

ONLINE DISPUTE RESOLUTION FOR CONSUMER GRIEVANCES

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Abstract:

No world can be without Dispute as when there are so many human beings, it is evident that there will be clashes and it was really important to set up a dispute resolution authority. So, initially, parties had to go to the courts to get their disputes resolved. Then, with changing times and also to reduce burden from the judges, the parties started opting for Alternate Dispute Resolution (Hereinafter referred to as ADR) mechanisms. Under ADR, the parties have more autonomy and control over the whole process of dispute resolution and can also move to court, if they are not happy with the settlement.

With the changing times, the world moved towards virtual world, with many people doing Electronic transactions. With these changing times, more and more online disputes arose and it became very difficult for the parties to resolve each and every dispute by physically meeting each other, arranging for dispute resolution officers and then getting the award enforced. So Online Dispute Resolution (Hereinafter referred to as ODR) became need of the hour as it allowed resolution of all disputes through the use of technology without even physically meeting each other. However, due to technological limitations, currently, only small and medium value disputes go there. ODR became really popular for consumer disputes due to the boom in the E-Commerce sector as many people started shopping online for smallest of the smallest things which paved way for more and more disputes and it was not feasible to opt for ADR Mechanism or Litigation in each and every E-Consumer Disputes.

The present article includes how ODR originated and what changes E-Commerce brought, Techniques used under ODR and The Draft ODR Policy brought by central government in 2020.

Keywords: E-Commerce, asynchronous communication, Draft Policy, ODR Techniques

Introduction

In today's time, in case of disputes, a person does not only have the option of going to the court, rather it also has the option of going to any of the Alternate Dispute Resolution (Herein after referred as ADR) like Arbitration, Conciliation, Mediation, Negotiation etc. and when these are done on an online platform or with the use of Technology, then it becomes Online Dispute Resolution (Herein after referred as ODR). ODR is a subset of ADR i.e., it falls within the branch of ADR only.

From Exchanging goods in the barter system in the old times to coins, notes, cheques, to digital transactions and crypto-currencies in the present times, the global market system has evolved enormously. In this novel age of technology with the explosion of activity in Cyberspace, it is certain that there will be online conflict as large and large number of people are getting internet access, which is a major source on which disputes arose these days and with the introduction of ODR, it has now also become the major source, where disputes are resolved as well.

Asians constitute 42% of the Internet users in the world. ODR can be used for disputes arising from an online, e-commerce transaction, or disputes arising from an issue not involving the Internet, called an "offline" dispute, but is settled online.

Meaning of ODR

ODR is the resolution of disputes, particularly small- and medium-value cases, using digital technology and techniques of alternate dispute resolution (ADR), such as negotiation, mediation, arbitration and/or use software automated processes for dispute resolution. For Large Value cases, People still prefer ADR or Traditional method of Litigation.

Online dispute resolution is an alternative to the traditional legal system i.e., alternate to court and litigation. Key advantage of ODR is that parties need not submit their disputes for adjudication before the courts of a different jurisdiction i.e., in case of disputes, parties can directly settle their dispute through ODR instead of first applying to courts of different jurisdictions.

It is not necessary for the dispute to be only E-Dispute to be resolved online through ODR as traditional disputes such as commercial or social disputes can also be resolved by use of information technology. The parties need to be virtually present in the process either by videoconferencing or through emails.

Origin of Online Dispute Resolution

The origins of ODR can be traced back to 1996 when the Virtual Magistrate project was established in USA to offer online arbitration system to resolve some defamation matters. The Online Ombudsman's office at University of Massachusetts resolved a dispute of a website owner with a local newspaper owner involving a copy right infringement issue which was settled through mediation.¹ Since 1999, many ODR service providers have actively resolved disputes both in the public and private domain involving government and commercial entities.²

In India, ODR germinated from ADR when in the early days family related disputes were resolved by Kulas, Srenis (Businessmen who conduct the same business) and Parishads (group of men who possess legal knowledge). In other jurisdictions as well, ODR was based on ADR practice wherein technology was added to the ADR process to make it more efficient and convenient to the parties.

The Indian legal framework also supports ODR. By Introduction of Section 89 of Code of Civil Procedure, 1908 which promotes use of alternative dispute resolution between parties and Order X Rule 1A which confers powers on the court to direct the parties to a suit to choose any ADR method to settle its disputes, the legislature clearly showed its intention towards an alternative to Litigation. Then, when this power was coupled with the Information Technology Act, 2000 which granted legal recognition to use of electronic signatures and electronic records. It paved the way for ODR.

In *Grid Corporation of Orissa Ltd. vs. AES Corporation*³, the Supreme Court held 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 the law or the contract between the parties requires it".

In *State of Maharashtra vs Dr. Praful B. Desai*⁴, the Supreme Court of India established that the Video conferencing is an acceptable method of recording evidence for witness testimony

The above cases clearly state the intention of the Supreme Court and how with time, the Supreme Court has started has started giving recognition to the use of technology in resolution of disputes, thereby, encouraging use of ODR Practices.

¹ Centre for Technology and Dispute Resolution, Online Ombud's narrative 1: website developer and the newspaper at www.ombuds.org/narrative_1.html

² United States ODR provider at www.adr.org. In Australia ADR online at www.adr.online.org etc.

³ 2002 AIR SC 3435

⁴ (2003) 4SCC 601

Changes brought through E-Commerce

Electronic commerce (e-commerce) is the largest and fastest growing market in the world. The rapid growth of e-commerce in India is being driven by greater customer choice and improved convenience. India has an internet user base of over 50 million users, which has raised their Standard of living along with the disposable income.

As the people have much wider product range to choose from in Online purchase i.e., from both international retailers and domestic retailers. So generally, more and more disputes are arising in these E-Shopping sites and is also bringing wide choices of dispute resolution as well. ODR, being one of them.

Flourishment of E-Commerce has considerably brought down the traditional consumer disputes in consumer forums which is time consuming as well as expensive. Thus, E-Commerce has reduced the burden on Consumer Forums.

Need of ODR for Consumer Grievances

- Litigation of disputes arising out of e-commerce is often inconvenient, time-consuming and expensive because of the low value of the transactions and the physical distance between the parties. So, generally consumers give up on their claims as they don't want to go through the whole process of litigation.
- Courts may lack the resources and the expertise to keep up with the growth in cross-border disputes arising out of an ever-emerging e-commerce as most of the laws are very old and are incapable of keeping pace with the complexities of disputes which arise in E-Transactions.
- The use of asynchronous communications allows the parties to be prepared to produce their best response without being easily intimidated or bullied. In E-Commerce, generally, the communications go one after the other i.e., person 'A' speaks first and then person 'B' gets the time to reply to it. These type of communications helps the parties to come up with the best possible answers and the parties don't get intimidated by other which usually happens if the communications are synchronous.
- To give greater control over the processes and the decision to the party. For instance, in consensual ODR the parties create their own agreement without having it imposed on them by a third party. Thus,

parties have more control over the process as well the outcome than any other dispute resolution mechanism.

- As ODR can be done just by a single click on a mobile phone, so even consumers don't hesitate in bringing the case whenever they feel like they are not satisfied with the product or services.

Difficulties in ODR in resolving Consumer Grievances

- The absence of non-verbal cues may facilitate misrepresentation of identity and lead to miscommunication as people might misinterpret written communications. Moreover, in some cases, a person might chat with someone else's account pretending to be him and the other party might not even know it.
- As ODR is based on technology, so many people might not be that technologically advanced and they might want to use traditional methods to resolve their consumer disputes as that has been their preferred method from quite some time.
- Currently most existing ODR services use only the English or Hindi language. This can be a barrier not just for those parties who do not speak the language but also for those parties who use it as a second or third language.
- The absence of clear legal standards for ODR creates many difficulties, particularly if the need of public enforcement arises because if there is no law governing ODR as a dispute resolution mechanism, then it would be very difficult for any party to enforce the settlement that they have reached between them.
- ODR generally applies confidential procedures which may cover up important information about defective products, poor customer service and other unethical business conduct, which, if publicly known, would impact on consumer purchasing choices. The chances of getting confidential information out are more in ODR as compared to any other dispute resolution mechanism. However, with stringent laws, this issue can be easily resolved.

Techniques of ODR for Consumer Grievances

1. Automated Negotiation - Automated negotiation is carried out exclusively by an ODR platform without the intervention of a neutral third party. It usually involves a 'blind bidding' negotiation process whereby one party invites the other to negotiate the amount of money in dispute. If the other party agrees, they start a blind bidding process whereby both parties make secret offers, which will only be disclosed if both offers match certain standards. They can usually submit up to three offers and the settlement is generally at the mid-point of both the offers, if the difference between both the offers is less than 30%. This method has proven to be particularly successful with consumer disputes with insurance compensations and in commercial activities.

2. Online Mediation, Assisted Negotiation and Online Conciliation – In Online Mediation, Mediators use information management skills encouraging parties to reach an amicable agreement; in doing so, they enable parties to communicate more effectively through the rephrasing of their arguments. Online Conciliation is similar to Online Mediation but, in addition, the conciliator can propose solutions for the parties to consider before an agreement is reached. Also, Assisted Negotiation procedures are designed to improve parties' communications through the assistance of a third party or software. In fact, some commentators argue that Assisted Negotiation and Online Conciliation are just different words for mediation.

3. Online arbitration - Arbitration is a process where a neutral third party (arbitrator) delivers a decision which is final and binding on both parties. It is often used to resolve businesses' disputes because this procedure is noted for being private and faster than litigation. Arbitration is far easier to conduct online than mediation processes because neutral third parties do not have to engage with the disputants in such an intense manner. Despite this, arbitration is probably the least popular ODR method for the resolution of consumer disputes, especially at an international level. The reason for this is that it is difficult to secure the other party's consent for Arbitrator once the dispute has arisen. Currently, most ODR providers allow parties to carry out part of the arbitration process online. For Example - parties may download claim-forms, the submission of documents through standard e-mail or secure web interface, the use of telephone hearings etc.

4. Online small claims courts - Small claims procedures provide a middle ground between formal litigation and ADR, where disputes involving small value claims can be resolved faster, cheaply and less formally.

5. Other ODR techniques -

A. *Med-Arb*: Med-Arb allows parties to use a tiered process in which the parties are given the chance to negotiate on their own or with the assistance of a mediator. If the parties are incapable of reaching an

agreement, then they may ask the online mediator to act as an arbitrator and to render a decision on the unresolved issues, which can be binding or not binding, as the case may be.

- B. *Neutral Evaluation*: Here, similar to arbitration, a neutral third party makes a decision on the basis of the written submissions and evidence provided by the parties. However, the decision takes the form of a non-binding recommendation.
- C. *Ombudsmen*: These are independent bodies which carry out investigations on the failure of services, when a consumer lodges a complaint. Most schemes are controlled by professional sectors, such as the ombudsman in insurance and finances. Ombudsman's proceedings generally use mediation and conciliation techniques. These services are free of charge for consumers and decisions are only binding towards the professionals involved in the particular sector.
- D. *Mock Juries*: These are ODR processes whereby a jury of voluntary peers makes nonbinding decisions of the issues in dispute via a web-based platform.

How to direct more Consumers to ODR services

1. Awareness - Greater awareness and understanding of ADR concepts and processes are needed for ODR to flourish. ODR is futile if consumers are unaware of its availability and where to find it. ODR can build trust, but it needs to be advertised appropriately. The goal of ODR should not be just to settle disputes but also to enhance consumer confidence in e-commerce.
2. Transparency and informing parties - In order to enhance trust in ODR providers, some relevant information must be given to the parties.
 - Type of ODR procedure
 - Requirements that consumers must meet before going for ODR
 - costs, including fees and possible extra costs when decisions need to be enforced
 - enforceability of decisions and agreements
3. Trust – There is still a lack of trust amongst people in regards to ODR. But the trust can be built:
 - By providing press articles and contact information of agencies and parties (including e-mail addresses, telephone numbers, real addresses and data protection rules)
 - Supplying simple information about the process and third neutrals
 - The use of Trustmark i.e., seal of certification

- Providing feedback mechanisms as the best insight as to how to improve ODR can be given only through feedbacks.

4. By ensuring impartiality – As businesses will be dealing with more cases as compared to an individual so there can be doubt in the mind of the consumer regarding impartiality of the whole ODR procedure so, the whole ODR process must be made user friendly so that the consumers are satisfied that there will be no partiality.

Draft ODR Policy, 2020

In October 2020, Niti Aayog prepared a draft ODR Policy to include several disputes including Consumer Disputes which could be resolved through Online Dispute Resolution. This was needed especially in the times when the world was going through tough time because of Covid-19. It not only affected the countries economically but also shackled the judicial system of the countries as people were not able to access courts to resolve their disputes. So, the long overdue ODR Policy was brought to allow people to resolve small value disputes quickly, effectively and efficiently just from their Mobile or Laptop screens. The legal sanctity of ODR, made this whole process more reliable.

The Draft Policy states that government can introduce ODR facilities for small value disputes at a very reasonable rate. This could be of very low cost or even free, thereby, making it extremely beneficial for displaced low-income workers especially during the pandemic of covid-19.

The policy mentions that there are over 3 crore disputes pending in courts and most of them are basically consumer disputes only. Hence, parliamentary committee of law and justice has recommended continuation of virtual courts even after the pandemic of Covid-19 gets over to reduce burden from the courts. Thereby, vehemently declaring that ODR is there to stay for long run and will not just vanish after the pandemic is over.

In 2020, after the introduction of this policy, E-Market giants, eBay has promised to solve around 60 million consumer disputes within a year through ODR Mechanism.

Conclusion

New problems require new solutions. ODR is that new thing which is going to bring further changes in dynamics of consumer protection. The whole world is witnessing the new age consumers who prefer to stay at

home and do all the shopping and book services ranging from getting a massage at home to shopping gym equipment. Everything is getting done on a finger tap on the screen and so is the dispute resolution which can be done with the assistance of the court.

Though ODR is in a nascent stage right now but will certainly be the dispute resolution mechanism for future as more and more people are moving towards internet facilities and the disputes arising on internet generally are solved through ODR only In India, currently few ODR firms are working and some e-commerce and banking sites are also using it. Starting with consumer disputes is a first step in the direction of getting internet courts in India as it will help in reducing burden on the courts. A Central Consumer Protection Authority shall be set up and it shall be made the principal body managing and running the Online Dispute Resolution system in India. This will encourage more and more people to go for ODR to resolve their dispute which is need of the hour.

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