

“Technology Mediated Dispute Resolution – A new paradigm for ADR”

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Law on the move

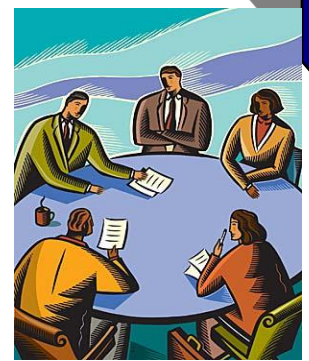


“If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. **Law must, therefore, constantly be on the move adapting itself to the fast changing society and not lag behind.** It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation”

Justice P.N. Bhagwati

- Case
- Features
- Benefits
- NIXI
- Concerns and corresponding opportunities
- Legislative amendments
- The “real” paradigm shift
- The “L-syndrome”

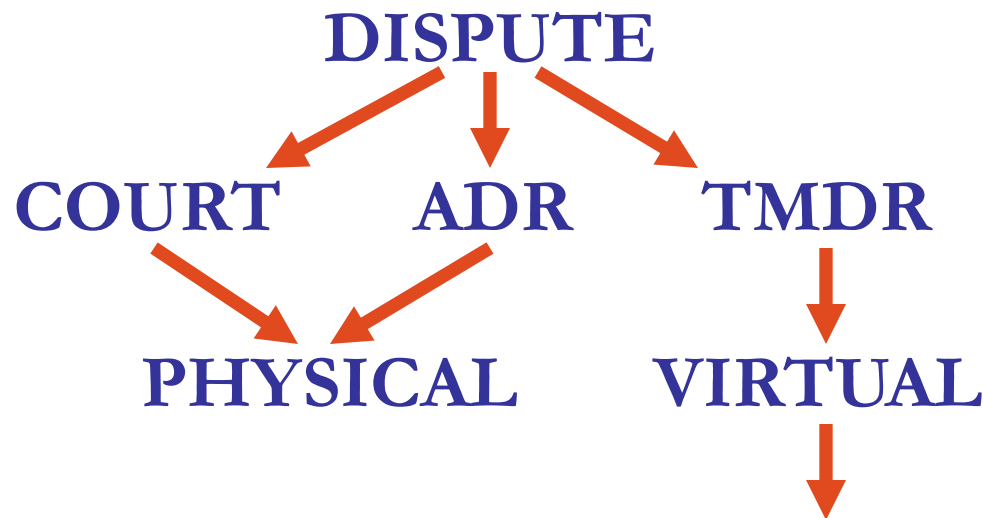
Classical case of ADR



- A dispute arises between parties
- Dispute resolution provision is invoked - often an arbitration clause
- Constitution of the tribunal and proceedings commence
- Meeting on a regular basis - “hearing” & incurring astronomical costs – venue, travel & lodging, arbitrators’, institutional, and legal fees, other administrative costs
- Award is delivered – losing party often challenges in court
- Outcome – cost, time with no tangible result for many years



Technology is the alternative



- ✓ Shift of venue rather approach
- ✓ Automation of current forums

What does it involve? – Creating a virtual replica of physical setting and conduct proceedings by using various means for information exchange – e-mail, SMS, digitized documents, grid computing, video and teleconference.

Can Technology Resolve Disputes?

**YES, potential to resolve ALL
kinds of disputes!**

- B2B, B2C, C2C
- Insurance
- Matrimonial
- Property
- IPR
- Technology licenses
- Consumer
- Civil commercial disputes

Certain global models

USA

ICANN

AAA

Square Trade

EUROPE

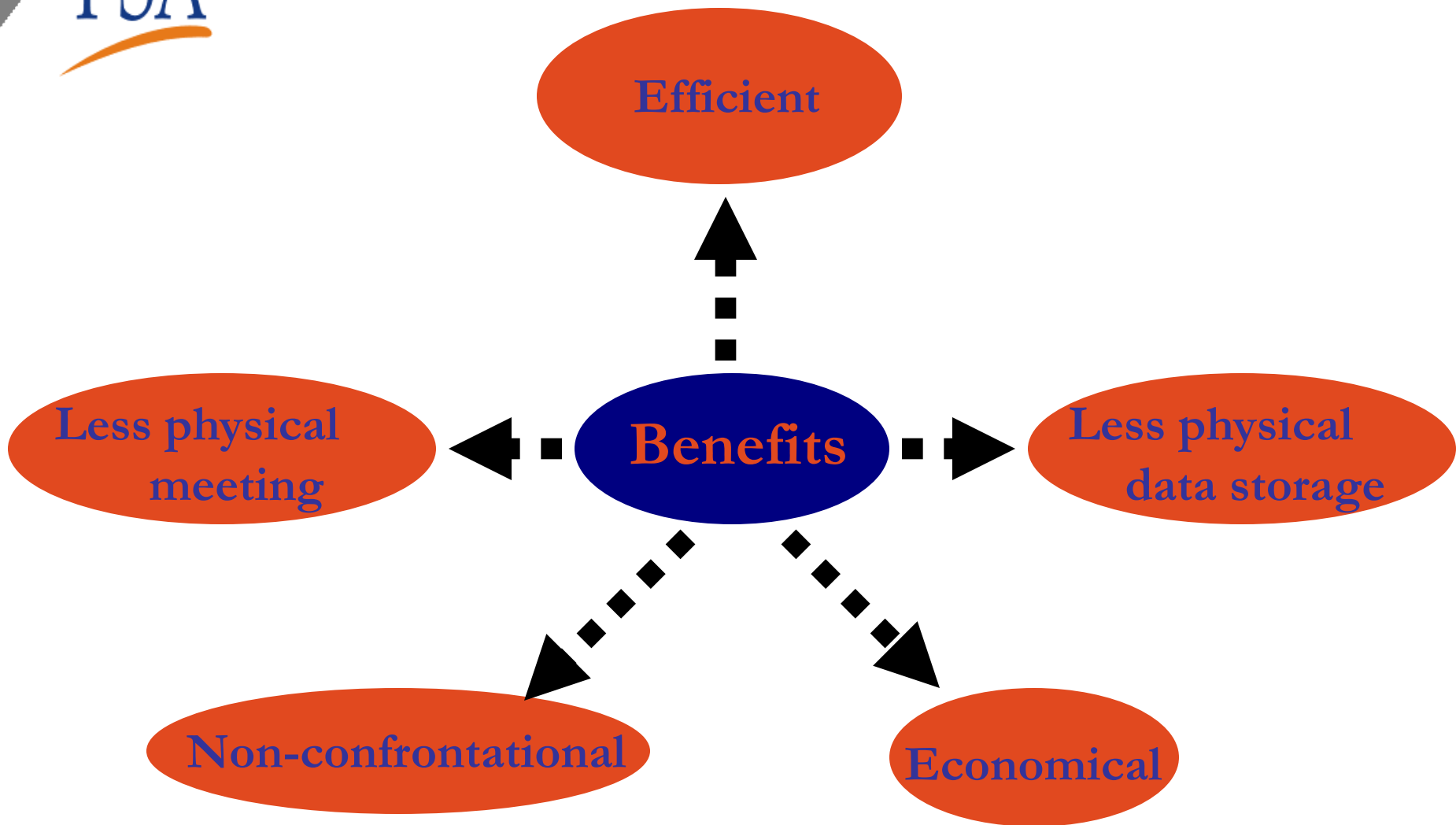
CCform

NetCase

WIPO

INDIA

NIXI



NIXI - the first step

- Created India's official (.in) registry - maintains the (.in) domains and has formulated .IN Dispute Resolution Policy
- Mode of dispute resolution: Arbitration
- Model can be successfully used in various other forums like TRAI, TDSAT, consumer forum, etc.

Court

Initiate civil case: upon arising of cause of action-3 years
 Summon to defendant: *no fixed period*
 Written statement: 30-90 days
 Record evidence & frame issues: 3 appearances
 Arguments: 1 appearance
 Judgment: 1 appearance

3-5 years

Arbitration

Invoke arbitration clause: upon arising of dispute
 Appointment of arbitrators by court: 60 days
 Written proceedings & hearing: as decided by parties (*No fixed period*)
 Award: per contract, if any (*No fixed period*)
 Enforcement of award: 4 months + 1 court appearance

1-2 years

PSA
 Legal Counsellors

NIXI

File complaint: Upon knowledge of offence
 Notify respondent: 3 working days
 Appointment of arbitrator: 5 working days
 Summon to respondent: 3 days
 Award: 60 days + 30 days
 Delivery of award: 5 working days

90 days

Concerns and Opportunities

❑ Lack of Infrastructure Networks

- Servers
- Hosting data
- Trained staff
- Bandwidth

❑ Security

- Data protection & confidentiality
- Privacy & trust

❑ Generational disconnect – X, Y vs. Ws

- Pro-technology *vs.* anti-technology
- Text *vs.* talk

❑ Training – forums, lawyers, judges, arbitrators, mediators

❑ Scarcity of resources – spectrum

Corresponding Business Opportunities

- IT companies to provide infrastructure – **hardware**
- IT companies that can address security, privacy and data storage concern – **software**
- Companies that can help in creating awareness, provide training to the forums and people – **service**

Statutory concerns

- ❑ **Enforcement** – Absence of institutionalized arbitration in India - courts are still inevitable for enforcing an award which, invariably, becomes a protracted process. Result – not efficacious for business.

- ❑ **Legislative amendments necessary**
 - Civil Procedure Code – digital signature on pleadings to remove notarization, accept e-filing, online hearing, and e-judgments
 - Court Fees Act – online payment of court fees
 - Indian Evidence Act – accept e-evidence
 - Information Technology Act – secure electronic signature on pleadings, data protection and privacy of filings
 - Arbitration and Conciliation Act – arbitrators NOT to be appointed by judges, enforcement process should be in sync with business needs

The “Real” Paradigm Shift

PILOT PROJECT: E-COURTS

“18 matters heard in just 2 hours with no movement of paper and gadgets replacing files”- opening day of the e-court in the Delhi High Court
(Dec. 15, 2009)

- The Delhi High Court’s computer committee aims to digitize all records and documents within 2 years
- Cost-effective, ensures transparency and accountability, solve problems of shortage of storage space, and reduce the burden on human resources
- “Real” and most encouraging shift - e-courts will hear all types of disputes

Should be emulated in other cities across the country at all levels

For an efficient court system

“Justice is a consumer product and must meet the test of confidence, reliability and dependability to survive market scrutiny.”

“The modern devices and equipments already in vogue should be utilized for effective judicial system.”

HC judge slams culture of adjournments



But...

The “L-Syndrome”



Factoid - Technology permeating every sphere
but
resistance to change by

- **L**egal community - diverse socio-economic strata and need to make money
- **L**awyers charge per appearance in most cases, adjournments are a necessary part of the “strategy”
- **L**ow fees is “frowned” upon
- **L**owering the role of lawyers in any form of dispute resolution may find its strongest resistance from within the **L**egal community!!

Radical shift required in the Indian Legal Community

The PSA logo features the letters 'PSA' in a blue serif font, with a blue swoosh underneath. The logo is positioned in the top-left corner of the slide, partially overlapping a decorative orange and grey geometric shape.

PSA

**Thank you
for
your time and attention!**

PSA

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