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ONLINE DISPUTE RESOLUTION: A NEED OF THE HOUR

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Abstract

India's e-commerce industry is expanding quickly since the country is thought to be generating a sizable and lucrative market for e-commerce companies. Because of this, the majority of e-commerce websites do not abide by Indian law and unintentionally break it without realizing it. Many Indian e-commerce businesses could face legal action as regulatory bodies in the country have begun to scrutinize their activities. This struggle involves not only the regulatory bodies and the proprietors of e-commerce websites, but also disagreements between e-commerce websites and their customers. In summary, the Indian government continues to oversee the resolution of disputes pertaining to e-commerce in India. Dispute resolution procedures are required in light of the Internet's and electronic commerce's rapid expansion in order to assist parties situated anywhere in the world settle disputes in a fair, quick, and economical manner. The effectiveness of online dispute resolution depends on technology being available to both the parties seeking justice and the authority that administers it. Due to fierce rivalry among service providers, internet consumption in India has significantly increased since 2016. Despite being the country with the highest internet usage, India only had 34.8% of its population with internet access in 2016, yet by 2020, that number had risen to 50%, according to the internet live statistics. An online mediation process would start if the settlement didn't work out. The platform's functions included problem diagnosis, automated negotiation, mediation, and arbitration. Since then, this model has developed into increasingly complex variations that are widely utilized by both nations and other private businesses. It is commonly referred to as ODR.

Keywords- E-Commerce, Dispute, Resolution, Online Dispute Resolution, Technology, Companies

Although the term "online dispute resolution" is now commonly used, there isn't a single definition that applies to all forms of ODR. In general, online dispute resolution (ODR) refers to the use of the internet as a tool to assist in resolving disputes by utilizing Alternative Dispute Resolution (ADR) principles such as arbitration, mediation, and negotiation. However, depending on the kind of dispute, ODR is conceptualized in a number of different ways. ODR can be used, for instance, to resolve disputes that occurred online (i.e., online

disputes) or, conversely, to resolve issues that occurred offline but, for a variety of reasons, use the internet to help resolve them.⁴³¹ I

t is a collection of dispute resolution procedures that enable the settlement of conflicts using online channels like the Internet or other technology that enables virtual communication without the need for the parties to be present in

⁴³¹ Kori Clanton "We are not who we pretend to be: ODR alternatives to online impersonation statutes" (2014) 16(1) Cardozo Journal of Conflict Resolution 323 at 349.



the same room.⁴³² Online arbitration, completely automated online "blind bidding" bargaining systems, and chat-based mediation programs are just a few of the many ODR services available. The parties involved and the nature of the dispute may influence which ODR format is best. Additionally, ODR procedures ought to be user-friendly and free from excessive accessibility issues.⁴³³

History of Online Dispute Resolution

Online dispute resolution is the process of resolving conflicts, especially those of modest to moderate value, via the use of digital technology and Alternate Dispute Resolution (ADR) methods such as arbitration, mediation, and negotiation. The development of the Internet in the 1990s, which led to a rise in online transactions and, consequently, disputes pertaining to those transactions, is where ODR got its start. In general, ODR's global development can be split into three stages, each of which benefited from later advancements in ICT (information, communication, and technology). The three stages are covered below:

FIRST STAGE: Experiments of eBay leads to:

- The University of Massachusetts and the University of Maryland initiated the first ODR project initiatives in 1996;
- As e-commerce grew, a strong system was needed to conduct business online. ODR provided a remedy for this issue;
- eBay began a trial program in 1999 to offer online mediation services for disagreements between buyers and sellers on its marketplace;
- By 2010, eBay's ODR technology handled more than 60 million complaints annually.⁴³⁴

SECOND STAGE: Period of ODR starts:

- The development of ODR and the proliferation of ODR platforms were sparked by

the model's success and the internet's explosive growth. In 1999, up to 21 new ODR programs were introduced;

- only a small number of prosperous platforms, including Cybersettle, Smartsettle, and the Mediation Room, were able to significantly influence the dispute resolution ecosystem.⁴³⁵

THIRD STAGE: Government and Judiciary

- Governments are becoming interested in this new addition to the dispute resolution ecosystem as a result of the success of some private ODR platforms.⁴³⁶

The number of disagreements grew along with the number of interactions, necessitating the use of online redress. Although the internet was created in the late 1960s, for the first 25 years of its existence, it was mostly used in academic and military contexts. Because the parties were probably in the same real-world circles, complaints could therefore frequently be settled offline.

In the beginning, courts were more concerned with using traditional litigation to settle online issues than they were with using technologically based remedies. One significant problem courts faced in the mid-1990s, for example, was determining who had jurisdiction over disputes resulting from online exchanges. The early adoption of internet use on college campuses has sparked lawsuits about campus activities that touched on topics like harassment and freedom of speech. The dispute resolution procedure itself was still somewhat analogue, even if the topics of discussion were related to online conduct.⁴³⁷

ODR projects had not yet been created.

1. The Virtual Magistrate initiative sought to settle conflicts between consumers and ISPs.⁴³⁸

⁴³⁵ Supra note 22.

⁴³⁶ Supra note 22.

⁴³² Robert J Condlin "Online Dispute Resolution: Stinky, Repugnant, or Drab" (Francis King Carey School of Law Legal Studies Research Paper No 2016-40, University of Maryland, 2016) at p. 15.

⁴³³ Ibid.

⁴³⁴ Supra note 22.

⁴³⁷ Dispute Resolution Conference, May 22, 1996 Washington, D.C. Sponsored by NCAIR, available at: <https://www.umass.edu/dispute/ncair/> (last visited on Sep 29, 2024).

⁴³⁸ Ethan Katsh, "The Online Ombuds Office: Adapting Dispute Resolution to Cyberspace" (1996), available at:



2. The Online Ombuds Office at the University of Massachusetts placed a strong emphasis on Internet issues in general.⁴³⁹

3. The University of Maryland suggested using ODR to resolve family conflicts including parents who lived far apart.⁴⁴⁰

In the past, when India lacked legal courts, disagreements were settled at the domestic level by the village sarpanch, an elder member of the family, or Kulas, Srenis, Phugas, or Parishadas. A number of laws, including the 1933 Charter Act, the Bombay Presidency Regulation Act, and the Madras Presidency Regulation Act, were passed during the British Empire to encourage arbitration. However, the Indian Arbitration Act 1940, which was based entirely on the English Arbitration Act, was a momentous step. It mostly dealt with domestic issues:

1. INDIAN CONSTITUTION

Following independence, the Indian Constitution was ratified, and Article 21 states that no one may be deprived of their life or personal freedom unless a legally mandated process is followed. Additionally, the process ought to be "fair, just, and reasonable."⁴⁴¹ In a historic ruling, the Indian Supreme Court ruled that the right to a quick trial is an integral aspect of the right to life or personal freedom.⁴⁴²

2. CIVIL PROCEDURE CODE

Because of the Civil Procedure Code Amendment Act of 1999, which added Section 89 (opt for any one mode of ADR after first hearing of suit), courts are now required to ask parties to agree to one or more ADR methods when there are elements of a settlement.⁴⁴³

<https://www.umass.edu/dispute/ncair/katsh/> (last visited on Sep 30, 2024).

⁴³⁹ Katsh E, Online Dispute Resolution: some implications have emergence of law in cyber space, *LaxElectronica*, vol.10n.3, hiver/winter2006, available at: <http://www.lex-electronica.org/articles/v10-3/katsh.htm/> (last visited on Sep30, 2024).

⁴⁴⁰ See <http://odrindia.in/> (last visited on Sep 30, 2024).

⁴⁴¹ Maneka Gandhi v. U.O.I, AIR 1978 SC 597.

⁴⁴² Hussainara Khatoon (1) v. Home Secretary, State of Bihar (1980) 1 SCC 81.

⁴⁴³ Code of Civil Procedure, 1908, available at: <http://www.advocatekhaj.com/library/bareacts/codeofcivilprocedure/index.php/> (last visited on Oct 2, 2024).

3. ARBITRATION AND CONCILIATION ACT 1996
The UNCITRAL Model Law on International Commercial Arbitration, 1985, and the Conciliation Rules, 1980, served as the foundation for the Act's enactment. Its key component is its universal applicability, which harmonizes the concepts of arbitration and conciliation across various legal systems worldwide.⁴⁴⁴ The primary goal of the act is to promote peaceful conflict resolution through domestic and international arbitration and conciliation. In order to promote dispute resolution, it allows for the use of mediation, conciliation, and other processes during arbitral proceedings.⁴⁴⁵

4. INFORMATION OF TECHNOLOGY ACT 2000

In order to provide online contracts more certainty and consequently support e-commerce, the ideas of writing and signing have recently undergone major modernization. The UNCITRAL Model Law on Electronic Commerce was adopted in 1996, marking the most significant international step toward this goal. Next came the adoption of the UNCITRAL Model Law on Electronic Signatures in 2001. "A global reform of writing requirement" was the outcome of such legislative reforms.⁴⁴⁶ In order to promote e-commerce and provide legal recognition for e-transactions, India passed the Information and Technology Act, 2000, which was modeled after the UNCITRAL Model Law of e-commerce. The Act's Sections 4, 5, 10-A, and 11-15 demonstrate the legal acceptance of electronic signatures and records.

FORMS OF ODR

1. Blind Negotiation

One of the most popular online dispute resolution processes at the moment is "blind bidding" or "blind negotiation." These

⁴⁴⁴ Dr. Anupam Kurlwal, An Introduction to Alternative Dispute Resolution System (ADR), at 181-188, (Central Law Publications, Allahabad, Second Edition, 2014).

⁴⁴⁵ Arbitration and Conciliation Act, 1996, available at: <http://www.advocatekhaj.com/library/bareacts/arbitrationandconciliation/index.php/> (last visited on Oct 3, 2024).

⁴⁴⁶ The UNCITRAL Model Law on Electronic Commerce was adopted by the General Assembly Resolution 51/162 of 16 December 1996, and amended in 1998, available at: <http://www.uncitral.org/> (last visited on Oct 3, 2024).



procedures are all characterized by the parties submitting financial offers and requests that are compared by a computer in "rounds" without being revealed to the other party to the negotiation. Participants are promptly informed online or via email if the claim is resolved.⁴⁴⁷

2. Online Bidding

Negotiation and mediation are two processes that are used in this type of ODR. By choosing online negotiation, the parties can start the ODR process and try to work out their differences and come to an agreement. A mediator is assigned to facilitate an online mediation and assist the parties in reaching a settlement if they are incapable of doing it on their own.

3. Online Negotiation-cum-Mediation

Negotiation and mediation are two processes that are used in this type of ODR. By choosing online negotiation, the parties can start the ODR process and try to work out their differences and come to an agreement. A mediator is assigned to facilitate an online mediation and assist the parties in reaching a settlement if they are incapable of doing it on their own.

4. Arbitration of Documents and Emails for Conflicts Resulting from Online Purchases

The entire arbitration process is conducted via document/email, as the name implies. Email is used for everything from the arbitration agreement to the filing of disputes with supporting documentation, written submissions, hearings, and closing remarks. Email is used for communication between the parties and the arbitrators. Email is the method used if the arbitrator want to ask questions or if parties wish to submit or respond to comments made by others.

5. Online Arbitration through Video-conferencing

Online arbitration that uses video conferencing is said to be the most similar to face-to-face arbitration. The arbitration procedure is carried out by video conference. Enforcement Issues in

Cyberspace 38 Dispute Resolutions in Cyberspace Using normal browser software, registered participants can access an electronic conference room from any location in the globe using the CAN-WINTM Internet conferencing system⁴. Each participant's screen displays a list of all parties present, and clicking on a participant's name brings up a box where you can write an email to that person. Additionally, each participant's screen has a space for typing messages to all other participants.

6. Panel Jury

To aid in the assessment and settlement of conflicts, ODR organizations also provide online "Peer Jury" and "Panel Jury" procedures. Volunteer jurors choose the cases they want to resolve, examine the arguments made by each party, ask questions, and then render decisions in Peer Jury online trials. A report that includes the median award, the number of votes cast, and a compilation of juror comments is sent to the parties. The parties select particular jurors in panel jury cases. The parties are free to choose whether or not the jury's decision will bind them. The online courthouse is located at www.iCourthouse.com. You can submit your issues for trial before a peer-led jury in our virtual courthouse. The plan is to get a consensus beforehand to take the matter to the courthouse, where a jury will render a decision.

ONLINE DISPUTE RESOLUTION (ODR) PLATFORMS

1. CADRE: Center for Alternatives Dispute Resolution Excellence

Shalini Saxena and Kanchan Gupta were the founders. A website-based technology called CADRE has streamlined the arbitration rules and expedited and secured the procedure. It employs skilled and knowledgeable arbitrators who are familiar with CADRE's regulations. Making sure the client doesn't leave the entire process without money or a solution is one of their primary responsibilities. When the first party approaches, the process starts, and the other party is then notified. If they choose to move further, an arbitrator is chosen to help them navigate the entire process, clearly

⁴⁴⁷ Online Dispute Resolution available at <http://www.squaretrade.com/spl/jsp/elN/el.jsp?stmp=elance//> (last visited on Oct 3, 2024).



emphasizing that the outcome, in their favour, would be legally binding. Additionally, emails and WhatsApp are used to notify the parties of the schedules and information. It is implied that the parties cannot meet without their permission. They can have a face-to-face conversation by setting up a video conference if they'd like. Within 20 to 25 days, the decision is made. Bangalore, Karnataka, is home to CADRE's headquarters. A variety of forms, including webinars, brochures, training materials, data tools, online learning modules, fact sheets, and briefing papers, are part of CADDRE's marketing approach.⁴⁴⁸

2. SAMA:

- In 2015, Vikram Kumar, Pranjal Sinha, and Akshatha Ashok created SAMA. Headquarter situated in Bangalore, Karnataka
- It is a brand-new ODR platform designed to economically settle disputes that arise between employers and workers, landlords and tenants, companies and clients, or professionals and clients.
- It guarantees a prompt, cost-effective, completely impartial, and officially acknowledged resolution.
- The Department of Justice acknowledges it.
- The Centre for Advanced Mediation Practise (CAMP) is the expert partner, while Tri legal is the advisory partner.⁴⁴⁹

3. PRESOLV 360:

Aman Sanghavi, Bhavin Shah, and Namita Shah co-founded it in 2017. Its headquarters are in Mumbai, Maharashtra. Its proficiency with integrated tech platforms, cloud-based solutions, end-to-end dispute management software, communication, negotiation, neutral evaluation, mediation, arbitration, litigation prevention, conflict prevention, conflict protection, and alternative dispute resolution. Presolv360 handles every business case. Edge craft Solutions Private Limited, an Indian business established in accordance with the

2013 Companies Act, is the owner of Presolv360.⁴⁵⁰

4. WEVAAD

Kritika Sethi is a co-founder of WeVaad. WeVaad is a well-known independent online dispute resolution platform that handles consumer disputes, unpaid loan or invoice issues, employer-employee conflicts, partnership disputes, e-commerce disputes, divorce disputes, and more through institutional arbitration, mediation, and conciliation. On its platform, it handles the dispute resolution procedure at the parties' convenience and finishes it on schedule.

REQUIREMENT OF ONLINE DISPUTE RESOLUTION

1. Conflict resolution is a difficult issue for all parties, including courts, governments, businesses, people, international organizations, etc.
2. Because different nations have distinct dispute resolution laws, this is especially true in cases of conflict of law.
3. To lessen the hardships caused by such conflicts, nations ought to adhere to a model code of conduct that has been incorporated into their own domestic legislation.
4. The legal system in India is already overloaded with lawsuits; the growing conflicts in e-commerce will make matters worse.
5. To limit the role of national courts and prioritize the parties' wishes when developing a dispute resolution process.
6. Ensuring procedural justice for a limited set of standards that the parties have not been able to agree to waive.
7. Putting into effect regulations that promote arbitration despite the parties' inability to agree on all relevant procedural issues.

MERITS OF ODR

1. Quick Resolution:

Compared to traditional courts, ODR takes less time, which is one of its main benefits. The number of disputes concerning transactions, consumer complaints, and other issues has significantly increased. In contrast to ADR, which

⁴⁴⁸ Online Dispute Resolution Startups in India, available at : <https://blog.ipleaders.in/top-online-dispute-resolution-odr-startups-india/> (last visited on Oct6, 2024).

⁴⁴⁹ ibid

⁴⁵⁰ ibid



takes several months to issue an award, ODR seems to be the most practical option because it offers a solid foundation for putting in place a quicker dispute resolution mechanism. ODR provides a dispute resolution process in a few short weeks.⁴⁵¹

2. Financially Cheap:

In addition to offering a prompt resolution, it is also financially feasible. Traveling and physically being present has grown costly and complex in and of itself because the arbitration procedure requires physical proceedings, which are frequently prohibited by geographic restrictions.

3. Complex jurisdictional challenges can be avoided:

ODR can assist in avoiding one of the main problems associated with geographic limitation. It also transforms the dispute resolution system from one that is conducted in a courtroom to one that is available anywhere.

4. Helpful in resolving cross-border disputes:

To address this problem, early adoption of online dispute resolution (ODR) has concentrated on resolving low-value disputes arising from business-to-business and business-to-consumer transactions where it is not economically advantageous to go to court, as well as e-commerce transactions where parties are located in different jurisdictions.⁴⁵²

5. Parties may take part from different places across the globe. An internet or landline connection is the only prerequisite.

6. There are no parking, transit, or facility fees.

7. There are significantly fewer chances of delays brought on by traffic or health issues.

8. Those with health conditions or severe disabilities can nevertheless take part in mediations from the convenience of their own home. The technology allows for closed captioning for participants who are deaf or hard of hearing.

9. ODR can make participants feel less anxious in highly emotional situations because they

don't have to worry about bumping into the other person.

10. People can participate in mediation with a more positive attitude when they are less anxious about it.

11. It is also safer for those involved in family conflicts to avoid the same environment. After that, participants may feel more at ease and encouraged.

12. Clients may feel more at ease and have a more optimistic attitude throughout the mediation process if they are in familiar settings.

13. It's easy to log in! An invitation with login details will be sent to each participant.

14. To ensure that participants feel comfortable checking in, we are always pleased to do a test log-in with them beforehand.⁴⁵³

DEMERITS

1. The procedure is more complicated than it first appears. The adjudicating authority and the parties may misunderstand each other as a result. It becomes challenging to assess the parties' and witnesses' culpability. Because there is no in-person interaction, the process may undermine the credibility of parties who live in distant nations and speak different languages.

2. Since the entire process is conducted online, there is no in-person interaction.

3. ODR may not be appropriate for serious conflicts like trespassing, which calls for discovery and claims, defamation, and so forth. It is only appropriate for a narrow range of topics, such as e-commerce, domain names, etc.

4. Sufficient secrecy cannot be guaranteed. Despite the implementation of data protection laws, authorities face challenges when hackers attempt to compromise data.⁴⁵⁴

5. It could result in problems with jurisdiction. Four factors need to be taken into account while discussing international law:

- The parties' merits and details.
- The remedy to acquire the claim.

⁴⁵¹ Online Dispute Resolution, available at : <https://blog.ipleaders.in/online-dispute-resolution-an-analysis/> (last visited on Oct10, 2024).

⁴⁵² *ibid*

⁴⁵³ *Supra* note50

⁴⁵⁴ *Supra* note 41



- The law that will be used in arbitration proceedings.
- Inconsistency between national laws that apply to each of the aforementioned legislation.⁴⁵⁵

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<http://www.advocatekhaj.com/library/bareacts/codeofcivilprocedure/index.php//> (last visited on Oct 2, 2024).
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⁴⁵⁵ Supra note 41