

# Online Dispute Resolution: An Indian Perspective

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## ABSTRACT:

E-commerce is growing at a fast speed in India as India is seen as a producing a sizeable and profitable market for e-commerce business. However, e-commerce laws in India are still not clear to most of the e-commerce entrepreneurs. As a result most of the e-commerce websites are not following the laws of India and are inadvertently (without knowledge) violating the laws of India. Regulatory authorities of India have started questioning the operations of e-commerce websites of India and many of them are facing potential legal actions.

The tussle is not merely between the regulatory authorities and e-commerce website owners but it also extends to disputes between e-commerce websites and their consumers. Most of the consumers are not aware about their digital rights while dealing with such e-commerce companies and websites. At the same time there is lack of forums and dispute resolutions platforms for digital consumers in India where they can agitate their claims. In short, e-commerce dispute resolution in India is still to be managed by Indian Government.

With the rapid development of the Internet and electronic commerce, dispute resolution mechanisms are needed to help resolve disputes between parties located anywhere in the world in a manner that is fair, expeditious and cost effective. ADRs are evolving with new technologies, making it possible to solve a dispute through electronic mechanisms of which Online dispute resolution (ODR) has been labelled “a logical and natural step” for the resolution of disputes that arise on the Internet without the physical presence of the parties involved.

This paper presents the ODR phenomenon with a specific focus on policy-making and regulatory problems in India. It argues that the current regulatory framework for online dispute resolution is, to a large extent, defective. Existing deficiencies result not only from a lack of comprehensive ODR law, but also from the weaknesses of the other modalities of regulation: market, norms and technology. Arguably, the current “hands-off” approach to regulating ODR has been unsuccessful, and it is time to re-examine that position.

**Key-Words:** E-commerce, Consumer, Dispute, Online.

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## I. INTRODUCTION

The phenomenon known as online dispute resolution relates, to put it simply, to resolving disputes on the Internet. It is happening in many forms and forums across different countries. Today’s ODR mechanisms are said to be early harbingers of the future global dispute resolution landscape in the Digital Age.<sup>1</sup>

It is very much clear that this type of Arbitration belongs to electronic arbitration. If arbitration is conducted online, the parties have to discuss through e-mail about the choice of law, enter into an online arbitration agreement digitally signed by them, and determine the geographical location of the server through which arbitration is to take place and also have to determine the place of signing the award by arbitrator. When we refer to the term online, we mean that the communication is being transmitted *via* electronic medium, especially through internet. It would include use of telephone or mobile, fax, or e-mail facilities or any other mode available on the internet or any other information and communication technology which can be beneficially used to solve disputes.

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<sup>1</sup> Many authors have suggested that the spectrum of dispute resolution mechanisms will soon encompass a full range of “virtual” options made possible by the current revolution in information technology – see for instance: Thomas J. Stipanowich, “Contract and Conflict Management” (2001) Wis. L. Rev. 831.

Benefit of online arbitration is that the parties located at distant places need not travel across the globe to resolve their dispute. Moreover, both online and offline disputes arising from transactions between the parties can be resolved through online arbitration.

The complete system of out-of-court dispute resolution has grown and flourished alongside the rapid advance of technology in recent years. Yet, a successful relationship between ADR and technology could not have happened. Since then, one of the main challenges facing the global map is how to resolve a growing number of cross-border disputes in the electronic environment. Diverse legal and non-legal obstacles such as physical, linguistic and cultural distances between parties, juridical difficulties concerning the applicable law, competent jurisdiction and enforcement of judgments make traditional methods of dispute resolution ineffective in the online environment. It has been argued that these deficiencies may significantly hamper further development of the Internet and electronic commerce. Although not free from similar and other concerns, ODR is being depicted as the potentially optimal method to resolve disputes arising on the Internet.

#### **A. ADVANTAGES**

One of the most significant advantages of ODR is that it obviates the need for travelling and substantially reduces cost. There is also a growing consensus that ODR can make dispute resolution more efficient, allowing for better time and cost management, greater flexibility in procedure, and more creative solutions. Parties can also decide on creating a more flexible procedure, setting such stages and deadlines as they deem convenient.

#### **B. DISADVANTAGE**

As ODR takes place distantly in front of computer screen, it reduces the essence of personal interactions or face to face communication between the parties due to which there is a lack of trust. The system is in a sense also disadvantageous that parties can be subject to hackers attack, lack of security, and lose of information due to virus or other technical issues.

#### **C. EXAMPLES OF ODR IN ACTION**

A series of examples of ODR in operation and the main purpose is to show the way in which ODR is actually being used. The example is as follows

eBay, Canadian Civil Resolution Tribunal, Financial Ombudsman Service, Resolver, Youstice, Online Schlichter, Cybersettle ,Modria, Traffic Penalty Tribunal There are many more systems up and running around the world.<sup>2</sup>

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<sup>2</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf> (last visited on 14.05.2015)

**eBay** -A significant 60 million disagreements amongst traders on eBay are resolved every year using ODR. There are two main processes involved. For disputes over non-payment by buyers or complaints by buyers that items delivered did not match the description, the parties are initially encouraged to resolve the matter themselves by online negotiation. They are assisted in this by clearly structured, practical advice on how to avoid misunderstandings and reach a resolution.

**Youstice**- is an ODR service for handling large volumes of low value consumer complaints, relating both to goods and services, whether or not the purchases took place online. There are two tools. The first enables negotiation between parties. It provides assistance in framing arguments – parties are invited to describe their position by selecting from a series of phrases, with relevant icons for each. The site also suggests suitable solutions that again can be represented by icons

#### **D. SECURITY ISSUES IN ODR**

In most ODR proceedings the parties (or one of the parties) will wish to maintain all aspects of the proceedings private. The Internet being an open network, communications per e-mail or communications via a website platform may be inherently less secure than mail, fax or telephone. There is a risk that unauthorised persons intercept communications transmitted over the Internet and hackers may break into computers connected to the Internet. For example one such technique to gain unauthorised access is spoofing, the unauthorised person assuming the identity of an existing authorised user to access confidential information. Sniffer packages may be used to intercept and manipulate particular data. More secure are closed systems, which are screened from the Internet. Instead of using the Internet, i.e. public networks, closed systems use dedicated private lines to transmit communications. For this reason they are more secure.

## **II. ODR- BUILDING FUTURE DISPUTE RESOLUTION SYSTEMS**

In countries with less developed ADR practices, litigation still occupies a central place in a dispute resolution system. Out-of-court dispute resolution mechanisms are mentioned as “alternative” which clearly suggests that there is a primary model for settling disputes that is litigation in court.

Though courts are more eager to send the disputes to meditation, conciliation and arbitration only one generation ago, “the idea of moving dispute resolution ‘out of court’ encountered concern similar to the concern expressed today about moving dispute resolution to the arena of cyberspace<sup>3</sup>. Since then gradually the picture of dispute resolution has changed and ADR was encouraged but in coming future ODR will also occupy its space in this commercial world. The factors affecting the growth of ADR will also be the reason of growth of

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<sup>3</sup> Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass, San Francisco, 2001) at 26 [Katsh and Rifkin].

ODR in India. And traditional courts are simply not enough to solve the disputes related to online activity due to the advancement in technology. Therefore, gradually the need of ODR will be realised in its own pace.

By observing the extent of advancement of internet in one decade and seeing the younger generation to be also the part of such advancement the time is not too far were the central method for resolving the dispute will be adopted as ODR.

## **A. INFORMATION TECHNOLOGY AND ARBITRATION**

Information technology is the vital tool in regards to Alternate dispute resolution. Every time one uses a computer, one handles information through technology. Information technology provides opportunities to facilitate communication and so assist in prevention and management of disputes. Where disputes arise, ADR services can use information technology to provide information to parties or substitute for, traditional face to face interventions. Information technology can also play a valuable role in supporting the quality of ADR practice through more effective supervision, assessment, training, information management, research and evaluation. IT is an influential tool box for international arbitration. It not only helps in speeding up the dispute resolution process, it also helps in handling the ample records that characterize present day arbitrations. Hence, speaking of the use of IT in arbitration may in fact cover a large variety of completely different actions, which collectively cover and go beyond the daily work of most lawyers.

## **B. ONLINE DISPUTE RESOLUTION IN INDIA**

Dispute resolution is an essential part of our daily lives. The traditional methods of dispute resolution involve utilising the platforms of courts and tribunals. However, the procedure followed by these courts and tribunals is not only cumbersome but also very time consuming. To get speedier redressal of disputes, alternative dispute resolution methods like arbitration, mediation, conciliation, etc have been developed. However, nothing can beat the use of online dispute resolution in India.

The use of ODR in India has many benefits but they can be achieved only if we have a well established ODR infrastructure in India. The present ODR infrastructure of India is in despair. India has neither a well organised legal framework nor adequate use of technology to make ODR in India a success.

As there is no dedicated Legal Framework for Online Dispute Resolution in India although some hints can be picked from the sole Cyber Law of India, as incorporated in the Information Technology Act, 2000 (IT Act, 2000), yet these random and selective provisions cannot sustain a sound, robust and long term ODR System in India. Another reason for lack of growth of ODR in India is absence of specialised institutions that can provide training, education, research and policies for the success of ODR in India.

For instance, we have a single techno legal e-courts training, consultancy and educational centre in India. It is managing many crucial aspects of technology and law like e-courts, ODR, digital evidencing, judges and lawyers training for e-courts and ODR, cyber law trainings, etc. In these circumstances, expecting India to be a hub for ODR services would be an over ambitious thinking. India has still to cover a long gap before ODR would be used for dispute resolution.<sup>4</sup>

### III. CRITICAL ANALYSIS ON ONLINE ARBITRATION

The appearance and growth of online arbitration practices resulted in the increasing interest the question of whether an arbitration conducted by the use of electronic means is valid within the current legal framework. As a new mechanism of dispute resolution, online arbitration has encountered certain difficulties in the application of traditional principles of international commercial arbitration law.

There are numerous issues in online dispute resolution that presently appear “insufficiently regulated.” “Insufficient regulation” results not only mean lack of comprehensive ODR law, but also from the weaknesses of the other modalities of regulation. Certainly, law is not always the best means to regulate.

In a very short span of time the picture has changed dramatically. Every year millions of disputes are resolved online and over a hundred service providers offer their services to settle the disputes online. These service providers offer their services worldwide. From a technology gadget, online arbitration has become a major phenomenon in dispute settlement. It may appear that there is no link between online arbitration and international commercial arbitration however, the day-to-day operation of commercial arbitration cannot remain unaffected by such a vast phenomenon. Well aware of these realities, ICC has launched several projects in the area of IT. These include issuing guidelines on the use of IT in arbitration, devising a web based system for conducting and managing arbitration proceedings, and setting up an online clearing house system for small claims

In cyberspace, like in the physical world, law, market, norms, and architecture all interact to regulate human behaviour. To take an example, if an ODR provider charges too much for their services, such a problem should rather be solved by market than by law. If the provider ignores clients’ emails about their pricing, likewise, norms seem to be more appropriate than law. If the provider tries to use a non-existing credit card number, they will probably fail not because it is forbidden by law, but because a computer system will not recognize a given number. Finally, when fraudulent charges are made to a client’s credit card, law must come into play. Thus, law and the other modalities co-regulate the field of online dispute resolution.

The current legislative framework does not promote online dispute resolution. At present there is no pertinent legal framework designed to regulate online arbitration procedures; therefore, until there is no separate legislation

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<sup>4</sup> <http://tlnind.blogspot.in/2011/03/online-dispute-resolution-in-india.html>

which could deal specifically with the problems of online arbitration we must look for the rules that are applicable for traditional arbitrations. There is no provision in the current legal framework for arbitrations that forbids online arbitral procedures but due to its special characteristics it would be convenient to elaborate a special legal regulation to lay down the rules for this process.

The regulation for online arbitration should be matched in order to avoid differences in the different local regulations. Instead a harmonized legal framework must be provided in the context of the whole globe and must not rely on information technology laws because they never separately mention about arbitration therein. Such laws are not framed specifically for arbitration but the countries frame such laws for its domestic purpose in order to avoid cyber crime.

However, harmonization may be a difficult task to achieve, as the negotiations for an international convention can take many years. A model law can help bring harmonization to the legal framework; however, as it is a flexible instrument, the level of harmonization may be lower. The most practical way for obtaining a harmonized legislation in this subject is to provide all the countries with a model law so that it can be enacted in each country. There is need of separate forum for the disputes which are settled through online arbitration mechanism.

#### **IV. RECOMMENDATIONS ON REGARD OF ODR MECHANISM AS AN EFFECTIVE TOOL IN THE COMMERCIAL WORLD:**

1. Enactment of separate legislative Framework is the primary steps should be considered worldwide.
2. Steps to be taken for security measures in ODR and not completely relying on IT principles because they are framed for domestic purpose by each country.
3. Separate online arbitration procedure should be initiated.
4. Awareness among the people regarding ODR mechanism as an effective tool for settlement of dispute.
5. For proper and effective mechanism of ODR a proper infrastructure should be initiated with background support from traditional arbitration principles.
6. Need of specialised institutions that can provide training, education, research and policies for the success of ODR in India.