
ESCROW-BASED ARBITRATION FOR INDIA'S E-COMMERCE AND PLATFORM ECONOMY

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ABSTRACT

India's digital economy has grown at a pace that its dispute resolution architecture was never designed to keep up with. Millions of transactions settle through payment aggregators every day, and a meaningful portion of them give rise to disagreements about delivery, quality, refunds, and contractual performance. When such a dispute surfaces, the central and often overlooked question is not who was right, but who controlled the money while the argument was still ongoing. This paper argues that escrow, already structurally embedded in India's payment ecosystem under the Reserve Bank of India's Payment Aggregators Directions, 2025, can and should be reframed as a legally recognised mechanism of interim financial protection within online arbitration proceedings. Drawing on the Arbitration and Conciliation Act, 1996, the Information Technology Act, 2000, the Consumer Protection Act, 2019, and the NITI Aayog ODR Policy Plan for India, the paper identifies a significant legislative gap: while Indian law separately supports online arbitration, electronic contracts, escrow-based fund holding, and consumer redress, it provides no unified framework that connects these elements into a coherent dispute-linked payment security regime. The paper proposes a model framework that defines the duties of payment aggregators during disputed transactions, establishes escrow-linked interim protection as a digital analogue to Section 17 relief, and prescribes consent, neutrality, and consumer safeguard standards. The central thesis is that online arbitration in India will remain procedurally sound but practically hollow unless the financial stakes of the dispute are secured throughout the process.

Keywords: Online Arbitration, Escrow, Payment Aggregators, ODR, Interim Relief, E-Commerce Disputes, RBI Directions 2025, Consumer Protection

I. INTRODUCTION

Picture a routine transaction in the Indian digital economy. A small business owner pays an advance of forty thousand rupees to a software freelancer through a popular platform. The freelancer claims the work is delivered. The business owner says it is incomplete and demands a refund. In the meantime, the payment aggregator that processed the transaction has already credited the freelancer's account because the settlement window expired. There is no mechanism in place that could have paused that release pending resolution of the dispute. The business owner is now chasing an arbitral remedy with no money left to secure.

This is not a hypothetical edge case. It reflects a structural problem that sits at the intersection of India's booming digital payments infrastructure and its underdeveloped online dispute resolution framework. The Indian e-commerce market was projected to touch USD 120.1 billion by 2025, and UPI alone crossed ten billion transactions per month in 2024. Consumer grievance data from the Department of Consumer Affairs reveals that approximately twenty-two percent of all consumer complaints in India now originate from e-commerce transactions. The disputes are high in volume, low in individual value, geographically dispersed, and technically complex. Traditional arbitration and court-based remedies were designed for none of these characteristics.¹

Online Dispute Resolution, or ODR, has been proposed as the natural answer. The NITI Aayog Expert Committee on ODR released its policy plan in October 2021, recommending a technology-driven, institutionally supported framework for resolving disputes digitally across sectors including e-commerce, banking, and government services. The Nilekani panel had earlier in 2019 specifically called for ODR systems targeting digital payment complaints. The momentum toward digitising dispute resolution is real and policy backed.²

Yet a fundamental question has been left unanswered in every ODR policy document and every academic discussion of online arbitration in India: who holds the money while the dispute is being decided?

¹ See National Consumer Helpline Data, Department of Consumer Affairs, Government of India, Grievance Trends 2017-2024; Department of Consumer Affairs, Press Information Bureau, Statement on Global ODR Platform for Cross-Border E-Commerce Disputes, PRID: 1972126.

² NITI Aayog Expert Committee on Online Dispute Resolution, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (Oct. 2021); Reserve Bank of India, Report of the High-Level Committee on Deepening of Digital Payments (2019).

The answer, in most cases today, is nobody. Or more precisely, whoever received the funds first. Once a payment aggregator settles funds to a merchant, the money leaves the escrow infrastructure entirely. If a dispute then arises and proceeds to online arbitration, the arbitral award may be correct in law but useless in practice because the losing party no longer holds the disputed amount in any accessible or traceable form.³

This paper addresses that gap directly. It argues that the escrow infrastructure already mandated by the RBI's Payment Aggregators Directions, 2025 provides the technological and institutional foundation for a dispute-linked payment hold mechanism, and that Indian arbitration law, specifically the interim relief provisions under Sections 9 and 17 of the Arbitration and Conciliation Act, 1996, provides the legal basis to recognise such a hold as a form of digital interim protection. What is missing is a framework that connects these two bodies of law and practice into an operational, enforceable system.⁴

The paper is structured as follows. Part II surveys the landscape of online dispute resolution and online arbitration in India. Part III analyses escrow as a legal and financial mechanism. Part IV examines the RBI's 2025 Payment Aggregators Directions and their relevance to disputed funds. Part V constructs the central legal argument, connecting escrow-based payment holdback to the concept of interim relief in arbitration. Part VI identifies risks, challenges, and necessary safeguards. Part VII proposes a model legal framework. Part VIII concludes.

II. ONLINE DISPUTE RESOLUTION AND ONLINE ARBITRATION IN INDIA: THE EXISTING FRAMEWORK

2.1 The Rise of ODR

Online Dispute Resolution as a concept predates India's digital payments boom. Its theoretical roots lie in eBay's resolution centre from the 1990s, which handled millions of small-value buyer-seller disputes through automated and semi-automated processes. The insight was straightforward: when the transaction happened online, the dispute resolution should too.⁵

³ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

⁴ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025; Arbitration and Conciliation Act, No. 26 of 1996, 9, 17 (India).

⁵ Juris Centre, The Rise of Online Dispute Resolution (ODR) in India (Feb. 2024); Rohaini et al., Reforming Online Dispute Resolution (ODR) Regulations in Growing E-Commerce for Legal Certainty and Protection, 9 Cepalo 69 (May 2025).

India's formal engagement with ODR began cautiously. The Nilekani Committee on Deepening Digital Payments (2019) was among the first official bodies to recommend ODR mechanisms specifically for digital payment grievances, calling for tiered resolution systems with automated and human-mediated levels and an appeal mechanism. The COVID-19 pandemic then accelerated what policy had only suggested: courts shut, hearings moved online, and the inadequacy of India's dispute infrastructure became impossible to ignore.⁶

The NITI Aayog Expert Committee on ODR, chaired by Justice A.K. Sikri (Retd.), released its report in October 2021 under the title 'Designing the Future of Dispute Resolution: The ODR Policy Plan for India.' The report recommended that ODR be integrated into judicial processes, government departments, and private sector dispute resolution, with particular emphasis on e-commerce, financial services, and small-value commercial claims. It recognised that ODR has the potential to reduce court burden, improve access to justice, and provide faster and more affordable resolution for parties who cannot practically sustain long-form litigation.⁷

The Department of Consumer Affairs has similarly flagged a global ODR platform for cross-border e-commerce disputes as a policy objective, specifically addressing disputes involving payment failures, delivery issues, and quality defects at the pre-litigation stage through mediation, conciliation, and arbitration.⁸

2.2 Online Arbitration and its Legal Validity

Online arbitration is a subset of ODR in which a neutral arbitrator conducts proceedings entirely or substantially through digital means: electronic submissions, virtual hearings, digital evidence, and electronically rendered awards. The question of whether such proceedings carry legal validity in India is settled in the affirmative by multiple statutory provisions.

Section 7 of the Arbitration and Conciliation Act, 1996 defines an arbitration agreement as any agreement in writing. The Explanation to Section 7(4) specifically recognises agreements made by electronic communication as satisfying the writing requirement, provided there is a record of the agreement. This means that click-wrap agreements on e-commerce platforms, digital

⁶ Reserve Bank of India, Report of the High-Level Committee on Deepening of Digital Payments (2019).

⁷ NITI Aayog Expert Committee on Online Dispute Resolution, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (Oct. 2021).

⁸ Department of Consumer Affairs, Press Information Bureau, Statement on Global ODR Platform for Cross-Border E-Commerce Disputes, PRID: 1972126.

service contracts, and online freelancer platform terms of service can validly constitute arbitration agreements if they contain a clear, accessible clause referring disputes to arbitration.⁹

Section 10A of the Information Technology Act, 2000 further reinforces this position by declaring that contracts formed through electronic means cannot be denied enforceability solely on the ground that electronic form was used. Taken together, these provisions establish a solid statutory foundation for online arbitration agreements in India.¹⁰

Procedurally, the Arbitration Act does not specify that hearings must be conducted in person. The 2015 and 2019 amendments to the Act, which strengthened arbitration as an institution, did not impose any in-person requirement. The Information Technology Act enables electronic document submission and digital signatures. The Indian Evidence Act, as amended in 2023, now treats electronic records as admissible primary evidence under defined conditions. The legal architecture, in other words, does not prohibit online arbitration. It simply has not specifically regulated it in a manner that addresses the payment security question.¹¹

2.3 The Enforcement Problem

Despite a sound legal basis, online arbitration in India suffers from a practical enforcement weakness that receives far less attention than the procedural questions. When an arbitral tribunal, whether physical or online, renders an award directing one party to pay a sum to the other, that award is enforceable as a decree of the court under Section 36 of the Arbitration Act. But enforceability of the award is very different from recoverability of the money.¹²

In physical commercial disputes involving assets, property, or bank accounts, Section 9 of the Act allows a party to seek a court order securing the disputed amount even before the arbitration commences, and Section 17 allows the arbitral tribunal itself to direct securing of the disputed sum during the proceedings. These provisions exist precisely because legislators understood that an award is meaningless if the money has been dissipated by the time it is enforced.¹³

In online platform disputes, the equivalent of dissipation is automatic settlement. Once a

⁹ Arbitration and Conciliation Act, No. 26 of 1996, 7 (India).

¹⁰ Information Technology Act, No. 21 of 2000, 10A (India).

¹¹ Indian Evidence Act, 1872; Bharatiya Sakshya Adhinyam, No. 47 of 2023 (India).

¹² Arbitration and Conciliation Act, No. 26 of 1996, 36 (India).

¹³ Arbitration and Conciliation Act, No. 26 of 1996, 9, 17 (India).

payment aggregator releases funds to a merchant or service provider in the ordinary course of its settlement cycle, the money is gone from any escrow structure. No Section 9 or Section 17 application routinely accompanies small-value online disputes. No platform automatically pauses settlement when a dispute is raised. The result is that online arbitration, for all its procedural efficiency, operates on a terrain where the financial stakes have already been decided by the settlement clock before the tribunal has even been constituted.

III. ESCROW AS A LEGAL AND FINANCIAL MECHANISM

3.1 Nature and Function of Escrow

Escrow, at its core, is a tripartite arrangement in which a neutral third party holds an asset, typically money or property, on behalf of two transacting parties and releases it only upon the occurrence of a defined condition or the satisfaction of an agreed standard. The escrow agent is not a party to the underlying dispute. Its role is custodial and conditional: hold first, release when agreed terms are met.¹⁴

In physical commerce, escrow has long been used in property transactions, mergers and acquisitions, and international trade finance. A buyer deposits the purchase price with an escrow agent; the seller delivers the goods or title; upon confirmation of delivery and quality, the escrow agent releases the funds. If delivery fails or quality is disputed, the funds remain held until a court, arbitrator, or the parties themselves resolve the question.

The genius of escrow is not just financial protection. It is behavioural. When a seller knows the money is held in escrow and will only release upon verified performance, they have a direct incentive to perform correctly and to cooperate in resolving disputes quickly. Conversely, when a buyer knows the money has already been released, they may find that the only leverage available to them has evaporated.

3.2 Escrow in the Digital Transaction Context

Digital platforms understood this logic well before regulators formalised it. Freelancing platforms such as Upwork and Fiverr globally, and domestic equivalents, have used milestone-based escrow for years: the buyer's payment is held on the platform, released in stages as work

¹⁴ See generally Black's Law Dictionary (11th ed. 2019) (defining escrow as property delivered to a third person to be held until performance of a condition).

is approved. If a dispute arises, the platform's own resolution process determines whether to release, refund, or split the funds.¹⁵

The problem with this model is that the escrow agent and the dispute resolution mechanism are both controlled by the platform. The platform holds the money and also decides who gets it. This creates a structural conflict of interest. Platforms have commercial incentives that may not align with fair adjudication. They may prefer quick resolution that minimises their own operational cost, penalise the party that initiates disputes too often, or apply opaque criteria that neither party can meaningfully challenge.

What India's digital economy needs is not just platform-administered escrow, but legally structured, independently enforceable escrow that is governed by neutral standards and capable of being directed by an arbitral tribunal. That is the gap this paper seeks to address.

3.3 Escrow as Interim Relief: The Legal Argument

Section 17 of the Arbitration and Conciliation Act, 1996 empowers the arbitral tribunal to grant interim measures during the arbitral proceedings. The 2015 Amendment Act expanded these powers significantly, giving tribunals the authority to direct, among other things, the securing of the amount in dispute in the arbitration, the preservation of assets, and the appointment of a receiver over property. Section 17 orders are enforceable as court orders under Section 17(2), as inserted by the 2015 Amendment.¹⁶

Section 9 of the Act gives courts the power to order the same categories of relief before, during, or after arbitration but before enforcement of the award. Courts have applied Section 9 broadly. The Supreme Court and multiple High Courts have held that the purpose of interim protection is to prevent the arbitral process from becoming a futile exercise by ensuring that the subject matter of the dispute is not dissipated or alienated during the proceedings.¹⁷

The legal argument for escrow-backed payment holdback as a form of digital interim relief is as follows: when a disputed payment is held in escrow during an online arbitration proceeding,

¹⁵ See generally The Lawway with Lawyers Journal, ODR in E-Commerce and Consumer Disputes: Role of Platforms and Legal Gaps (Apr. 2025).

¹⁶ Arbitration and Conciliation Act, No. 26 of 1996, 17 (India).

¹⁷ Arbitration and Conciliation Act, No. 26 of 1996, 9 (India); AMLEGALS, Interim Reliefs in Arbitration: Section 9 and 17 (2024); AZB Partners, Interim Measure: Harmonising Reliefs Under Section 9 and Section 17 of the Arbitration and Conciliation Act, 1996 (2025).

it performs precisely the same protective function as a Section 9 or Section 17 order securing the amount in dispute. The only difference is the mechanism. Instead of a court or tribunal directing a bank to freeze an account, the online arbitration agreement would specify that the payment aggregator must maintain the disputed sum in escrow from the moment a dispute is formally raised until the arbitral award is rendered and enforced.

If escrow-based payment holdback is properly designed, documented in the arbitration agreement, and connected to the payment aggregator's settlement cycle through contractual and regulatory instruction, it can serve as a pre-constituted, automated form of interim financial protection that does not require a separate Section 9 application and does not depend on the speed of court intervention.

This reframing is significant. It transforms escrow from a passive payment mechanism into an active component of the dispute resolution architecture.

IV. RBI PAYMENT AGGREGATORS DIRECTIONS, 2025: THE REGULATORY FOUNDATION

4.1 Overview of the Directions

On 15 September 2025, the Reserve Bank of India issued the Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025. These Directions represent a comprehensive overhaul of the earlier guidelines issued in 2020 and subsequently amended in 2021 and 2023. They consolidate the earlier regulatory framework into a single master direction and extend its scope to cover both online payment aggregators and physical or proximity-based aggregators, as well as cross-border payment aggregators.¹⁸

The Directions introduce a tiered classification system, distinguishing between small, medium, and large aggregators based on transaction volumes. They impose capital requirements, governance norms, risk management standards, and detailed merchant due diligence obligations. Non-bank entities must obtain prior authorisation from the RBI to operate as payment aggregators, and the deadline for existing non-bank aggregators to migrate to the new

¹⁸ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

escrow arrangement was set at two months from receipt of RBI authorisation.¹⁹

4.2 The Escrow Account Framework

The most directly relevant provisions of the Directions for this paper's argument concern escrow accounts. The Directions mandate that all non-bank Payment Aggregators maintain funds collected from customers on behalf of merchants in a separate escrow account with a Scheduled Commercial Bank in India. The aggregator's own corporate funds cannot be commingled in this account. Credits and debits to the escrow account are restricted to transactions explicitly permitted under the Directions.²⁰

For cross-border aggregators, the Directions require separate accounts: an Inward Collection Account for receipts from overseas customers and an Outward Collection Account for payments made by Indian customers to overseas merchants. These accounts are to be maintained with Authorised Dealer Category-I banks.²¹

The Directions also address settlement timelines. The transaction money is required to be sent to the merchant within a maximum period of one day, styled as T+1 settlement. While this ensures merchant liquidity and reduces the aggregator's exposure to float, it also means that by default, funds leave the escrow structure within twenty-four hours of a transaction being completed.²²

4.3 The Refund and Disputed Transaction Gap

The Directions acknowledge the existence of refund obligations for failed, disputed, returned, or cancelled transactions. Refunds are generally required to be credited to the original payment method unless the payer provides alternative instructions. This is a sound consumer protection provision, but it does not resolve the core problem this paper identifies.²³

The gap is this: the Directions regulate what the aggregator must do when a refund is already determined. They do not regulate what the aggregator must do when a dispute is raised but not

¹⁹ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025; Castler, RBI New Master Directions for Payment Aggregators: What You Need to Know (Sept. 2025); AuthBridge, RBI Payment Aggregator Master Direction 2025 (Mar. 2026).

²⁰ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

²¹ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

²² Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

²³ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

yet resolved. The default position, given the T+1 settlement mandate, is that the money moves to the merchant even if a dispute has been formally initiated. There is no provision in the Directions for a dispute-triggered hold, no requirement to pause the settlement cycle when an arbitration clause has been invoked, and no mechanism for an arbitral tribunal to directly instruct the aggregator to maintain funds in escrow pending its award.

This is precisely where the legislative gap identified in this paper lies. The infrastructure exists. The regulatory mandate for escrow accounts exists. What does not exist is the legal bridge between that infrastructure and the dispute resolution process.

Legal Area	Existing Position	Identified Gap
Arbitration Act, 1996	Allows interim protection under Sections 9 and 17; award enforceable under Section 36 ²⁴	No mechanism for digital escrow release triggered by arbitral award
IT Act, 2000	Recognises electronic contracts and digital evidence ²⁵	Does not address fairness or enforceability of click-wrap arbitration and escrow clauses
RBI PA Directions, 2025	Mandates escrow accounts for aggregators; governs refunds ²⁶	No dispute-triggered hold; no arbitral tribunal instruction mechanism
ODR Policy (NITI Aayog)	Recommends broad ODR adoption across sectors ²⁷	No binding enforcement model; no escrow-backed payment security standard
Consumer Protection Act, 2019	Provides forum choice to consumers; E-Commerce Rules mandate grievance officers ²⁸	No linkage with ODR arbitration or escrow-based interim protection

²⁴ Arbitration and Conciliation Act, No. 26 of 1996, 9, 17, 36 (India).

²⁵ Information Technology Act, No. 21 of 2000, 10A (India); Bharatiya Sakshya Adhinyam, No. 47 of 2023 (India).

²⁶ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

²⁷ NITI Aayog Expert Committee on Online Dispute Resolution, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (Oct. 2021).

²⁸ Consumer Protection Act, No. 35 of 2019 (India); Consumer Protection (E-Commerce) Rules, 2020 (India).

V. CONNECTING ESCROW TO ONLINE ARBITRATION: BUILDING THE LEGAL BRIDGE

5.1 The Core Argument

The argument advanced in this section is that escrow-based payment holdback, when embedded in an online arbitration agreement and connected to the payment aggregator's settlement cycle through contractual and regulatory instruction, constitutes a legitimate and legally defensible form of digital interim relief.

The current doctrinal position on interim relief in Indian arbitration is well established. Section 9(1)(ii)(b) of the Arbitration Act specifically refers to securing the amount in dispute in the arbitration as one of the categories of interim relief available from courts. Section 17(1)(ii)(b) provides the same power to the arbitral tribunal. The Supreme Court has interpreted these provisions broadly, holding that the purpose of such relief is to ensure that the arbitral award, when rendered, is not rendered meaningless by the dissipation of the subject matter.²⁹

In a physical commercial dispute, securing the amount typically involves a court order directing a party or a bank to freeze funds in an account. In an online platform dispute, the structural equivalent of such an order would be an instruction to the payment aggregator to hold the disputed sum in escrow from the moment the dispute is raised. If the arbitration agreement expressly provides for this mechanism, and if the aggregator is contractually and regulatorily bound to comply, the same protective purpose is achieved without requiring a separate court application.

5.2 Consent and the Arbitration Agreement

For escrow-backed online arbitration to be legally sound, the arbitration agreement must satisfy the requirements of consent, clarity, and writing under Section 7 of the Arbitration Act and Section 10A of the IT Act. This is particularly important in the context of platform contracts, which are typically presented as click-wrap or browse-wrap agreements that users must accept without negotiation.³⁰

²⁹ Arbitration and Conciliation Act, No. 26 of 1996, 9(1)(ii)(b), 17(1)(ii)(b) (India).

³⁰ Arbitration and Conciliation Act, No. 26 of 1996, 7 (India); Information Technology Act, No. 21 of 2000, 10A (India).

The law does not prohibit click-wrap arbitration agreements. They have been enforced by courts in the United States, the United Kingdom, and increasingly in India. However, the Indian courts have also signalled caution about unconscionable or adhesive clauses that effectively strip a weaker party of meaningful access to dispute resolution. The Supreme Court's ruling in *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751, which recognised that consumers retain the right to approach consumer forums regardless of an arbitration clause, reflects this caution. More recently, the Court in *M. Hemalatha Devi v. B. Udayasri*, (2024) 4 SCC 255, reiterated that consumer disputes are non-arbitrable if the consumer chooses the statutory forum.³¹

These decisions do not invalidate click-wrap arbitration agreements for non-consumer disputes. They do require that for consumer-facing platforms, the design of escrow-backed online arbitration must be voluntary and non-coercive in nature. Consumers must not be compelled to arbitrate by operation of platform terms in a manner that strips them of their right to approach the National Consumer Disputes Redressal Commission or State Consumer Commissions.

5.3 Platform Neutrality and the Conflict-of-Interest Problem

Any framework for escrow-backed online arbitration must squarely address the conflict of interest that arises when the platform administering the escrow is also the platform whose conduct is in dispute, or whose commercial interests are aligned with one party over the other.

Platforms naturally prefer fast resolution and low operational cost. They may also have a financial interest in releasing funds to merchants because settlement cycles are tied to their own revenue recognition or float income. Allowing such platforms to both hold the disputed money and decide the dispute creates an institutional bias that undermines the integrity of the process.

A neutral framework would require separation between the escrow custodian function and the dispute resolution function. The payment aggregator would hold the funds as a neutral custodian under its regulatory obligation. The dispute would be resolved by an independent online arbitral institution or a panel of neutral arbitrators with no commercial relationship with the platform. Only upon the issuance of the arbitral award would the aggregator receive a valid

³¹ *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751; *M. Hemalatha Devi v. B. Udayasri*, (2024) 4 SCC 255.

instruction to release, split, or refund the held funds.

5.4 The Freelancer and MSME Dimension

While consumer disputes have attracted significant regulatory and judicial attention, the escrow-backed arbitration framework is arguably most immediately valuable for a different category of disputant: freelancers, gig economy workers, and micro, small, and medium enterprises that transact through digital platforms.

These parties face a distinctive set of problems. They typically lack the resources to pursue formal court-based remedies. Their disputes are too large to absorb as a loss but too small to justify expensive litigation. They are bound by platform terms they did not negotiate. And they are economically vulnerable in ways that make waiting months for dispute resolution genuinely damaging.

For these parties, escrow-backed online arbitration offers a proportionate and accessible remedy. The disputed amount is held. A streamlined arbitral process produces a binding decision within a defined timeframe. The escrow is released in accordance with the award. Neither party needs to approach a court. The freelancer does not lose the advance because the platform's settlement window expired. The business owner does not lose the money because the freelancer became unreachable after receiving payment.

VI. RISKS, CHALLENGES, AND NECESSARY SAFEGUARDS

6.1 The Forced Arbitration Problem

The most serious risk in any escrow-backed arbitration framework is that it will be used by powerful platforms to compel weaker parties into private arbitration in lieu of public legal remedies. This concern is not hypothetical. In the United States, mass arbitration clauses embedded in consumer contracts have been extensively criticised for systematically preventing consumers from accessing class action remedies. In India, the concern takes a somewhat different form given the existence of accessible consumer commissions, but it is no less real.

A legal framework that allows platforms to automatically route all disputes to private online arbitration backed by escrow holdback would effectively allow them to privatise justice for the disputes most likely to be decided against them. The safeguard against this must be express

and structural: escrow-backed online arbitration should be mandatory only for B2B and commercial disputes between parties of roughly equal sophistication. For consumer disputes, it should be offered as an option that the consumer may voluntarily elect, but never as the exclusive remedy.

6.2 Platform Liability and Aggregator Accountability

If a payment aggregator holds disputed funds in escrow pending arbitration and then releases those funds incorrectly, either to the wrong party or in the wrong amount, the question of the aggregator's liability arises. The RBI Directions are silent on this scenario. General contract law would suggest that the aggregator could be liable to the party wrongly deprived of the funds, but the practical difficulties of recovering from a large payment institution are considerable.

A sound framework must therefore specify the standard of care expected of the aggregator in holding disputed funds, the circumstances under which it may act on a release instruction, the verification it must perform before acting, and the recourse available to a party that suffers loss due to incorrect release.

6.3 Digital Divide and Access to Justice

Online arbitration, like all ODR, presupposes a level of digital access and literacy that is not uniformly present in India. A freelancer in a semi-urban or rural location may lack the stable internet connection, the digital skills, or the language fluency in English that current online arbitration platforms require. An escrow-backed online arbitration framework that is inaccessible to a significant portion of its intended beneficiaries is not a solution to the access to justice problem but a new form of it.

The NITI Aayog ODR Policy Plan itself acknowledged this concern, recommending investment in digital infrastructure, training of neutrals, and multilingual platform design as preconditions for effective ODR. Any regulatory framework for escrow-backed online arbitration must incorporate these access requirements, including minimum platform standards for user interface design, language availability, and assisted access for parties who cannot independently navigate the process.³²

³² NITI Aayog Expert Committee on Online Dispute Resolution, *supra* note 1; NLIU Law Review, *Revolutionizing Justice: NITI Aayog's ODR Blueprint for India* (Oct. 2024).

6.4 Cross-Border Disputes and Jurisdictional Complexity

India's digital economy increasingly involves cross-border transactions: Indian buyers purchasing from overseas sellers, Indian freelancers serving global clients, Indian businesses using internationally headquartered platforms. These transactions generate disputes in which the applicable law, the enforcement jurisdiction, and the currency of the disputed funds may all be contested.

The RBI Directions partially address this by creating separate Inward and Outward Collection Accounts for cross-border aggregators, but the dispute resolution dimension is unaddressed. An escrow-backed arbitration framework for purely domestic disputes is a necessary first step, but its design must anticipate the need for cross-border extension, consistent with India's obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which India is a signatory.³³

VII. PROPOSED LEGAL FRAMEWORK: ELEMENTS OF AN ESCROW-BACKED ONLINE ARBITRATION MODEL FOR INDIA

Drawing on the analysis in the preceding sections, this part sets out the core elements of a proposed legal framework for escrow-backed online arbitration in India's e-commerce and platform economy.

7.1 Statutory Recognition of Dispute-Linked Escrow

The Arbitration and Conciliation Act, 1996 should be amended, or a supplementary set of rules issued under its authority, to formally recognise escrow-based payment holdback as a species of interim protection equivalent in effect to an order under Section 17(1)(ii)(b). The amendment should specify that where an arbitration agreement in a digital commercial contract includes a provision for payment holdback upon invocation of the arbitration clause, such provision is enforceable against the payment aggregator as an instruction to hold the disputed sum in the existing escrow account, without the need for a separate court application.³⁴

³³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. III, June 10, 1958, 330 U.N.T.S. 38.

³⁴ Arbitration and Conciliation Act, No. 26 of 1996, 17(1)(ii)(b), 36 (India).

7.2 RBI Direction: Dispute-Hold Category

The RBI should introduce a Dispute-Hold category within the permissible operations of escrow accounts under the Payment Aggregators Directions, 2025. This category would specify that upon receipt of a formal dispute notification satisfying defined criteria, the payment aggregator must suspend the T+1 settlement cycle for the disputed transaction amount and maintain that sum in the escrow account until it receives a release instruction from an online arbitral tribunal or a mutually agreed settlement notice from both parties. The criteria for a valid dispute notification should be clear and verifiable to prevent gaming of the system.³⁵

7.3 Neutral Arbitrator Appointment and Institutional Standards

Any escrow-backed online arbitration framework must require that the arbitrator or arbitral panel have no commercial relationship with the platform through which the transaction occurred. Platforms may administer the process, provide the technological infrastructure, and fund the institutional cost, but they must not appoint arbitrators or influence the conduct of proceedings. An independent accreditation body, potentially under the auspices of the Ministry of Law and Justice or a designated arbitral institution, should maintain a roster of qualified online arbitrators and prescribe ethical standards for their conduct in platform dispute proceedings.

7.4 Mandatory Disclosure and Consent Standards

Platform contracts that include escrow-backed arbitration clauses must disclose these clauses clearly and prominently, not buried in terms and conditions that a typical user would not read. For consumer-facing platforms, the disclosure must include an explicit statement that the consumer retains the right to approach a consumer forum and that the arbitration option is voluntary. For B2B platforms, the disclosure must include the name of the arbitral institution, the governing rules, the timeline for proceedings, the mechanism for escrow release, and the cost allocation between the parties.³⁶

³⁵ Reserve Bank of India (Regulation of Payment Aggregators) Directions, 2025.

³⁶ Consumer Protection Act, No. 35 of 2019 (India); Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751; M. Hemalatha Devi v. B. Udayasri, (2024) 4 SCC 255.

7.5 Time-Bound Process and Default Award Procedure

The efficiency of online arbitration depends on strict time limits. The proposed framework should specify that from the date of formal dispute notification, the arbitral proceedings must conclude, and an award be rendered within sixty days for disputes below one lakh rupees, and ninety days for disputes between one lakh and ten lakh rupees. The escrow hold should be automatically extended until the award is rendered and a release instruction is issued. If an arbitrator fails to render an award within the stipulated period, a default procedure should apply, potentially including appointment of a replacement arbitrator or, for very small amounts, an automated determination based on documentary evidence.

7.6 Consumer Safeguards

The framework must categorically exclude consumer disputes from mandatory escrow-backed arbitration. Where a consumer voluntarily opts into the process, the platform must make available a concierge or assisted access service in the consumer's preferred language. The consumer must be able to withdraw from the arbitration and approach the consumer commission at any point before the arbitral award is rendered, with the escrow hold being maintained during the consumer commission proceedings as well to preserve their practical remedies.

7.7 Audit Trail and Transparency

Every escrow-backed online arbitration proceeding should generate an immutable audit trail: the date and amount of the original transaction, the date of dispute notification, the amounts held and released, the identity of the arbitrator, the evidence submitted, the award rendered, and the instruction for escrow release. This audit trail should be accessible to both parties and, for regulatory purposes, to the RBI and any designated ODR oversight body. Transparency in the process is not merely good governance; it is a prerequisite for building the institutional trust that ODR requires to function effectively at scale.

VIII. CONCLUSION

The central argument of this paper can be stated plainly. Online arbitration in India has the procedural framework it needs. What it lacks is financial architecture. An arbitral award that is correct in law but impossible to enforce because the money is already gone is not justice. It is

a well-reasoned piece of paper.³⁷

India is in a rare and enviable position. Its payment infrastructure, through the RBI's Payment Aggregators Directions, 2025, already mandates escrow accounts at the heart of every significant digital transaction. Its arbitration law already provides for interim protection of disputed amounts. Its ODR policy framework already identifies e-commerce and platform disputes as priority sectors for digital resolution. The pieces are all present. They are simply not yet connected to one another.

The framework proposed in this paper is not a radical departure from existing law. It is a targeted integration of mechanisms that already exist in separate regulatory compartments. The dispute-hold category in RBI Directions, the statutory recognition of digital escrow as interim relief under the Arbitration Act, the neutral arbitrator appointment standards, the disclosure and consent requirements, and the consumer safeguards are all calibrations of existing frameworks rather than entirely new constructions.

The urgency of this integration should not be understated. India's digital economy will generate hundreds of millions of small-value disputes over the coming decade. If each of those disputes plays out with no financial security for the party who did not receive the money first, the practical value of ODR as a justice mechanism will be significantly diminished. The freelancer who loses forty thousand rupees because the settlement window expired before the dispute could be raised is not served by a framework that is procedurally sophisticated but financially hollow.

Escrow-backed online arbitration, properly designed with safeguards for consumer choice, platform neutrality, digital access, and regulatory accountability, offers a path toward making digital commercial justice real rather than merely formal. It is time for India's arbitration law, payment regulation, and ODR policy to converge on this question and produce an answer.

³⁷ See Arbitration and Conciliation Act, No. 26 of 1996, 7, 9, 17, 36 (India); Information Technology Act, No. 21 of 2000, 10A (India); NITI Aayog Expert Committee on Online Dispute Resolution, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (Oct. 2021).

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