
ADDRESSING E-COMMERCE DISPUTES: THE NEED FOR AN ODR MECHANISM

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ABSTRACT

The surge in e-commerce disputes underscores the need to adopt and use Online Dispute Resolution (ODR) mechanisms. ODR transcends geographical boundaries, offering a swift and impartial resolution platform. The Ministry of Consumer Affairs data underscores the urgency for a robust ODR mechanism to efficiently manage and resolve the increasing number of e-commerce disputes. The paper analyses the emergence and current landscape of ODR in India. Moreover, the advantages like easiness and convenience may be appealing, we still have to figure out how to overcome the problems like the digital infrastructure gaps and privacy issues. Here lies the mainstay of ensuring the trust and acceptance of ODR, it has to begin by addressing these challenges. This paper delves into the need of such a mechanism, its structure, along with the advantages and the current challenges in its adoption and execution. The paper ultimately proposes a way forward in the realm of ODR in India and beyond.

Keywords: Online Dispute Resolution, E-commerce, Disputes, Digital infrastructure, Privacy, Impartial resolution

INTRODUCTION

A major increase in the use of Alternative Dispute Resolution (ADR) as a preferred means of resolving conflicts outside of regular legal proceedings has occurred in recent years. Due to its less formal and time-consuming character, ADR has gained wider recognition as an effective substitute for the lengthy and intricate judicial processes. Aware of the growing load on the courts, academic debates focused on the necessity of assigning authority and creating substitute processes such as arbitration, conciliation, mediation, and negotiation.

With the development of trade, particularly e-commerce, it became clear that traditional ADR was inadequate for resolving disputes arising online. The need for physical presence created difficulties in the digital environment, which led to the practical solution of Online Dispute Resolution (ODR). ODR uses information technology to help resolve e-commerce issues quickly and effectively. Techniques including email exchanges, video conferences, and automated complaint systems are some of the ways ODR uses information technology.

Examining how ADR and e-commerce disputes interact, this article emphasizes how crucial an ODR system is. The significance of including a "dispute resolution clause" in contractual agreements is emphasized as a vital step in offering efficient remedies and avoiding discrepancies, without getting into specific legal issues. ODR is essential to overcome the challenges posed by the physical presence requirement since it serves as an electronic conduit for issues involving e-commerce and ADR. With trillions of dollars changing hands online and the digital community growing every day, resolving e-commerce disputes through ODR is becoming not only legally required but also a critical tactic in building confidence, improving productivity, and guaranteeing the digital marketplace's continuous development. Just as the widespread adoption of smartphones and affordable data plans has revolutionized the Indian consumer market, the prospect of online dispute resolution (ODR) promises to re-engineer the country's dispute landscape, offering a more accessible and effective means of resolving conflicts.¹

UNDERSTANDING THE NEED OF AN ODR MECHANISM

In the bustling realm of e-commerce, where transactions occur at the speed of a click, conflicts

¹ Bhaven Shah & Sidharth Kapoor, *Online Dispute Resolution*, The Hindu Businessline (Aug. 1, 2023), <https://www.thehindubusinessline.com/opinion/online-dispute-resolution/article67147413.ece>.

are inevitable. The advent of Online Dispute Resolution (ODR) emerges as a beacon of resolution, weaving tales of swift justice in the digital landscape.

Think about Sana, a conscientious internet buyer whose purchase became a nightmare since the item she received looked very different in person than it did online. Frustrated, she turned to ODR, a virtual arena that transcends geographical boundaries. Sana and the vendor were able to communicate more easily and present their cases thanks to the platform. The neutral mediator, an algorithm designed for impartiality, weighed the evidence and proposed resolutions. In this case, ODR proved instrumental in streamlining the dispute resolution process. Its asynchronous nature allowed participants to engage at their convenience, eliminating time zone constraints. The transparency of the online platform ensured fair judgment, while the absence of physical presence minimized emotional tensions. In the end, Sana and the vendor reached an amicable settlement, thanks to ODR. This anecdote illuminates the transformative potential of online dispute resolution in e-commerce. As we navigate the intricate web of digital transactions, ODR stands as a virtual peacemaker, fostering trust, ensuring fairness, and heralding a harmonious era for online commerce.

Furthermore, according to the data published by the Ministry of Consumer Affairs for April 2020 to February 2021, a total of 1,88,262 complaints relating to e-commerce were lodged.² Moreover, Department of Consumer Affairs Secretary Leena Nandan said at a press conference that between April 2017 and February 2021, India's grievance redressal system registered 5,23,837 complaints related to e-commerce.³ These figures further emphasize the need for a proper ODR mechanism to address and solve the disputes arising in e-commerce.

STRUCTURE OF ODR SYSTEM

There are five main participants in the Online Dispute conclusion (ODR) system, and each one of them has a specific responsibility to provide a prompt, equitable conclusion. The disputants, or two or more parties looking to settle their differences outside of a courtroom, are the main players. These people or organizations pick an arbitrator, a third party who is impartial, to start

² Zia Haq, *As shopping goes online, e-commerce disputes rise to unprecedented levels*, Hindustan Times (Mar. 22, 2021), <https://www.hindustantimes.com/business/ecommerce-%20disputes-on-the-rise-shows-data-101616366508503.html>.

³ Samyak Pandey, *Over 22% of consumer complaints in India in last 4 years are linked to e-commerce sector*, The Print (Mar. 15, 2021), <https://theprint.in/india/over-22-of-consumer-complaints-in-india-in-last-4-years-are-linked-to-e-commerce-sector/622383/>.

the procedure. In assisting the parties involved in the dispute in reaching a resolution, the arbitrator or mediator is vital. The fourth element of the ODR system is an online forum where disputants and arbitrators come together. This platform serves as the digital forum where disagreements are discussed, and solutions are sought; it is powered by artificial intelligence and information technology. Simultaneously, a technology service provider, the fifth member, offers technical support to ensure the seamless functioning of the ODR system.

In the digital sphere, where trust is crucial especially when it comes to privacy, legality, and compliance, it is essential to set up a strong online dispute resolution mechanism. ODR providers must maintain operational openness in order to build and maintain confidence. This entails giving disputants comprehensive information about the possible remedies, the conflict resolution procedure, anticipated timelines, and the appeals process. In order to guarantee parties that their data is kept private, the terms and conditions disclosures are also essential.

Thus, the cooperation of disputants, arbitrators, online platforms, and technical service providers is essential to the success of ODR. Building and sustaining trust in the online dispute resolution process depends more and more on the adoption of strong security measures and a focus on transparency as the digital world grows.

EMERGENCE OF ODR IN INDIA

The massive volume of cases that India's courts handle on a daily basis has led to a move toward Alternative Dispute Resolution (ADR) techniques such as arbitration, conciliation, and mediation. While ADR has been shown to be effective in reducing the workload in courts, Online Dispute Resolution is clearly needed, especially in cases involving e-commerce when ADR may not be sufficient.

The Civil Procedure Code, Section 89⁴, gives Indian courts the authority to order parties to explore ADR options, thereby endorsing these alternatives legally. Notably, the Supreme Court's acceptance of Information Technology in court proceedings, as seen in the **State of Maharashtra v. Dr. P.B. Desai**⁵ case, signifies a crucial step towards embracing technological advancements. The court's acknowledgment that virtual reality and video conferencing are tools for actual reality, not just virtuality, highlights a paradigm shift in the judicial system.

⁴ The Code of Civil Procedure, 1908, § 89, No. 5, Acts of Parliament, 1908 (India).

⁵ P.B. Desai v. State of Maharashtra, (2013) 15 SCC 481.

This was further reinforced in the **Grid Corporation of Orissa Ltd. v. AES Corporation**⁶ case, where the Supreme Court explicitly mentions 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 of the ruling contract between the parties”.⁷

The use of ODR in India is not entirely unprecedented, with its recognition under the Banking Ombudsman Scheme, 2006. Furthermore, the Information Technology Act, 2000, grants legal recognition to electronic signatures and records, forming a foundation for the development of ODR mechanisms. Analyzing legal aspects, the Arbitration and Conciliation Act, 1996, read with the Information Technology Act, 2000, validates electronic communication in arbitration agreements and arbitral awards. Moreover, the Consumer Protection Act, 2019 introduces e-filing of grievances through online portals, thus, partially acknowledging online redressal mechanisms.

The "Techno Legal Centre of Excellence for Online Dispute Resolution in India" (TLCEODRI) emerges as a pioneering force since 2007. It serves as a pioneering institution facilitating efficient resolution of disputes through technology. Functioning at the intersection of law and technology, it harnesses digital platforms to streamline dispute resolution processes. By leveraging online tools and expertise, it seeks to expedite justice delivery, reduce caseloads, and foster a modernized legal landscape in India, aligning with global trends in ODR. TLCEODRI endeavors to introduce ODR clauses in agreements at national and international levels, fostering awareness through seminars and conferences. Their Cyber Arbitration Portal tackles domain name disputes, marking a progressive step towards comprehensive ODR implementation.

In 2017, the Ministry of Micro, Small and Medium Enterprises launched ‘SAMADHAN’ Portal, a digital platform or forum aimed at streamlining grievances related to employment. It offers a user-friendly interface for workers, management, and trade unions to address issues such as wrongful dismissal, delayed payments, unauthorized deductions, and non-payment of various entitlements like maternity benefits and minimum wage. It works under the Micro,

⁶ Grid Corpn. of Orissa Ltd. v. AES Corpn., (2002) 7 SCC 736.

⁷ Pranjal, *The Legality of ODR in India*, THE IMW POST (April 14, 2024, 6:21 PM), <https://imwpost.com/the-legality-of-odr-in-india/#:~:text=It%20is%20similar%20to%20traditional,in%20India%2C%20so%20is%20ODR.>

Small and Medium Enterprises Development Act, 2006. Section 20 and 21 of this Act mentions State Governments to establish Micro and Small Enterprise Facilitation Council (MSEFC) for settlement of disputes on getting references/filing on Delayed payments. It facilitates online application filing by Micro and Small Enterprise (MSE) units against buyers before the respective MSEFCs of their State/UT. These applications are accessible to MSEFCs and relevant authorities for prompt resolution of disputes, thereby promoting efficiency in addressing delayed payments⁸.

However, the biggest and perhaps the most famous ODR platform in India, currently, is 'Sama' which provides disputes resolution services like Online Mediation, Online Arbitration, Online Lok Adalat, along with others, with 2 crore cases filed and 34 lakhs resolved so far. The average time of dispute resolution is 45 days and legally enforceable awards. Thus, Sama has ample records of dependability, which is evident from one of its awards that was favored by Saket Court, New Delhi. Top security and trust are the platform's priorities. It has a secure hosting feature, strong encryption, and compliance to ISO 27001 standards. The open approach of Sama's panel-based appointment system relies upon a pool of more than 3000 neutrals from over 500 districts in India. Sama is the only ODR platform that works with government bodies such as state legal services authorities and police boards to solve even criminal non-bailable matters, therefore, increasing user confidence.

In essence, as technology evolves, so must judicial procedures. TLCEODRI's efforts, Sama's initiative and expansion to reach the masses, coupled with the judiciary's recognition of the need for procedural enhancement, signal a promising future for ODR in India. As amendments in relevant acts are contemplated, the trajectory is set for ODR to become an integral component of India's legal framework, streamlining dispute resolution and diminishing the burden on traditional courts.

THE INTERPLAY OF ODR, AI, AND GLOBALIZATION IN E-COMMERCE

The convergence of Artificial Intelligence (AI) and Online Dispute Resolution (ODR) in the e-commerce space occurs in the context of globalization, which is the process of markets and industrial processes becoming more integrated across borders. Globalization is driven by the dynamics of commerce in products and services, the movement of money and technology, and

⁸ MSME SAMADHAAN - Delayed Payment Monitoring System, https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx (last visited May 06, 2024).

the dismantling of natural barriers made possible by electronic information and telecommunication technologies, according to the definition provided by the European Commission.

Within this environment of digital connectivity, e-commerce has become a dominant force, transforming the nature of business dealings. The rapid expansion of e-commerce, which is distinguished by its ease of use, absence of geographical restrictions, and round-the-clock accessibility, makes efficient dispute resolution procedures crucial to preserving the integrity of the online marketplace. ODR serves as a catalyst, leveraging technology to streamline conflict resolution processes tailored to the unique challenges posed by online disputes.

In addition, the client experience is further improved by the incorporation of AI into e-commerce. Predictive analytics, tailored product recommendations, and AI-powered chatbots all help create a smooth and effective customer experience. The need for effective dispute resolution procedures and individualized experiences increases as e-commerce transactions become more international. The benefits of ODR and e-commerce work hand in hand to solve the problems that arise from transactions conducted online that don't involve in-person communication. Because of the dangers involved, business-to-consumer (B2C) and consumer-to-consumer (C2C) transactions require strong security assurance procedures. One important way to provide effective, affordable, flexible, and quick resolution is through online dispute resolution.

The collaboration between ODR and AI in e-commerce is positioned to further improve and refine the effectiveness of dispute resolution in the dynamic digital space as technology develops. Because of the transnational character of e-commerce and the interconnectedness of markets, specialized procedures are required to handle difficulties and support the safe and smooth expansion of the digital marketplace. ODR can help out the E-Commerce companies to create a platform where the grievances of the Consumer and the resolution for the same can be done at an earlier stage.⁹ The digital landscape is changing as a result of this intricate dance between globalization, AI, and ODR. This presents chances for innovation, trust-building, and the sustained success of the global e-commerce ecosystem.

⁹ Manvee, *Online Dispute Resolution in E-Commerce*, LL.B MANIA (April 14, 2024, 8:47 PM), <https://llbmania.com/2021/12/04/online-dispute-resolution-in-e-commerce/>.

ADVANTAGES OF ODR IN E-COMMERCE

Several benefits come with online dispute resolution in e-commerce, including improved customer satisfaction and streamlined resolution procedures. First off, online dispute resolution increases efficiency by giving parties a convenient platform to settle disagreements without having to meet in person. This lowers the expenses related to using traditional dispute resolution techniques while also saving time. Conventional dispute resolution techniques frequently come with hefty costs for travel, legal fees, and administrative overhead. ODR lessens the financial load on companies and customers by utilizing digital platforms and automated procedures to alleviate these costs. ODR also promotes transparency because it ensures fairness and accountability by having the entire process documented and available to both parties.

In addition, ODR improves accessibility by allowing people from different places to participate in dispute resolution without being limited by geography. Technology utilization makes it possible to communicate quickly and effectively, which speeds up the resolution process. Moreover, ODR enhances the standing of e-commerce platforms by demonstrating a dedication to customer care and dispute resolution, which helps draw in and keep users. It is seen that resolutions take one to two months for many face-to-face cases, but online resolutions are taking an average of six days, with some being resolved in a few hours. The majority of ODR agreements are reached outside of typical court hours—late in the evenings or over the weekend—because that’s when people are free to engage and work out solutions.¹⁰ In conclusion, the benefits of ODR in e-commerce are numerous and include affordability, efficacy, transparency, accessibility, and a positive brand image as well.

CHALLENGES FACED IN THE ADOPTION OF ODR

The integration of Online Dispute Resolution (ODR) in India faces a variety of obstacles in the operational, behavioral, and institutional realms. From a structural perspective, having a strong digital infrastructure is essential for ODR success. Governmental initiatives to guarantee internet connectivity for all are demonstrated by the National Digital Communication Policy, 2018, and the National broadband Mission, which was introduced in December 2019.

¹⁰ Colin Rule, *Online Dispute Resolution Moves From E-Commerce to the Courts*, PEW (May 02, 2024, 11:24 AM), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/06/04/online-dispute-resolution-moves-from-e-commerce-to-the-courts>.

Nonetheless, disparities in internet penetration between rural and urban areas continue to exist, highlighting the necessity of focused programs like the Pradhan Mantri Gramin Digital Saksharta Abhiyan to close this gap.

Another structural barrier that differs throughout demographics is digital literacy. There are differences in internet usage in India according to location, ethnicity, and age. To address this, comprehensive programs that promote basic digital skills and improve internet accessibility in rural areas are needed. Furthermore, there is a notable disparity in technological availability based on age, gender, and class, which may impede the widespread adoption of ODR. In order to provide fair access to justice through ODR services, efforts must be focused on reducing these inequities. One characteristic of behavioral problems is a lack of awareness and confidence in ODR. To acquaint the general public and businesses with ODR processes, awareness campaigns are essential. Resolving concerns about technology, enforceability, and data security is essential to fostering confidence. A governance framework is needed to establish ethical standards for ODR service providers, fostering confidence and dispelling apprehensions surrounding ODR effectiveness. Concerns about privacy and confidentiality in the digital sphere are operational obstacles. Confidentiality breaches and online impersonation are among the new issues brought about by the integration of technology and the decline in in-person interactions. To overcome these issues, ODR service providers need to put strong frameworks for data management and storage in place. These frameworks should include security features like encryption and digital signatures.

Due to globalization, developing countries share the common characteristics of unequally distributed wealth. The developed nations have more potential for ODR than the developing and the underdeveloped states which causes a disparity to arise. A perfect ODR system has become a science fiction fantasy for the developing and underdeveloped nations.¹¹ Also, as ODR use rises, the need for tech-savvy experts becomes more pressing, making the availability of educated Neutrals essential. Creating guidelines for Neutrals' accreditation and training becomes essential to building a capable ODR ecosystem. In addition, challenges to the smooth and successful implementation of ODR in India must be addressed. These include antiquated legal procedures and uncertainty surrounding the execution of ODR outcomes, such as the enforcement of arbitral awards.

¹¹ Dev Sareen, *Online Dispute Resolution- Application and Challenges*, 1 IJLMH 1, 5 (2019).

THE WAY FORWARD

It is essential to ensure connection through collaborative efforts of the government, judiciary and private industry in digital infrastructure improvement. This is to ensure that the poor and marginalized communities have access and digital literacy. Achieving the large-scale implementation of Online Dispute Resolution (ODR) will require the provision of the comprehensive capacity-building programs, including the relevant education of professional staff and take advantage of the Para-Legal Volunteers in the rural areas. The confidence of ODR processes may be gained by way of the setting of certain disputes for resolution purposes and multimedia sensitization campaigns. Guaranteeing solid legislation on data protection is a necessity for future users to have trust in ODR. Integrating emerging technologies like AI and blockchain will make us rethink ODR processes. But it is equally important to ensure that users' rights are protected while giving enough room for innovation.

The legal community must actively participate in Online Dispute settlement (ODR), a developing area of conflict settlement. By assuming a leading role in the development and application of ODR, the legal community not only addresses its relevance in the realms of e-commerce and international business but also extends its influence into areas traditionally dominated by Alternative Dispute Resolution (ADR). Proactively embracing ODR allows the legal community to align itself with technology, preventing potential obsolescence as others take the lead in innovation. And e-commerce transactions are not just about business strategy and management but more of technological advancement. So, as to secure e-commerce transactions, ODR will be the best solution from the perspective of both seller and consumer.¹²

With technology expanding to bridge distances and make the world smaller, there is less demand for in-person conflict resolution. Whether interacting with parties locally or internationally, people no longer expect face-to-face encounters to be a need for settling conflicts. Technology is changing how people engage with each other in society, and as a result, the legal profession must assume the role of leader in conflict resolution. ODR is emerging in India as a transforming element set to democratize dispute resolution by empowering creators within different sectors to design ODR mechanisms, which will help to resolve conflicts

¹² Yashraj Dokania, *Arbitration for Dispute Arising from E-Commerce Transaction*, 21 SUPREMO AMICUS 1, 11 (2020).

effectively. This is not merely a futuristic technological revolution; it is the reality we face today.