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ONLINE DISPUTE RESOLUTION SYSTEM: GREEN LIGHT TO SPEEDY JUSTICE

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ABSTRACT: Digital technology is transforming the landscape of dispute resolution. Online Dispute Resolution (ODR) uses alternative dispute resolution processes to resolve a claim or dispute. Online Dispute Resolution 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. Dispute Resolution is an alternative to the traditional legal process, which usually involves a court, judge, and possibly a jury to decide the dispute. Online dispute resolution was born from the synergy between Alternative Dispute Resolution and Information and Communication Technology, as a method for resolving disputes that were arising online, and for which traditional means of dispute resolution were inefficient or unavailable. Thus, ODR is a different medium to resolve disputes, from beginning to end, respecting due process principles.

Key words – Digital, Online, Dispute, Speedy Justice, Transforming

Introduction

Disputes are conflicts or clash of interests, every society inescapably experiences disputes. In the era of internet where possibly valuable new patterns of intellectual property can be created at the keyboard where interactions, transactions and relationships start and culminate rapidly, it is not surprising that conflicts are occurring. Modern modes of interaction, i.e. information and transmission technology has given birth to novel disputes, such as copyrights, e-commerce conflicts. In the present scenario, states are required to tackle the conflicts in society, whether crimes or ethnic disputes. The rising part of Online Dispute Resolution possibly tenders a functional technique for resolving conflicts. These techniques are capable of being used for both offline and online disputes.

Nature and Scope of Online Dispute Resolution (ODR)

Online Dispute Resolution is a split of Alternate Conflict Resolution. The fundamental meaning of ADR is resolving disputes other than litigation. These modes of resolution of disputes have been resorted to since the time immemorial.¹In this modern era of technology with the flare-up of activity in Cyberspace, comes the certainty of online dispute. ODR is thought to complement existing ADR modes to tackle disputes rapidly and effectively using Internet and the technology.

Online Dispute Resolution utilizes Alternative Dispute Resolution methods to settle down a clash. Both online and offline conflicts can be settled down with the help of

¹ Susan Patlyek, Dispute Resolution in Cyberspace, retrieved From<www.chss.montclair.edu/leclair/LS/papers/cyberadr.html>.

ODR system. ²ODR is a substitute of the conventional judicial procedure, which generally requires a court, a judge or judges to settle down the conflict. Online Dispute Resolution is a system that helps in resolving conflicts without the parties physically being in attendance. Thus, the parties are required to be virtually present in the procedure either through emails or through videoconferencing. Online Dispute Resolution is known as the out of court techniques of resolution of disputes grows out of electronic operations and digital means of communication.³

Stages of Development of ODR

Online Dispute Resolution is operating since 1996 and has passed through following episodes of development:

1. **Hobbyist Episode-** Here individuals started work on ODR without any traditional support.
2. **Experimental Episode-** In this episode, NGOs and academics were funded by institutions both at national and international levels to run various pilot programs.
3. **Entrepreneurial Episode-** Where numerous for-profit institutions launched personal ODR sites.
4. **Institutional Episode-** ODR has entered in this modern stage, where it is piloted and practised by a number of official institutions like judicial and various government dispute resolution agencies.⁴

Kinds of disputes handled by ODR

ODR is a mechanism to help people solve their disputes. The dispute can arise either offline or online. Use of ODR is not restricted to merely solving of online disputes only. ODR is appropriate for settling both online and offline clashes. This present technique of settling conflicts is independent of both, disputes and the place of origin of disputes. If any conflict has taken place, then the disputing parties can very well get in touch with the ODR institutions through its Web site services, and can easily submit its conflicts, can select the way for resolving their conflicts, hence can advance further. For instance, if there arises a contractual dispute between two businessmen and they agree to have an online mediation, they can approach an ODR institution, submit their dispute, have an online mediator appointed, and proceed with the mediation process online. The settlement ones resorted to between the litigating parties becomes enforceable as a decree of the competent authority under the Indian Arbitration and Conciliation Act, 1996.⁵

Similarly, if a company offers ODR services for its products, a consumer can easily file a complaint on the company's Web site and the dispute resolution procedure can be started. This is a small yet feasible and working model of ODR where a subscriber instead of approaching the company through letters or personally can immediately log

²American Bar Association Paper on Electronic Commerce and Alternative Dispute Resolution Task; Retrieved from http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/consumerodr.authcheckdam.pdf.>

³Spyros Ch. Makris LLM, DL University of Konstanz, Lawyer in European Court of Justice Review 2, 2009 , page 160.

⁴Melissa Conley Tyler, 'Online Dispute Resolution' in Matti Malkia& Ari-Veikko Anttiroiko (eds) Encyclopaedia of Digital Government. Hershey: Idea Group Reference, 2007, 1268-1274.

⁵Sections 30, 36 & 74 of the Arbitration and Conciliation Act, 1996.

on to the Web site of the company, lodge his complaint through a standard online complaint form and through mutual negotiations, the problem is solved. It is to be noticed that here the dispute is not necessarily due to any online transaction rather any normal business transaction could lead to a dispute which is solved online through the company's Web site and use of e-mail services.

Techniques of Online Dispute Resolution

ODR comprises all procedures used to resolve disputes, which are mainly using Information and Transmission Technology. The aid of Information and Communication Technology (ICT) has been named as the fourth group, besides the two disputing groups and the third neutral group (arbitrator, mediator, negotiator etc.), there is a fourth group in the procedure, which is technology. Thus, the fourth group is used by the third group as an instrument for aiding the procedure.⁶

Following are the main techniques or methods of ODR:

E-Mediation:

Mediation is an ADR process with a neutral person helping the parties, finds a solution to their dispute. Online Mediation is utterly be done through a mode of online communication, where each party will reach a decision that satisfies both the parties. It is in general faster and much less expensive than a trial.

E-Negotiation:

As in present era, commerce is globalized and time is of essence for all, online negotiation has come forward as a technological alternative to conservative negotiations. There are two types of modern deliberations:

1. Double Blind Bidding-It is a process for sole pecuniary matters between two groups.
2. Visual Blind Bidding-It is preferred to deliberations with numerous groups and matters between them. This method is used primarily by insurance companies.

E- Arbitration:

Arbitration is the commonly prescribed mode of all non-judicial conflict settlement procedures. The adjudicator outstretches to a final conclusion after critically analysing the submissions and depositions of the litigating sides. Direct confrontations between the parties by the mode of video-consultation can also be resorted to. When the litigating parties have willingly contracted to refer a conflict to an adjudicator independently, withdrawal by one of the parties is not permissible from the arbitration. This includes joining together of persons known as arbitrators who will ultimately scrutinize the e-submissions of the conflicting parties and then give an imperative judgment.

Advantages of ODR System:

1. Speedy resolution and Convenience:

This is one of the key advantages of Online Dispute Resolution system compared to offline court action. ODR assures resolving of conflicts within days or even hours, while traditional ADR settle a dispute in months or years. Thus, the proceedings do not drag for years in the modern era of ODRS. The Consumers

⁶Katsh and Wing," Ten years of Online Dispute Resolution (ODR) : Looking at the Past and Constructing the Future" 38 (2006)U. Tol. L. Rev. p.35).

International study reports that majority of ODR providers satisfy the norm of correctness and expediency.⁷

2. Cost Efficiency:

ODR can significantly reduce the expense of getting a conflict settled; thus leading to the opening of the doors of the equity for the most disadvantaged groups of society. The price of online dispute resolution is a “mere trifle” in contrast to the traditional method in filing a plaint in the court. Online Dispute Resolution mechanism fulfils the economic requirements of the disputed parties. Swapping of most of the deeds, legal and official papers etc. between the parties in e-proceedings is effected via e-mail, as contrary to fax and post that is very slow as compared to internet facilities. Thus, electronic channelling of deeds and other official papers are both faster and economical as compared to traditional litigation, where official paper work is very expensive and complicated. In traditional litigations, advocates’ fees is a very high and in contrast ODR is more cost effective, as it reduces the expenses of hiring advocates or third party for better services.

3. Flexible Approach:

A conventional ADR mode may be affected at the office of a stranger or at the office of his/her advocate, which will certainly make the disputing parties a bit apprehensive. In ODR, such an issue can be easily eluded as internet provides an impartial locus to the parties.

4. Confidentiality:

Online dispute resolution is preferred over litigation in the disputes of commercial contracts, intellectual property or other matters of confidential nature, as it imparts privacy and preserves the confidential information between the parties.

5. Reputation:

Where some cases are pending before any person or an individual, it may result in loss of reputation of the person or the institution. For instance, a defect in a product or any deficiency of service can seriously effect on one’s business. The adoption of Online Dispute Resolution in India would save any person from such loss of reputation in the market.

6. Neutrality:

Online Dispute Resolution has proven to be unbiased to the legislation, mother tongue and cultural heritage of the parties to litigation, thus ODR avoids any homeland benefit that either of the litigating party may cherish in traditional litigation system, where acquaintance of the applicable legislation and local methods can provide momentous strategic benefits. Thus, it avoids expenses and technicalities of diverse-jurisdictional litigation, and lessens the risk of erratic decisions.

7. Intelligible:

It is more comprehensible to the common people; hence they feel more comfortable in pleading for themselves and will be at no loss.

⁷ European Commission (1998), “Commission Recommendation 98/257/EC on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes.”.

8. Settling Commercial Disputes:

For any vocation, time is wealth. Conflicts are like cancer which should be prevented from proliferating as early as possible. Techniques like arbitration, conciliation, negotiation, mediation, and a blend of all these methods have been successfully applied, recently such modes are flattering as the most prevalent ones for resolution of business disputes. Nevertheless, the loop-holes of such modes, specifically, personal attendance of the litigating sides and the adjudicator at a particular locus in multiple meetings, makes even ADR techniques quite futile. ODR encompasses various classes of ADR and traditional temple of justice cases which includes the application of the computer networking services.

9. ODR and Consumer Protection

With the recent growth in e-commerce campaigns, ICPEN has launched a new system in the USA that will help and safeguard the consumers' rights all over the world, which will also be rewarding for Indian sub-continent. Under ICPEN there is an agenda known as econsumer.gov that is a doorway launched for end users to file their grievances at the above mentioned portal then takes step on the grievances and inflicts propitious penances against the bodies who are infringing the rules and regulations. Indian subcontinent has recently been placed at the sixth rank in regard to the figure of patron grievances on the above stated portal.

Need of Online Dispute Resolution in India

There is a rapid slow-down in the judicial system in our country. Very often too many adjournments in legal proceedings disappoint the disputing parties and they end up in adopting alternate dispute modes for settling their conflicts. Impediments in our justice system have become very common in traditional judicial system of our nation. The traditional courts have become so overburdened with routine formalities that trials only start after prolonged delay and, once initiated, are carried out at a very slow speed. In India, the conception of ODR has come out in diverse directions owing to liberalisation, privatisation and globalization and also with successful outcomes of Alternative Dispute Resolution system in our country. Alternative Dispute Resolution in our nation imparts an alternate to the customary legal process, such a traditional legal process generally includes a court, a judge, and advocates to settle down the conflicts.

Online Dispute Resolution in India

The objective of ADR is contained in the Constitution of India itself. Preamble states: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity."⁸

In our country, use of ADR methods is clearly given confidence through the system of Nyaya Panchayat, LokAdalat, Arbitration and Conciliation Act, 1996 founded on UNCITRAL Model legislation of adjudication and negotiation. The Code of Civil Procedure of the year 1908 was altered and S.89 was put in place to contribute in the development of certain techniques of alternative dispute resolution in our country. The above mentioned section of the Code of Civil Procedure, 1908 supports ODRs, it encourages the application of alternative conflict reprisal mechanism between

⁸ The Preamble of Constitution of India.

conflicting sides. Likewise, O. X. R. 1A of CPC gives authority to the court to instruct the disputing sides to select any of the several ADR methods for resolving their conflicts.⁹ With the enforcement of IT Act of the year 2000, e-governance and e-commerce are granted a ceremonial and statutory status. Online Dispute Resolution has also been accepted in our country by the Banking Ombudsman Scheme of the year 2006 directed by the RBI, where grievances were sanctioned to be made through internet to the above body under the scheme.¹⁰ The IT Act of 2000 also provides statutory recognition to freely utilize the electronic signatures and electronic records. Also the precedents laid down by the apex court of our country props up utilization of modern technology for settlement of disputes and promote the application of ODR mechanisms.

In the landmark case of *State of Maharashtra v. Dr.Praful B. Desai*¹¹, the Apex Court of our country found that face to face conversation through computer networking is a recognised mode of recording evidence for deponent testimony. In clearing up the advantages of video-conferencing, the apex court stated that:

“Video-conferencing is a modern development in science and technology that allows one to visualise, listen and speak with some individual at a distance, with the similar facilities and comfort as if he is present before you. In reality, an offender is hence allowed to visualise the deponent in a better way than otherwise he would have been in traditional judicial proceedings carried out in ordinary courts. They can notice his or her attitude, appearance and looks directly. In fact the privilege of face to face conversation through computer networking will ensure better discovery of appearance and attitude. They can listen repeatedly the submission and testimony of the deponent.”

Legal machinery for Online Dispute Resolution can be developed in India by studying the Arbitration Act of 1996 vis-a-vis IT Act of 2000. For instance, s.7(3) of Arbitration Act emphasis on the accord between the parties should be written down comprehensively. Conversely, if such an accord is concluded online and forwarded to ODRS, such an agreement would be legitimate under S.4 of the Information Technology Act which emphasis that if a legislation states that particulars, details, facts or any other concerned issue should be written down in a particular form like in typed or imprinted format, then these conditions shall be presumed to have been thoroughly complied with if such details are presented in an electronic form and approachable so as to be referred for further references. Likewise, S.31(1) of the Arbitration Act demands that the adjudicator’s decision should be in a written form. It should be duly authenticated by associates of such authority. Such conditions are thus accomplished under S.4 and 5 of the IT Act that offer for statutory acceptance of e-records and e-signatures respectively. These sections of the said Act can aid in constructing a legal foundation for ODR in our nation.¹²

Appreciable Shift in Judicial Thinking

⁹Karnika Seth, *Online Dispute Resolution* (CIAC Conference paper).

¹⁰ The Banking Ombudsman Scheme 2006, Ref.RPCD.BOS.No.441/13.01.01/2005-06.

¹¹ State of Maharashtra v. Dr.Praful B. Desai (2003) 4SCC 601.

¹² P. Khandewal and S.Singh, “ODR and E-Commerce in India”, Legal Reference.<http://legalreferee.com/odr-e-commerce-india/#_ftn33> .

The courts have repeatedly stressed upon the use of ADR techniques and also to refer the cases to Lok Adalats, which are no doubt benevolent courts, presided over by working or decamped judges and their final verdicts are based on the settlements between the litigating parties. The decree of a Lok Adalat is conclusive and imperative between the conflicting sides and not challengeable in any court. There is an appreciable shift in judicial thinking. This traditional forum is motivating the application of computer networking services, like video conversations, for speedy settlement of conflicts. The Indian judicial system affirms the application of computer networking. The sole stipulation is that it should not strengthen the social imbalance.

Justice Deepak Misra while speaking at the 'Global Pound Conference' which was based on 'shaping the future of dispute resolution and improving access to justice' at the Chandigarh Judicial Academy has emphasised the demand for modern methods like online dispute resolution mechanisms to flourish greater surmount to the eventual user of justice delivery services. He said, "The army of techno-lawyers at the grassroots level could organise online dispute resolution with Indian and foreign companies and that system can offer a speedier, inexpensive method of adjudication."¹³

Justice S Vimla while speaking at the 10th conference of the ICSI's Southern India Regional Council held in Madurai said that ODR is developed as a modern mode it may prove very favourable in a country like India, where a numerous business-to-consumers and business-to-business disputes are of significantly low worth. The judge stated that judiciary has depicted noticeable move around the application of the modern techniques and modes for the settlement of conflicts.¹⁴

Challenges to ODR Mechanism

Technology Gap

One of the most conspicuous glitches with Online Dispute Resolution is that it completely relies on technology and mode of communication. This precludes people from using the technology efficiently. It is very difficult for the populace who do not have access to the internet and gadgets. Also, computer and communication technology is not as advanced as in other parts of the country and it is providing interference in using ODR method to resolve the disagreements.¹⁵

Impersonal

ODR inflicts electronic distance between the parties. There is no one to one interaction between the conflicting sides and the intermediary. The virtual technique of ODR is inefficient in understanding the emotional state of the disputed parties and the resultant body language and tone are not expressed to the dispute resolver. Consequently, this could hinder ability of dispute resolver to settle down the conflicts.

¹³ retrieved from <https://timesofindia.indiatimes.com/city/chandigarh/need-to-adopt-online-dispute-resolution-mechanism-justice-dipak-misra/articleshow/58667405.cms> last visited on 26-01-18.

¹⁴ "Online dispute resolution most suitable for Indian conditions, says HC judge" Times of India, August 13, 2016, retrieved from <https://timesofindia.indiatimes.com/city/madurai/Online-dispute-resolution-most-suitable-for-Indian-conditions-says-HC-judge/articleshow/53679897.cms>.

¹⁵ "Merits And Demerits of ODR Law Essays", Teacher, Law, November 2013, Retrieved from <https://www.lawteacher.net/free-law-essays/commercial-law/merits-and-demerits-of-odr-law-essays.php?cref=1> last visited on 26-01-2018.

Also, the dispute resolver has no control over the anger and tone of the disputed parties. In such a situation, the persuasive value of the mediator also significantly declines.

Privacy issues over Internet

The Internet being an open, worldwide network, transmissions over email or via a website may be less certain than letter, fax or telephone. There is a possibility that the hackers or unauthorised person could misuse the information available on online databases. This may hesitate people who are more concerned about their privacy and it refrains them to use this forum.

Restrained to Limited Disputes

Online Dispute Resolution System is paramount in settlement of different kinds of conflicts, namely e-commerce and domain name conflicts. However, this process may not be appropriate for every type of online dispute. For instance, the issues which arise out of basic contractual disputes like money matters can be settle down by measures of negotiation and mediation. However, since neither of these means produce a compulsory verdict, they may not be appropriate for deciding imperative matters that frequently need aid from courts or statutory bodies.¹⁶

Conclusion and Suggestions

Considering the current state of the justice system in India, it can be concluded that alternatives to conventional litigation is very vital. With the peculiar conditions in India and a variety of area-specific disputes arising, ODR can be a viable and positive step towards dispute resolution (ODR). The companies should take the lead by introducing in-house ODR facilities to enhance consumer satisfaction. It will take a while before the courts become techno savvy and accept online awards for enforcement. Till then, the courts can contribute that at least referring the question of appointing arbitrators to ODR institutions wherever they feel fit. It can be thus concluded that if the government and other authorities are cheering ODR, then they are aiding in the accomplishment of an inexpensive and suitable judicial framework. Thus the sooner ODR is resorted to the better it would be for the country extensively and the justice aspirant in scrupulous.

To sum up, ODR has all the potentials of becoming effective technique to settle down the disputes that will result in far reaching advantages including secure ecommerce and build much greater faith and credence in cyber space. Advancement in technology may actually be the answer to these technological matters. ODR procedure demands mass awareness, man power training and technology, funding for project and ordination of ODR law and practice to effectively resolve e-disputes.

16 M. Tanvi , “Pros and Cons of Online Dispute Resolution (ODR)”,July,2016, retrieved from < <http://letspedia.com/pros-cons-online-dispute-resolution-odr/>> last visited on 20-01-2018.