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

By: Neeraj Dubey

I-Tech Law - 6th International Asian Conference
February 4-5, 2010, Bangalore
“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
Structure

- 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 – loosing party often challenges in court

- Outcome – cost, time with no tangible result for many years
Technology is the alternative

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.

- Shift of venue rather approach
- Automation of current forums
Can Technology Resolve Disputes?

YES, potential to resolve ALL kinds of disputes!

- Insurance
- Matrimonial
- Property
- IPR
- Technology licenses
- Consumer
- Civil commercial disputes

Certain global models

USA
- ICANN
- AAA
- Square Trade

EUROPE
- CCform
- NetCase
- WIPO

INDIA
- NIXI

PSA
Legal Counsellors
Benefits

Efficient

Less physical meeting

Less physical data storage

Non-confrontational

Economical
# 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

## 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

## 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

<table>
<thead>
<tr>
<th>3-5 years</th>
<th>1-2 years</th>
<th>90 days</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PSA</td>
<td>Legal Counsellors</td>
</tr>
</tbody>
</table>
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.”

But...
The “L-Syndrome”

Factoid - Technology permeating every sphere but resistance to change by ……

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

Radical shift required in the Indian Legal Community
Thank you for your time and attention!

PSA
Legal Counsellors
14A&B, Hansalaya Building
15, Barakhamba Road
New Delhi – 110001

Tel: +91 11 4350-0500 (Board)
Fax: +91 11 4350-0502
website: www.psalegal.com