellow thing which says ODR. So, the bias that you mentioned or the inertia that you
25 mentioned is there. But there is an equal amount of... from the opposing side as well. And as I
26 said in the beginning, right, the train's left the station. If you're not on it, you will have to figure
27 out ways to get onto the train. With SEBI doing what it has done, and I don't know if people
28 know, about two years ago, the Reserve Bank of India said there should be an ODR mechanism
29 for resolving disputes in the payment and settlement system space. They haven't turned the
30 screws on it yet, but I'm sure they will at certain point in time. So, I think it works on both
31 sides. There will be a little bit of give and take to and fro but ODR is here. That's my answer to
32 them. I'm largely a very optimistic person. I think four years ago people would ask, what are
33 you guys doing, right? And now people say, how much should we pay you? And how are you
34 doing this? I think it's changing.



1 **TARA OLLAPALLY:** But I think you do raise a very important point, especially when you're
2 talking about institutional mindset changing. It's a tough one. It requires... we're talking about
3 a combination of having done things in a particular way for years. People being so
4 overwhelmed that they haven't had a chance to pause and understand how to bring about a
5 change that causes certain sectors to be more resistant to these adoptions. And in our practice,
6 the judiciary plays a very critical role in promoting the practice of mediation. And we continue
7 to work with the Judges, usually to help them understand why mediation is their friend, why
8 mediation works in reducing backlog in their dockets. But where I see, where I had huge hope
9 and where I see a big change is actually in the younger crop of lawyers working with their
10 clients to try mediation. And that's where the change begins to happen. So, whilst there is this
11 resistance, there's also, as Rajneesh said, the whole other ecosystem that's growing of younger
12 lawyers saying we came into this field for supporting clients to resolution. That's why we came
13 to the law and the current system does not allow us to do this. We're done. We want to try
14 other systems which is where these kinds of processes come in to create that change.

15 **VIKAS MAHENDRA:** A very quick addition to that one. It's not that the ODR journey has
16 been seamless even in the context where they've adopted ODR. I'll give you a SEBI example.
17 Once they said ODR is mandatory for Securities Market transactions. We were supposed to do
18 an orientation for existing Arbitrators on these stock exchanges to onboard them onto our
19 platform. We started that call. The first question before our presentation began was, one
20 person said, "listen, I want you to promise me one thing. If you appoint me as an Arbitrator, I
21 want you to send a hard copy of every single document that has been filed in this case to my
22 house. You promise me, only then I'll let you continue this call". That was two weeks ago, right?
23 It is not that this mindset is going to change overnight. It is a process that takes a little bit of
24 time. But I think COVID's given us hope. It really has, because if you see the Chief Justices
25 that you're talking about are all now very happy doing virtual hearings because, now they can
26 do ten times the number of hearings they would have done earlier. Because now they don't
27 have to travel. They don't have to waste time doing it. So, we are hoping that that somehow
28 percolates down a little bit more. And if you see Delhi High Court for instance, I don't see more
29 than 50% of the lawyers carrying files anymore. Everyone carries an iPad, and everyone has
30 liquid text. And that also gives you hope that if you give them the right tools, I think people are
31 willing to adopt. And that's the sort of thing that some of the ODR players are attempting to
32 do that we will try and give the lawyers tools. Yes, it's going to take time. Yes, there will be
33 detractors. But I think there's only one way this is going.

34 **AKSHETHA ASHOK:** Just to quickly add. I think from what Pavan said, so a fellow like
35 optimist in the room and by no means am I talking about anything political, but just for you



1 to narrow down on just how amazing it was as a project, it's such a great time to be in India
2 doing ODR. And that's something that we just really, really believe. And India is the place
3 where UPI happened, where Aadhaar happened. Again, just think of it as a project. To be able
4 to [UNCLEAR]. So many people in a country like India, whether it's your GST. India is just...
5 it is really a great place to be in to do ODR. Even now with the securities market sort of coming
6 in, that was... that's a great sample size, it has scale, and it has the most enthusiastic people
7 about ODR. All of us really plugged in and making sure this works or just even the learnings
8 that's going to come out from the next few months. It's going to pave the way for how any other
9 large market would ever want to adopt ODR. And I don't think anyone else will be able to take
10 those kinds of strides. So, it's always helpful though as Pavan was mentioning, it's always
11 helpful to have champions in the room though. So, if there's just a request that I would leave
12 with is, just don't leave the room today as fence sitters when it comes to ODR. But just
13 championing it is probably what's going to help. Because as Tara was saying, right? Like a good
14 lawyer now, is not necessarily how many wins or loses you have, but how many relationships
15 have you saved? How many conflicts have you avoided? And if we're moving into that
16 direction, then I think this is a great place to be and it's a great time for ODR.

17 **AUDIENCE 3:** I think this is a ODR question. I may just you sound like a broken record now,
18 and I see that your arbitration is only as good as your Arbitrators. So, I can tell you seven years
19 back when we started to do our annual conference, we made it a point to have transcript and
20 you rightly said we had Epiq and we moved to TERES, and we're very glad that we have Indian
21 transcribers who are doing the job right. The difference it has made is that I can tell you if it's
22 an MCIA Arbitration. The judges are... when I say judges and Arbitrators are very happy to
23 take transcription. They have no difficulty. So, it's a systemic change where I think institutions
24 be it ODR, arbitral institutions, mediation institutions, when they appoint the experts or
25 neutrals or adjudicators, I think the acceptability of what's changing becomes higher as well.
26 So, the answer really is that you need to move things to institutions whichever institutions you
27 may want to do that.

28 **TINE ABRAHAM:** Thanks, Niti, for that. Just one... I think there was one more question
29 and we can take that. Yeah.

30 **SUSHIL SHANKAR:** Actually, two questions. I'm Sushil Shankar. So, this is probably more
31 for Akshetha and Rajneesh and Vikas because it's probably more towards arbitration. You all
32 spoke about the regulatory framework and how there needs to be a balance between not
33 stifling innovation, and at the same time having regulation and about ring fencing things. But
34 what I feel is all this is possible, and this regulatory framework can only evolve if the end user
35 that is the Parties, if their complaints, or their unhappiness about this ODR is brought into the



1 public domain. And one way I can think of that is when your award is challenged, a Section
2 34. Now I'm aware that most of these cases there are people who may not be aware of what
3 arbitration is, let alone what is Section 34. And so, they're very unlikely to go and challenge
4 their awards. So, without giving me, without specifying numbers if you could just tell us
5 broadly what percentage of your awards, your ODR awards are actually challenged and... for
6 the regulatory framework to evolve. Because if it's all... otherwise the dirt is just going to be go
7 under the carpet and nobody will know what's happening in the ODR world.

8 **RAJNEESH JASWAL:** So, I think I won't be able to give you exact numbers, but what I do
9 know and principally because today as the business has evolved, we are largely working for
10 banks and financial institutions. And these are numbers which, large volume of cases being
11 pushed to the system, but we do see CADRE. We've done cases for example, somebody
12 mentioned tech transfer to two IT companies. I gave you the contract to create a game for me
13 and game had XYZ sort of deficiencies. That went on for us for about 3 months. We gave an
14 award. Both the parties agreed, and it was not challenged. So, I mean take aside the volume
15 cases and some of them do get appealed. But we haven't seen any... I can tell you... I have seen
16 five cases in the last six months which have been challenged in the city civil court in Bangalore.
17 This is one of those small ones Section 34. I haven't seen them go against saying that the ODR
18 process was not right. So, that's one, but I am talking about the other sort of more difficult
19 ones for example, this gaming thing...

20 **SUSHIL SHANKAR:** What about the volume ones?

21 **RAJNEESH JASWAL:** Volume ones I said. I have seen five in the last six months, and we
22 have got summons from the city civil court in Bangalore, please produce your records? We
23 have given them records in digital form with the Section 65(B) certification and there has been
24 nothing beyond it. Right. We have not been scrutinised overtly to say who are you? Where are
25 you from? And things like that. We follow 65(B), give it in a digital form, put it in a pen drive,
26 put a seal on top and say these are the records of the arbitration. And I think it has been smooth
27 that way. I haven't seen anything beyond that, no. But I think for this audience would be
28 relevant, would-be cases like, 'I asked you to create an online game for me, it didn't work. I
29 need damages and so on and so forth and I won't pay you'. That case was decided, and it was
30 by consent referred to us and it was decided in three months or even lesser. Both parties were
31 fine. We see some folks coming out of Mumbai on... and again these are fights over commercial
32 matters, might be BPO not getting paid, again... came to us, award given in three months or
33 less and it's not been challenged. We have heard nothing beyond that. And these clients are
34 happy to refer more cases to us. So, I don't... because the nature of arbitration is such that it
35 doesn't get reported and that's changing. For example, SEBI has now mandated that all cases



1 which go through the SEBI process must be reported. How many settled? How many xyz?
2 Hopefully at some point there will be such kind of reporting per case. But this all and in total
3 I can tell you five in the last six months and the ones I have seen. Otherwise, I haven't seen any
4 overt scrutiny from courts in that sense.

5 **VIKAS MAHENDRA:** Yeah, likewise for us. We haven't in fact, we haven't received a
6 summons in a single of our case. We definitely know that our awards have been taken to courts
7 because for instance, courts in Tamil Nadu require the original to be sent by whoever is...
8 printed it to be sent to them. We had to send it, so we know it's gone to courts. But we haven't
9 got anything that's been challenged. But I think you do bring up an important point
10 somewhere in the middle of your question, which is, 'education of the consumers as well'. And
11 I think that is something that the ODR players do a lot more than typical conventional
12 arbitrational processes. For instance, when we send out a notice of arbitration, we translate
13 them into multiple languages. So that you understand what it is that you are getting into. And
14 we tell them if you don't have access to technology, you don't have access to internet, let us
15 know, give us a phone call. We will arrange some way for you to participate in the process. So,
16 we really do a lot to bring the disputants on to the table and rather than just publish ex parte
17 awards. That's certainly been my experience with at least the ODR players on this panel. So,
18 investor education, consumer education is an integral part of the processes that we are doing.
19 Also, I can speak personally, we are very conscious of the kind of disputes we do as well.
20 Unilateral appointments has been a problem in the recent past. Therefore, we as an institution
21 in the last few months have taken an active call not to do unilateral appointment cases except
22 where the parties consent. So, it's also something that we are evolving to ensure that we don't
23 just become rubber stamps.

24 And we wear as a badge of honour that at least in ten cases that I know of in our institutions
25 the case has been ruled against the Claimant. And these are banks. Imagine if a case has been
26 ruled against them. That should give you some sense of the independence that we hold our
27 arbitrators to. In fact, the arbitrators came and asked us, "Listen, I think in this particular case
28 they don't have enough documents you might have to rule against them". I said, "Please do, it
29 is you who are making that decision. You are ultimately who is independent" and therefore,
30 that is of primal importance to us. All of this just to give you a sense that, yes, there is an
31 asymmetry in terms of awareness. We are trying to bridge that. ODR institutions are genuinely
32 trying to be neutral. We are not being rubber stamped. And in terms of cases, we have not seen
33 the courts being particularly intrusive and setting aside our awards, at least in our panel. That's
34 been our experience.



1 **RAJNEESH JASWAL:** Just to add... translations, multiple languages, IVRs, QR codes,
2 requesting Respondents to come and join the proceedings. If a Respondent does not have
3 access to a Zoom, can I create another tech solution where a Respondent can just on a simple
4 feature phone, just log into the call and hear what's happening. Can I translate from X
5 language to Y? Now, so these are a number of steps we are already doing to bring inclusiveness
6 into the system. And similarly, we've had where cases have gone against banks because, stamp
7 duty is not paid. The last page of the agreement is missing, which had the arbitration clause,
8 signatures are missing. I think a lot of us... the fact that we are lawyers, we are aware of all of
9 these. There's a very high standard we put on ourselves as well, to say that for an institution,
10 for an award to be set aside because of a reason of not being inclusive is this anathema for all
11 of us. I can very safely say that for all the institutions.

12 **TINE ABRAHAM:** Thank you to the wonderful panel.

13 **SUSHIL SHANKAR:** One second, I have a second question.

14 **TINE ABRAHAM:** You have a second question.

15 **CHARVI:** Sir, can you please take it to the lunch...

16 **SUSHIL SHANKAR:** Sure, no problem.

17 **TINE ABRAHAM:** We are running short of time. So, thank you to the wonderful panel and
18 I should say that this is one of those panel discussions where you end the discussion with such
19 an optimistic, high note because you've had four panellists here who are all very, very
20 optimistic about the future of the online dispute resolution, or on how mediation is here to
21 change the way people look at dispute resolution. Thanks to all of you for taking the time and
22 being part of this very enlightening discussion.

23 **RAJNEESH JASWAL:** Thank you to MCIA. As I said, this is the third year running. They've
24 been consistently been focused on ODR. It's heartening to see an institution take that step.
25 Thank you so much.

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~~~END OF SESSION 2~~~