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The Relevancy of ODR: Future of New Consumer Disputes Redressal Method

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Due to the Internet's phenomenal expansion in popularity, which also gives birth to e-disputes, businesses may now reach vast e-consumer populations with their services. Every year, many instances involving consumer disputes are registered in India, and courts are already handling a large number of cases. To deal with these issues, ODR (Online Dispute Resolution) came into function. ODR can let the parties settle their disagreement quickly, easily, flexibly, and securely without their having to be present in person at a meeting or hearing. In this article, the author aims to examine the history, significance, and differences between other dispute resolution mechanisms and the online dispute resolution system used in India to settle consumer disputes. With reference to various case laws, the article also makes an effort to analyze the legal framework supporting ODR and the trend of the Indian judiciary toward it. Lastly, the goal of the article has been to offer a course of action by suggesting potential changes to this system.

Keywords: *technology, consumer defense, dispute resolution, arbitration.*

INTRODUCTION

Over the last two decades, online dispute resolution has grown exponentially around the world. India is in its development stages and has shown development on all three levels, such as Judiciary, Government, and Private sector. As brick-and-mortar courts were being

restricted, the ideology of resolving disputes online was lost. As a result, in April 2020, the Supreme Court was able to list 357 matters for hearing, which amounts to only 2.48 percent of the number of cases listed before the Supreme Court in September 2019 (14381 cases). Although Alternative Dispute Resolution has adopted ICT tools, we have a long way to go so as not to impede the sector's growth. According to data mentioned by SAMA, and the online dispute resolution system in India, the organization has resolved more than 2,10,000 cases so far of which 68% are in Civil and 32% are Criminal Cases. It was generally understood that consumers are vulnerable to exploitation by providers of products and services. The government creates consumer dispute resolution bodies in order to implement the laws that have been enacted to protect consumers. Customers who have been the victims of fraud, deception, or other similar issues from a corporation or brand can go to these consumer dispute redressal forums and seek redress.

ODR (ONLINE DISPUTE RESOLUTION)

We are living in a technology revolution era with the tech-savvy mentality of the population particularly the youngsters, to the point that if a country with a particular sector fails to catch up, it will lag behind the world. The development of e-commerce, e-banking, cryptocurrency, financial technology, and so on are all current phenomena. Using modern arbitration techniques, we are no longer confined to a room. Internet technology has made communication and information more accessible, less expensive, and, unexpectedly, easier for consumers. There are many ways to resolve consumer grievances, but the increase in consumer complaints in India needs a more efficient and easily accessible method to resolve such problems, which is why ODR came into play. It is a process to combine technology and alternative dispute mechanisms such as negotiation, conciliation, and mediation.

The ODR concept is improving over time. ODR, at its most basic level, refers to the use of ICT technology that can help parties resolve their disputes. This includes employing simple to complex communication technology such as audio-visual tools ranging from cellphones to smartphones to LED screens with the vision to resolve the conflict without the parties having to physically meet. The issue with ODR is how to communicate an award. Will it be mailed?

Can it be challenged? Can we consider such a mode of communication as ODR? Having a legislative policy that guides individuals about ODR can answer all the questions.

DIFFERENCE BETWEEN ADR AND ODR

Alternative Dispute Resolution (ADR) encompasses a variety of non-confrontational ways to resolve problems, ranging from direct dialogue between parties to mediation, negotiation, conciliation, and arbitration. Internationally, ADR governing law is the New York Convention of 1958, UNCITRAL, arbitration rules of 1976, and Model laws of international commercial arbitration OF 1985. Domestically, the Arbitration and conciliation Act of 1996. Earlier, arbitration was established to resolve disputes outside of the courtroom. The process is simple, cost-effective, and time-saving, helping not only the parties but also the courts. But with time the method became complex and costly. Therefore, the redressal method was improved by bringing the facility online called ODR which made it friendly, transparent, and budget-friendly.

Online Dispute Resolution (ODR) is a way of resolving issues in a digital space rather than solving it traditionally. It allows people to receive solutions online in a more accessible, efficient, and affordable way regardless of their socioeconomic status. This innovative technology is a boon to the court system since it allows the online resolution of disputes between parties with minimal effort and loss of time and money. In India February 2019, DPIIT released the draft National e-commerce policy which aims to use an electronic grievance electronic method for disputes arising from e-Commerce. In 2019, the RBI recommended a two-tiered ODR system to deal with complaints about digital payments. Therefore, If used constructively, ODR can contribute to customer satisfaction by rapidly resolving disputes.¹

¹What is ODR' (*DR Online Dispute Resolution*) <<https://www.ncsc.org/odr/guidance-and-tools>> accessed 04 May 2022

BENEFITS AND DRAWBACKS OF ODR AS A CONSUMER REDRESSAL METHOD

BENEFITS	DRAWBACKS
<p>Cost Saving</p> <p>The use of ODR allows the parties to save money on expenses such as dispute resolution travel and lodging, as well as the hiring of legal counsel, particularly in international Online conflicts involving parties who may live or work in different countries. ODR is also preferred in low-value conflicts due to the lower expenses.</p>	<p>Lack of Trust/Miscommunication</p> <p>Because there is no real communication or interaction between the parties, the online interface may not be able to develop a bridge of trust between them. As a result, the parties may not be able to fully disclose their status of the disagreement.</p>
<p>Time-Saving</p> <p>Before ODR, conflict resolution was already time-consuming and expensive. It might take up to 4-5 years to conclude even a small dispute but ODR has simply speed up the process by removing unnecessary adjournments using communications technology.</p>	<p>Lack of Knowledge/Awareness</p> <p>Because of illiteracy or a lack of education, many individuals are unable to access ICT services. Also, because just a small percentage of Indians are aware of ODR, it will take time for consumers to adopt these services.</p>

<p>Providential Procedure</p> <p>The use of ODR communications allows the parties to be ready to respond in the best possible way without being intimidated. Before transmitting their thoughts, parties might ponder more deeply than in spoken conversations. ODR makes it easier for parties to get started on resolving their conflicts right away.</p>	<p>Lack of Control</p> <p>ODR also lacks effective control since if the two parties get into a heated dispute, the third party (mediator, arbiter, etc.) may not be able to maintain decorum, which adds to the complexities.</p>
<p>Autonomy/Avoidable Conclusion</p> <p>Through ODR, without the constraints imposed by the law, it is possible to reach agreements that give you more autonomy. Also, parties do not have to fully rely on the final decision made by the mediator and can go for an alternative if they are not satisfied with the decision.</p>	<p>Vague Legal Guidelines</p> <p>Authorities have not established clear guidelines on how to implement an ODR procedure and apply it to disputes involving several jurisdictions for effective implementation.</p>
<p>Impartiality and Confidentiality</p> <p>In contrast to the antagonistic climate in court, ODR establishes an environment of good faith and trust, as well as provides secrecy. It also permits impartial third parties to help the parties once critical conversations have occurred</p>	<p>Cyber Attacks</p> <p>Because all sensitive data is saved through technology throughout an ODR process, there is a considerable risk of that data being stolen by cyber infiltrators for their own benefit which</p>

without any discrimination.	is a serious concern.
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CAN ODR ACT AS A CONSUMER DEFENCE MECHANISM?

ODR is going to bring a new revolution into a dispute redressal method by formulating speedy justice. But how well-versed are consumers with this new concept is a point of concern. Consumer defense mechanisms are a group of mental processes that enable the mind to reach compromise solutions that cannot be resolved otherwise. What type of business parties is dealing with matters a lot in ODR? If the business is involved in B2B, there are the involvement of complex disputes with large amounts whereas C2C and B2C deal with small value chains. Also, Mediators prefer physical interaction with their clients as it is easy to understand people by their body language and behavior and most of the parties are not familiar with the technology and are also afraid of the breach of their privacy.

A thin line between consumer disputes and business disputes has to be drawn by determining the amount business deals with, type of business, and preference of parties. Most B2B businesses prefer the arbitration method as it is governed by *Arbitration and Conciliation Act, 1996* and it has a procedure and rules that need to be followed. It lasts for a month or a year, parties are assisted by lawyers, and an award is given at the end which is binding on all. Whereas, Mediation is a friendly redressal method where consumers or parties don't need any hustle while making complaints. If the mechanism is complicated, the consumer might end up dropping their complaints, which will impact business and the justice delivery system of a particular country. Undoubtedly, ODR is the most effective and friendly way to resolve a dispute but it does not have any authority to govern or scrutinize it. We don't have any clause which describes the appointment, qualification of the mediators, and what remedies do parties have if mediators don't abide by the law. Therefore, ODR can act as a consumer defense mechanism with proper rules and regulations.

ODR PLATFORMS AVAILABLE IN INDIA

For consumers and merchants looking to settle contractual responsibilities arising from online sales and service contracts, the ODR platform is the most effective solution. Some of the ODR platforms available in India are mentioned below –

1. Online Consumer Mediation Centre (OCMC), Bangalore

The National Law University, Bangalore established an Online Consumer Mediation Centre in 2016 with an aim to provide an Online Mediation tool for a quicker and free-of-cost dispute redressal mechanism. The nature of the complaint would be determined by ODR software. The parties can then begin discussing a resolution using the platform's interactive chat function. Suppose the parties are unable to reach an agreement through dialogue. In that case, they will proceed to the online mediation phase, where a neutral mediator will be appointed automatically from a list of official mediators. Finally, if the parties agree, the mediator will sign the agreement, which will be enforced by the courts.

2. SAMA - Space for Resolution

Sama is an online dispute resolution platform that has been recognized by the Department of Justice for its ability to resolve a wide range of issues rapidly and efficiently. Through the use of new technology, SAMA has established its own platform for executing ODR processes such as arbitration, conciliation, and mediation, which has assisted the e-LokAdalat in settling over 50000 disputes. Both parties must first register on their website, where they will be assigned a conciliator who will provide them with a method to establish a concrete settlement with binding power, similar to a court order.

3. Centre for Online Resolution of Disputes (CORD)

CORD is an Organisation that focuses on internet cases from beginning to end. It seeks to simplify the complexity of the procedure while simultaneously maintaining the goals of justice by enabling the client and their advocate to handle the entire process. CORD strives to enable a speedy and cost-effective resolution of conflicts by assigning a neutral, unbiased third party for a wide range of issues from a huge pool of professional arbitrators and mediators.

4. Centre for Alternative Dispute Resolution Excellence (CADRE)

CADRE is a web-based platform that has made the arbitration process more efficient, cost-effective, and secure by streamlining arbitration rules which have legally binding authority. It has experienced and specialized arbitrators who are well-versed in the CADRE rules available at any time. One of their key roles is to ensure that the consumer is not left with no money or remedy at the end of the operation.

REGULATION OF ODR IN OTHER NATIONS

ODR as a Consumer Dispute Redressal method is used in the UK, EU, Australia, and many other countries as it helps in reducing the burden of their Courts. The ODR has been designated an obligatory procedure in the UK under the CPR to be used to resolve disputes at the first stage between the parties. The European Union has created a unified strategy for online-purchased goods disputes. The E-Trade Directive, EU Directive 2000/31/EC, established a framework for internet commerce in 2000. The directive's principal goal is to handle any online disputes in the European Union without the need for a court proceeding. The Canadian Civil Resolution Tribunal (CRT) is Canada's first online tribunal specializing in resolving strata and small claims disputes. Early next year, it will also begin taking minor claims cases.

JUDICIAL ACCEPTANCE

In India, ODR is recognized by the Information Technology Act, 2000, and the Arbitration and Conciliation Act, 1996. Arbitration Act enables parties to choose the venue of dispute resolution and IT Act streamlines the online process. The effectiveness of the ODR mechanism is confirmed by a few judicial decisions -

In *Grid Corporation of Orissa Ltd. v AES Corporation*,² the Supreme Court mentioned that, *"When an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons required to act in consultation with each other must necessarily sit together at one place unless it is the requirement of law or the ruling contract between the parties."*³

² *Grid Corporation of Orissa Ltd. v AES Corporation* (2003) 1 CALLT 50 SC

In *The State of Maharashtra v Dr. Praful B. Desai*⁴ a doctor living in the United States was supposed to visit India to assist with further proceedings. He was, however, unable to attend due to his health conditions, but he gave his assent to participate by video conferencing. Indian courts accepted this, and from then on video evidence can be recorded through video conferencing.

According to **Order X Rule 1A of CPC**⁵ gives power to the court to choose any mode of Alternative dispute resolution i.e., mediation, arbitration, or conciliation which interprets ODR as well because the provision includes “Any mode of redressal”. There are a few cases where parties opt for redressal such as *Shakti Bhog Food Ltd. v Kola Shipping Ltd.*⁶ and *Trimex International FZE Ltd. v Vedanta Aluminium Ltd.*⁷

As per the 2019 Consumer Protection Act, consumer disputes are going through mediation as a new redress mechanism and it will be accepted through online platforms soon.

SUGGESTIONS

Some of the ways by which we can accelerate the growth of ODR are as follows:

- Since there is a lack of awareness, the method needed more recognition to make it more accessible to the general public.
- Increasing digitalization is one of the prerequisites for ODR in India as it includes both physical access to infrastructure and an increase in digital literacy.
- We need quality ODR professionals who are trained and skilled by institutions that incorporate the hands-on experience.
- Public trust in ODR can be built by integrating it with government agencies and acting as a consumer redress mechanism or applying it to government litigation.

³ Neha Jain, 'Online Dispute Resolution (ODR) - The future of Solving Disputes' (*Tygar Law Corporate*, 7 July 2020) <<http://www.tygarlaw.com/online-dispute-resolution-odr-the-future-of-solving-disputes/>> accessed 12 May 2020

⁴ *The State of Maharashtra v Dr. Praful B. Desai* (2003) Appeal (Criminal) No. 476/2003

⁵ Code of Civil Procedure, 1908, r 1A, ord.10

⁶ *Shakti Bhog Food Ltd. v Kola Shipping Ltd.*, (2012) O.M.P. 194/2009

⁷ *Trimex International FZE Ltd. v Vedanta Aluminium Ltd.*, (2010) Arbitration Petition No. 10/2009

- It is critical to have a high ODR success rate to garner media attention and public importance.
- Confidentiality concerns, effective enforcement procedures, and outdated legal processes can only be addressed by enacting legislative regulations and deploying government e-portals such as SAMADHAAN into use.

CONCLUDING OBSERVATIONS

ODR has come out to be an efficient tool for conflict resolution between parties but some policies need to be evolved with the change in the surroundings. With such a large population, there is a digital literacy gap in the country that has to be closed. Urban but most importantly rural citizens need to know about this system which can quickly resolve their conflicts and it can only happen if Government, as well as ODR platforms, come together to help promote it by providing clear descriptions of the policies. The government, through its many departments and the court, may undertake a comprehensive campaign that uses multimedia platforms including television, radio broadcasts, and publishing on Government, Supreme Court, and High Court websites to educate the public about how to use ODR processes. However, India needs a far more advanced and risk-free method for resolving conflicts between consumers and merchants utilizing the same medium. ODR technologies, procedures, and platforms, like most technology innovations, are continually and quickly developing, especially in their early phases. Given the uncertainty that sometimes accompanies new solutions, especially in an area where the mandate has historically rested with the government, the desire to pre-emptively regulate must be carefully considered.