Online Dispute Redressal in India

Why in news?

Union Law Minister, in a recent event held in Delhi International Arbitration Centre, emphasized the need for institutional arbitration to enhance the ease of doing business.

What is Arbitration?

- It is a legal technique for the resolution of dispute outside the courts.
- It allows parties to avoid the normal lengthy recourse to the local courts for settlement of disputes.
- It is a part of the Alternative Dispute Resolution (ADR) mechanism.
- The Indian arbitration is governed and regulated by the Arbitration and Conciliation Act 1996.
- The Act derives its basis from the 1985 UNCITRAL Model on International Commercial Arbitration and the UNCITRAL Arbitration Rules of 1976.

Types of Arbitration	
Institutional Arbitration	**Ad Hoc Arbitration**
• When an arbitral Institution conducts arbitration it is called as Institutional Arbitration. • **Example** - Delhi International Arbitration Centre, International Arbitration and Mediation Centre (IAMC).	• When the parties agree among themselves and arrange for arbitration, it is called Ad hoc Arbitration • Ad hoc Arbitration has no institutional proceeding. • It can either be domestic, international or foreign arbitration.

What are the advantages and disadvantages of ODR?

Advantages

- Reduce the burden on the courts
- Saves time, litigation costs, and provide effective resolutions.
- Encourages consensual rather than an adversarial approach
- Geographical limitation can be avoided through ODR

Disadvantages

- Impersonal, leading to greater distance between the parties and mediator.
- Inaccessible due to lack of infrastructure for technology
- Lack of protection of confidential material in ODR

Why India has to focus on arbitration?

- **Preferred choice** - As more countries entered into bilateral investment treaties, institutional arbitration became the preferred choice.
- **Ease of doing business** - Despite its tremendous improvement in the World Bank's Ease of Doing Business report, India ranked 163rd, in Enforcing Contracts category.

India's Ease of doing business ranking improves from 142 in 2014 to 63 in 2019

- **Unfriendly legislation** - Although India introduced its arbitration legislation in 1996, it acquired a reputation of being '*arbitration-unfriendly*'.

What are the challenges in India?

- *Srikrishna Committee* in 2017 pointed out several reasons which includes:
- ***Lack of preference*** for institutional arbitration over ad hoc arbitration.
- ***Frequent interference*** from the judiciary from the appointment of arbitrators to the enforcement of awards.
- Setting aside of arbitral awards on the grounds of '***public policy***'.

What are the measures taken so far?

- **The Arbitration and Conciliation (Amendment) Act, 2015** - To make arbitration process user friendly, cost effective and ensure speedy disposal and neutrality of arbitrators.
- It amended the Arbitration and Conciliation Act 1996.
- **B.N. Srikrishna committee** - To prepare a road map to make India a hub of international arbitration.
- It recommended the creation of the post of an International law adviser (ILA) to advise the government on international legal disputes, particularly Bilateral Investment Trade disputes.
- **New Delhi International Arbitration Centre** - It is an independent and autonomous body for facilitating institutional arbitration.
- Established by the New Delhi International Arbitration Centre Act, 2019.
- **The Arbitration and Conciliation (Amendment) Act 2019** – It provides for establishment of the Arbitration Council of India.
- **Arbitration Council of India** - It will frame, review and update norms to ensure satisfactory levels of arbitration.
- It will also frame policies governing the grading of arbitral institutions.

How India can be made an arbitration hub?

- **Incentivise** - Incentivise the use of ODR by way of legislative measures.
- **Infrastructure** - Create infrastructure to curb the digital divide, and catalyse ODR's growth by optimising existing setups such as Aadhaar kendras to also function as ODR kiosks.
- **Dedicated fund** - On the lines of e-Courts project (aimed at digitising the justice

system), a dedicated fund must be set up for furthering ODR.
- **Increase trust** - proactive use of ODR as a grievance redress mechanism by government departments will increase the trust in the process.

References

1. The Hindu | ODR
2. PIB | Year End Review, 2022 | Department of Legal Affairs

