



ONLINE DISPUTE RESOLUTION MECHANISM IN A GLOBALISED WORLD: PROBLEMS AND PERSPECTIVES

Dr. Jasneet Kaur Walia¹, Parvinder Kaur²

(University Institute of Legal Studies/ Panjab University/ India)

(Department of Laws/ Panjab University/ India)

ABSTRACT: *Disputes are clash of interests which originate between individuals as a result of their interactions and differing needs. In the era of globalization, there is expansion of the world market. Further, the development of information and communication technology has boosted the phenomenon of e-commerce and the increasing commercial transactions worldwide bring about more and more clashing of interests. The world today is a global village and given the multifarious diversities, there is a great rise in different kinds of disputes. Further, the cross-border and cross-cultural nature of these disputes makes them increasingly complex and from dispute resolution point of view, certain issues like jurisdiction, choice of law etc. arise. In this backdrop, the online dispute resolution mechanism has a key role to play. The present paper studies the different problems and perspectives associated with the online dispute resolution mechanism and suggest measures to make it an effective method of resolving disputes.*

Keywords: - globalization, information technology, ADR, online, settlement, dispute etc.

1. INTRODUCTION

With the rapid growth of the internet and electronic commerce a fair, speedy and cheap dispute resolution mechanism is required to decide disputes between parties resides anywhere in the world. Online dispute resolution (ODR) has been called as “a logical and natural step” for the resolution of cyber disputes.³ ODR is similar to offline ADR system but it works at distance because of which it is called as ‘Online ADR’.⁴ The basic reason for inventing ODR mechanism was the deteriorating and inaccessibility of traditional methods of ADR in e-commerce cases.⁵ Moreover, the national or regional courts sometimes fail to solve the global cyber disputes due to which online alternative dispute resolution (ADR) mechanisms have been seen as helpful processes for resolving global Internet-related disputes.⁶ Thus, ODR mechanism is gaining significance in the local as well as global world and it offers technology to settle disputes in every field from eBay disputes, commercial litigation,

¹ Assistant Professor, University Institute of Legal Studies, Panjab University, Chandigarh.

² Research Scholar, Department of Laws, Panjab University, Chandigarh.

³ Refal Morek, Regulation of online dispute resolution: Between law and technology, available at: www.odr.info/.../Regulation%20of%20ODR_Rafal%20Mor..., August 2005 (Visited on 10 October, 2017).

⁴ O. Robinovich- Einy and E. Katsh, Technology and the future of Dispute System Design, *Harvard Negotiation Law Review*, Volume 17, 2012, 151,171.

⁵ Ernest Uwazie, *Alternative Dispute Resolution and Peace-building in Africa* (Cambridge Scholars Publishing, 2014) 77.

⁶ Jacques de Werra, Alternative Dispute Resolution in Cyberspace: The Need to Adopt Global ADR Mechanisms for Addressing the Challenges of Massive Online Micro-Justice, *Swiss Review of International and European Law*, Volume 26, Number 2, 2016, 289-290.

family disputes to the Sri Lankan peace process. It is significant to note that now ODR services are available almost in all regions and in July 2004 as a minimum 115 ODR services had been launched all over the world which had settled more than 1.5 million disputes.⁷

2. CONCEPT, METHODS AND DEVELOPMENT OF ONLINE DISPUTE RESOLUTION

Online dispute resolution (hereinafter 'ODR') refers to the resolution of disputes in an electronic environment with the help of information technology⁸ by using different methods of dispute resolution. The term ODR is also known as electronic (e ADR), online (o ADR) and internet dispute resolution (i DR) etc. and it covers disputes that are in part or entirely settled over the internet having initiated in cyberspace with a source outside it.⁹ In other words, according to the International Organization (Consumers' International (CI), Online Dispute Resolution is ADR services which do not require the presence of disputing parties and decides the disputes entirely by electronic means.¹⁰ The combined term "On-line Dispute Resolution" is globally used for different types of on-line dispute settlement ADR methods. Presently types of ODR systems are available:

- E-settlement, which is used to resolve financial claims automatically by using an expert system;
- E-arbitration, in which skilled arbitrators resolved the disputes with the help of a website;
- E-resolution of consumer complaints, in which e-mail is used in order to resolve consumer complaints;
- E-mediation, which also works with the help of skilled mediators by using a website to resolve disputes;¹¹

Therefore, online settlement and online mediation are the most developed ODR mechanisms and other types of ODR mechanism are not entirely developed yet.¹² Moreover, Katsh and Rifkin considered the assistance of Information and Communication Technology (ICT) as the fourth party in the process of dispute resolution in addition to two disputing parties and third neutral party (arbitrator, mediator, negotiator etc), which is used by the third party as a device for supporting the process.¹³

⁷ Melissa Conley Tyler, 115 and Counting: The State of ODR 2004, available at: www.mediate.com/odrresources/docs/ODR%202004.doc (Visited on 12 October, 2017).

⁸ Mireze Philippe, The ODR Redress System for Consumer Dispute: Clarification, UNCTRAL works and EU Regulations on ODR, *International Journal of Online Dispute Resolution, Issue 1*, 2014, 57-58.

⁹ *Supra* note 6.

¹⁰ Catherine Cotsaki, Online Dispute Resolution, available at: file:///C:/Users/user/Downloads/COTSAKI%20-%20Catherine%20-%20Presentation_0.pdf (Visited on 14 October, 2017).

¹¹ Esther van den Heuvel, Online Dispute Resolution as a solution to Cross-Border E-disputes, available at: <http://www.oecd.org/internet/consumer/1878940.pdf>, 8 (Visited on 15 October, 2017).

¹² *Ibid.*

¹³ Alankrati Khare, Online Dispute Resolution: An Answer to Cross-Border Disputes, available at: <http://rickychopra.co/blog/wp-content/uploads/2017/05/Online-Dispute-Resolution.pdf> (Visited on 17 October, 2017).

Online Mediation is a process which completely done with the help of online communication in which each party shall reach a satisfactory decision and it is comparatively a quick and cheaper process than a trial. Like meditation, Online Negotiation is a technological substitute of conventional negotiation which resolves the disputes online without requiring the physical presence of disputed parties. Arbitration is a process in which arbitrator is chosen by disputed parties to provide a binding decision for settling a dispute in accordance with neutral procedure. In Arbitration mechanism, disputed parties consensually put forward a dispute to a non-governmental decision- maker for the settlement of disputes and there are many online arbitration institutions, for example: WIPO (World Intellectual Property Organisation), ICC (International Chambers of Commerce) and the American Arbitration Association¹⁴ to settle disputes online.

Many author described four phases in the development of online dispute resolution (ODR). The first phase ran from 1990 to 1996, when the electronic solutions were in a testing period. During the second phase (1997-1998), ODR developed with passion under which the first services offered commercial web portals were established. The third phase ran from 1999 to 2000 was an economic development business phase, especially in IT services in which many companies started projects on electronic dispute resolution, but most of those no longer operate in the market. In the fourth Institutional phase which ran with 2001, ODR techniques were involved among various institutions like the Courts, the Administration authorities.¹⁵

3. ODR AND ITS GLOBAL PERSPECTIVES

The beginning of Online Alternative Dispute Resolution methods took place in the United States of America and during the initial period of ODR methods, two tremendously considerable programs: the Virtual Magistrate Project and Online Ombuds were developed. The Virtual Magistrate Project, which has been providing arbitration services, particularly dealing with disputes with respect to offense of the dignity and the personality via online publications and cases of theft of business secrets, of frauds connected to e – transactions, abuse of personal data, sending– transactions, abuse of personal data, sending of spams etc¹⁶ and the Online Ombuds Office, which has been offering mediation services to resolve the disputes between members of discussion groups, between concerning domain names, between competitors etc arising on the internet.¹⁷

However, eBay/PayPal is one of the most successful ODR mechanisms which raised the level of ODR process, where parties first try of your own free will to settle their disputes by using assisted negotiation software and after failing to reach a settlement the claim goes up to adjudication. In addition, other successful ODR is _Cyber_Settle which uses blind-bidding negotiation to resolve insurance and commercial disputes. In blind –bidding negotiations, where the settlement is the

¹⁴ *Supra* note 11.

¹⁵ Karolina Mania, online dispute resolution: the future of justice, *International Comparative Jurisprudence, Volume 1, issue 1*, November 2015, 77.

¹⁶ *Supra* note 10.

¹⁷ Karim Benyekhlef and Fabien Gelnas, Online Dispute Resolution, available at: <http://www.mediate.com/Integrating/docs/karim%20ODR%20book.pdf>, 88-93 (Visited on 18 October, 2017).

midpoint of the two offers, the parties make secret offers which will not be disclosed unless both offers match certain standards (usually ranging from 30 to 5 percent) or a given amount of money. This ODR mechanism has been operational online since 1998 settling over 200,000 disputes with an amassing value of more than USD 1.6 billion.¹⁸ One more mid- 1999 successful ODR mechanism is Square_Trade which has been used as an online dispute resolution (ODR) mechanism in over 800,000 disputes in over 120 countries and it has included ODR into the Internet's largest trust mark program for online small business sellers (the Square_Trade Seal). The Square_Trade has first partnered with the world's largest online marketplace- eBay, to handle disputes between buyers and sellers around the world and it has also worked with the California Association of Realtors to resolve home real estate disputes between buyers, sellers and realtors.¹⁹

Furthermore, there are numerous programs which have built momentum over time, especially in international e-commerce. For example, the European Union ("EU") has adopted a Directive on Alternative Dispute Resolution for Consumer Disputes (the "ADR Directive") and a Regulation on Online Dispute Resolution for Consumer Disputes (the "ODR Regulation"), which work to require member states to implement ODR systems for resolving consumer claims. Furthermore, the United Nations Commission on International Trade Law ("UNCITRAL") with its Working Group III on Online Dispute Resolution is presently advancing guiding principle on ODR for cross-border ecommerce.²⁰ Moreover, BBBOnline, a subsidiary corporation of the Central Better Business Bureau (CBBB) is mounting the online solving of consumer complaints in the US.²¹ The European Union-funded Electronic Consumer Dispute Resolution (ECODIR) project provides a mechanism similar to Square_Trade where many types of consumer disputes can be filed. In 2001, European Commission created the ECC-NET (formerly EEJ-Net- Extrajudicial net) to help consumers to solve cross- border disputes by taking access to out of court or alternate dispute resolution schemes in other EU members states and in consequence, until 31 March 2003, has solved over 2183 complaints from consumers throughout the European Union (EU), Iceland and Norway.²² In early 2004, a new European Union initiative that was _CC_form_ opened which make easy to solve the online disputes of consumer complaints in all of the official languages of the European Union. These EU-funded projects, for instance; European Extra-Judicial Network for cross-border dispute resolution (EEJ-NET), an ADR/ODR general clearing house, and its financial counterpart FIN-NET, have not been very successful to be a magnet for consumers due to difficulty of giving details in all of the official EU languages.²³ Other

¹⁸ Pablo Cortés, What should the ideal ODR system for e-commerce consumers look like? The Hidden World of Consumer ADR: Redress and Behaviour, *CSLS Oxford*, 28 October 2011, available at: https://www.law.ox.ac.uk/sites/files/oxlaw/dr_pablo_cortes.pdf (Visited on 17 October, 2017).

¹⁹ Steve Abernethy, Building Large-Scale Online Dispute Resolution & Trustmark Systems, available at: <http://www.mediate.com/Integrating/docs/Abernethy.pdf> (Visited on 18 October, 2017).

²⁰ Amy J. Schmitz, Building trust in ecommerce through Online Dispute Resolution, available at: <http://lawweb.colorado.edu/profiles/pubpdfs/schmitz/SchmitzBuildingTrustinEcommerceThroughOnlineDisputeResolution.pdf>, 2-3 (Visited on 16 October, 2017).

²¹ *Supra* note 11 at 10.

²² Network for the extra-judicial system of consumer disputes (EEJ- Net), available at: http://europa.eu/legislation_summaries/other/132043_en.htm (Visited on 18 October, 2017).

²³ Arno R. Lodder, John Zelenzikowdd, Developing an online dispute resolution environment: Dialogue tools and negotiation support systems in a three-step model, *Harvard Negotiation Law Review*, 2005, 297-300.

examples of consumer ODR include: the European Union's prototype online consumer dispute resolution site, Online Confidence, an initiative of Eurochambres, the membership organization of 1300 European chamber of commerce, NotGoodEnough.org, an Australian "gripes" site: where dissatisfied consumers can post complaints to be forwarded to the company involved, FSM: a German site that handles complaints about internet sites, Ecogra: British site that provides ODR for users of online gaming.²⁴

Another important ODR system is SmartSettle which helps the parties in solving disputes by supporting them in the negotiation process. Moreover, the Internet Corporation for Assigned Names and Numbers (ICANN), the Uniform Domain-Name Dispute Resolution Policy (UDRP) are developed as an online procedure to fight domain-name grabbers. Furthermore, ICANN has appointed various providers which offered online dispute resolution procedure to handle disputes for instance; World Intellectual Property Organization's (WIPO) Arbitration and Mediation Center handled approximately six thousand domain-name disputes, since last five years.²⁵ In Mexico, Concilianet, ODR system has been provided to settle online the consumer's disputes against the participating suppliers.²⁶ Moreover, Singapore also took incentive to provide a separate Dispute Manager which is not formally associated with a court but handles controversial matters. It provides automated negotiation, mediation and case appraisal in English. In addition to it, Philippine also has Philippine Online Dispute Resolution, which provides automated negotiation, neutral evaluation, online mediation and online arbitration for any disputes, especially those involving a monetary claim. In the Australian state of New South Wales, the mediation process has been taking place face to face but the Retail Tenancy Unit resolving tenancy disputes provides online filing, case management and communication with the help of mediators before the mediation process.²⁷ Another important ODR is the portal Modria.com which cooperates with eBay and among others. Recently, in mid 2014, a project started which involves cooperation with the American Arbitration Association (AAA) in which portal Modria acted as a service platform for the insurance cases of "New York No-Fault Insurance (NYNF)" and handled cases estimated more than 100,000 per year.²⁸

However, the US based National Centre for Technology and Dispute Resolution is compiling a list of existing ODR Providers, which are currently operational with 68 providers on the list which includes ODR like: ElectronicCourthouse.com, EmissaryMediation.com, eQuibbly.com, iCan Systems Inc., iCourthouse, International Chamber of Commerce, Iudica, The Internet Ombudsman, Intersettle, Iris Mediation, IVentures, JAMS, Judge.me, Juripax, Legal Face-Off, Mediation Arbitration Resolution Services (MARS), Mediation in the

²⁴ *Supra* note 7.

²⁵ Isabelle Manevy, Online dispute resolution: what future? June 2001, available at: <http://lthoumyre.chez.com/uni/mem/17/odr01.pdf> (Visited on 19 October 2017).

²⁶ Louis Del Duca, Colin Rule, Zbynek Loebl, Facilitating Expansion of Cross-Border Ecommerce - Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems – Work of the United Nations Commission on International Trade Law, *Penn State Journal of Law & International Affairs Volume 1 / Issue 1*, April 2012, 66.

²⁷ Sanjana Hattotuwa, An Asian perspective on online mediation, available at: <https://sanjanah.Woedpress.com/2006/02/02/an-Asian-perspective-on-online-mediation/> (Visited on 19 October, 2017).

²⁸ *Supra* note 7 at 78.

Clouds, Mediation Now, The Mediation Room, MESUTRAIN, MichiganCybercourt.Net, ODR.NL, ODRWorld, PeopleClaim, Private Judge, Resolution Forum Inc., SettleTheCase, SettleToday, Simediar, Smartsettle Family Resolutions, TRUSTe, Ujuj, VirtualCourthouse, Webmediate.com, World Intellectual Property Organization (WIPO) Effective Legal Framework for Online Dispute Resolution 269 model. Moreover, ODR has been adopted for many other disputes such as commercial, family, workplace and neighbourhood disputes for example; In U.K. Company, the Claims offers a series of “rooms” which can be hired out by practitioners like any physical room to conduct dispute resolution mediations procedure. Furthermore, the Canadian Family Mediation provides the facilities of web–broadcast teleconferencing and joint document collaboration to solve family disputes. Another ODR is global Chamber of Commerce’s “Paction” which permits parties to organize, bargain and complete contracts for the intercontinental sale and purchase of goods online.²⁹

In order to improve litigation process and to improve access to justice, ODR mechanism is being accepted by courts and tribunals, for instance; the Federal Court of Australia’s eCourt initiative facilitates electronic filing and document management and offers a “virtual courtroom”; including videoconferencing, particularly for Native Title hearing in distant areas. Similarly, Courts and tribunals in Singapore (e@dr), the United Kingdom (MoneyClaimOnline) and Ireland (Irish Commercial Court) have also adopted ODR mechanism for a number of their processes. Finally, online mechanisms has been playing wonderful role in maintaining peace, for example; in Sri Lankan peace process, online mechanism played a vital role to bring the parties at conclusion.³⁰ Recently, in 2016, British Columbia created its Civil Resolution Tribunal which is an official branch of the court system and has jurisdiction over miniature claims as well as some property disputes.³¹

4. ODR AND INDIAN PERSPECTIVE

In India, exercise of ADR methods are clearly encouraged through Nyaya Panchayat System, Lok Adalat, Arbitration and Conciliation Act, 1996 based on UNCITRAL Model law of arbitration, provision of statutory arbitration amongst other initiatives. However, it is clear from Section 89 and Order X Rule 1 A of Code of Civil Procedure, 1908 that the Indian legal system supports ODR mechanism.³² Recently, in *State of Maharashtra v. Dr. Praful B. Desai*³³, the Supreme Court of India held that the video conferencing is a satisfactory method for recording evidences for witness statements and explained the benefits of video-conferencing. Again in *Grid Corporation of Orissa Ltd. v AES Corporation*,³⁴ the Supreme Court held that the presence of disputed parties is not required when there is possibility to consult effectively with the means of electronic media and distant conferencing unless it is a

²⁹ *Supra* note 7.

³⁰ *Ibid.*

³¹ Noam Ebner and John Zeleznikow, No Sheriff in Town: Governance for Online Dispute Resolution, *Negotiation Journal*, Volume 32, issue 4, October 2016, 297.

³² Pankhudi Khandelwal and Samarth Singh, ODR and E-Commerce in India, **available at:** <http://legalreferee.com/odr-e-commerce-india/> (Visited on 15 October, 2017).

³³ *State of Maharashtra v. Dr. Praful B. Desai* (2003) 4 SCC 601.

³⁴ *Grid Corporation of Orissa Ltd. v. AES Corporation* 2002 AIR SC 3435.

specific clause in the contract signed between the parties or the requirement of law.³⁵ The practice of ODR is not completely strange in India as it has been recognised in India under the Banking Ombudsman Scheme, 2006 and in the provisions of the Information Technology Act, 2000. The IT Act grants legal recognition to use of electronic signatures and electronic records. Moreover, the Consumer Protection Bill, 2015 (Draft Bill) has been introduced in Lok Sabha which provides for option of electronic filing of complaints and also introduces mediation as an alternative dispute resolution mechanism.³⁶

However, the settlement of disputes in gigantic nation like India is not easy task as Indian traditional Courts are already overloaded with the litigations and the Indian Government has been trying to use Alternative Dispute Resolution (ADR) mechanism to settle the disputes but despite the Arbitration and Conciliation Act, 1996, the situation has not improved.³⁷ Moreover, in early day's disputes resolution was a difficult matter for all stakeholders including courts, government etc. Furthermore, different countries may have different laws to settle disputes due to which global commercial disputes suffered from many difficulties for their resolutions. To solve this problem, countries adopted a model code of conduct that was incorporated in their respective domestic laws for instance; the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985 and also adopted the UNCITRAL Conciliation Rules in 1980 to resolve the dispute comes up with respect to global commercial relations. India has also included these uniform principles of alternative dispute resolution in the Arbitration and Conciliation Act, 1996 that was amended in the year 2015 and included alternative dispute resolution mechanisms like arbitration, conciliations etc for nationwide and global stakeholders.³⁸

However, in India ODR is still missing despite the Arbitration and Conciliation Act, 1996 and due to lack of consideration of the use of information and communication technologies (ICT) for resolving disputes in required manner. Moreover, since 2004, Perry4Law Organisation (P4LO) has been encouraging the use of ODR and since 2012, Techno Legal Centre of Excellence for online Dispute Resolution in India (TLCEODRI) has been working to promote the use of ODR for various dispute resolution purposes in India. TLCEODRI has been doing tremendous job in promoting and improving ODR mechanism in order to help local and global ODR stakeholders, for instance; it has drafted an "ODR Clause" which can be used in their agreements, contracts etc. Furthermore, in order to improve ODR mechanism, it has launched committed blog for ODR training together with an ODR discussion forum where techno legal aspects would be discussed. Above all, TLCEODRI has launched the first ever techno legal ODR portal of India that is Online Disputes

³⁵ *Ibid.*

³⁶ *Supra* note 32.

³⁷ Praveen Dalal, Online Dispute Resolution (ODR) in India by TLCEODRI, 31 January 2015, available at: <http://odrindia.in/> (Visited on 16 October, 2017).

³⁸ TLCEODRI, Cyber Arbitration Trends in India 2017, 20, January 2017, available at: <http://odrindia.in/?p=53> (Visited on 16 October, 2017).

Resolution & Cyber Arbitration Portal to resolve dispute of local and global stakeholders. The Indian Government is planning to amend various laws like Information Technology Act, 2000 (IT Act 2000), Arbitration and Conciliation Act 1996, etc to have room for online dispute resolution (ODR) and cyber arbitration. It further planning to give confidence to public private partnership (PPP) based ODR and cyber arbitration models in India. Moreover, the Indian government is focusing upon the digital schemes like digital India, e-governance, etc which would enlarge digital disputes but unfortunately India neither has regulatory system nor has the online dispute resolution infrastructure to handle these digital disputes. So, the Indian government is working on this front and Consumer protection in cyberspace.³⁹

5. ODR AND ITS PROBLEMS

There are many structural and other problems which required being look upon in order to design a global system. These problems are discussed herby:

5.1 Lack of awareness

The foremost challenge among ODR is lack of awareness as Consumers do not have a legal knowledge to deal with the disputes. Even they do not know where to seek remedy after an online transaction has gone sour. Most of Businesses avoid commencing court proceedings and they are unaware about Consumer's redress available by ODR systems. Besides it, not many credible trust marks exist which effects the success rate of ODR mechanism.⁴⁰

5.2 Lack of proper and uniform legal standards

A second challenge among ODR is the lack of legal standards. Presently, the ODR field does not have official recognized services.⁴¹ Moreover, in traditional ADR system the disputing parties are aware of the legal rules governing the area of their dispute and their results but in e-disputes, people are not aware about applicability of laws, especially with cross border e-disputes.⁴² Furthermore, the processes of Online Alternative Dispute Resolution methods are not governed by formal binding rules.⁴³ However, presently, no international instruments other than online arbitration are available which make obligate the courts to make certain that a party act in accordance with any resolution which is allege to be binding on the party or any agreement to put forward disputes to an ODR service. Moreover, different legal jurisdictions are open to adopt divergent methods of interpreting binding resolutions and agreements to put forward disputes to ODR which may cause problems to the parties engaged in international disputes with respect to

³⁹ *Supra* note 38.

⁴⁰ Pablo Cortes and Arno R. Lodder, Consumer Dispute Resolution goes online: Reflections on the evolution of European law for out-of-court redress, *Maastricht Journal of European and Comparative Law*, Volume 21, Issue 1, 2014, 18.

⁴¹ *Ibid.*

⁴² *Supra* note 11 at 16.

⁴³ *Supra* note 10.

enforceability of resolutions obtained from and agreements to put forward disputes to ODR.⁴⁴

5.3 Technology

Another problem with respect to ODR mechanism is the expansion of ad hoc ODR technology, which can be extremely pricey and high costs of research required on the development of bespoke ODR soft ware. However, online ADR is based on generic existing software like (such as email, Skype etc) but it will not offer the full potential of ODR, that is recognizing patterns of conduct for solving disputes exclusive of the participation of a third neutral party. Thus, the development of ODR soft ware that is user-friendly and effective is not easy task which in result effects the development of ODR mechanism in global world.⁴⁵

5.4 Enforcement

Another problem with respect to ODR is enforcement of its decision. However, many ODR mechanisms fails to enforce their decisions but there are some successful and continued ODR programs of the last two decades for instance ICANN and PayPal which are able to automatically put into effect their decisions. The ICANN can independently alter domain name registrations in response to UDRP13 proceedings and PayPal can freeze funds and then move them independently to put into effect claim's decisions. Though, things are not that easy in the cross-border consumer cases as an arbitrator can decide a claim in favor of a buyer but has no power to put into effect the decision or a reverse of the buyer's sum from the vendor's account. Thus, creating a global online dispute resolution system independent of jurisdictional limitations will have no use, if the enforcement of the decisions is still dependent on those same jurisdictional restrictions.⁴⁶

5.5 Language

Language is the most significant barrier between new immigrant populations and access to online dispute resolution services worldwide. In North America, there is problem with respect to language as most of privately-owned online dispute resolution service providers do not provide service in languages other than English which is a major problem in development of ODR mechanism globally. Although some providers offer translation services to their clients but these are highly time and cost consuming. A number of providers only offer translation services in the cases of complex, multi-party conflicts. There are a number of public-sector ODR services available in numerous diverse languages which are not highly expensive to client. Furthermore, it is noted by the private ODR practitioners that a trustworthy,

⁴⁴ Arun Raghu Galexia, The Legal Challenges Facing Online Dispute Resolution: An Overview, August 2000, available at: http://www.galexia.com/public/research/articles/research_articles-art42.html (Visited on 19 October, 2017).

⁴⁵ *Supra* note 40.

⁴⁶ Colin Rule, Vikki Rogers, and Louis Del Ducia, Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims—OAS Developments, *Uniform Commercial Code Law Journal*, Volume 42, Number 3, June 2010, 228-230.

qualified translation and interpretation⁴⁷ services are very difficult to obtain which also effects the development of ODR mechanism in global world.

5.6 Volume and Scalability

One more challenge with respect to global online dispute resolution is volume as for designing a program to deal with problems of millions people, much efforts are required. However, any system that is formed has to function efficiently with the increased size of the case loads. Furthermore, in order to deal with projected volumes, the system will have to depend on the sophisticated software, which can be scaled as opposed to human powered approaches that cannot scale,⁴⁸ which is again a challenge for global ODR mechanism.

5.7 Security in ODR

Security in ODR mechanism is also a challenge as in most ODR proceedings either one party or both parties will want to maintain the entire proceedings of process private. However, Internet being an open network may causes unwanted risks which are not avoidable for instance; not permitted persons interrupt communications done on the Internet, hackers may burgle computers information linked to the Internet. Furthermore, communications through internet based e-mail or a websites may be intrinsically less secure than mail, fax or telephone. Thus, security is always a question of risk management which requiring a cautious evaluation of risks.⁴⁹ Moreover, it is hard to develop public confidence in ODR mechanism due to its security issues and it is essential that ODR service providers must put into practice suitable security measures.⁵⁰

5.8 Trust

In ODR mechanism, one of the greatest concerns is whether its services will be accepted at large by the online public. However, in online mechanisms the parties are not present face to face which cause fear in the minds of parties regarding the trustworthiness of the online institution. However, it is very terrifying to be bound by the decision of the ODR institution upon which parties have no trust. Moreover, it would not possible for the parties to find out who will be arbitrator in the process which may cause fear of partiality and bias in the minds of parties which is another obstacle in development of ODR mechanism in global world.⁵¹

6. SUBMISSIONS

6.1 Firstly, to improve the ODR mechanism, Business and consumer education and awareness campaigns must be organized globally and the

⁴⁷ Dawn Nickel, Online Dispute Resolution (ODR) and New Immigrants, May 13, 2010, available at: <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/publications/odr-new-immigrants.pdf>, 10-13 (Visited on 18 October, 2017).

⁴⁸ *Supra* note 46.

⁴⁹ Julia Hörnle, Online Dispute Resolution-The Emperor's New Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration, available at: <http://egov.ufsc.br/portal/sites/default/files/anexos/18561-18562-1-PB.pdf> (Visited on 18 October, 2017).

⁵⁰ *Supra* note 44.

⁵¹ Devashish Bharuka , Online Dispute Resolution, available at: <http://14.139.60.114:8080/jspui/bitstream/123456789/722/17/Online%20Dispute%20Resolution.pdf>, 318 (Visited on 18 October, 2017).

governments can play an important role in spreading information about ODR and encouraging potential users to trust in the process.

- 6.2 Minimum legal standards with respect to ODR mechanism in global world must be there to assure fair results. There must be official recognition of ODR providers and it should be in conformity with European standards of due process, transparency, fairness, impartiality, and consistency.
- 6.3 Similarly, in online arbitration and mediation, potential participants must be assured regarding their infringement of privacy and the privacy of the neutral third party in order to promote participation in ODR procedures. However, the data and confidentiality can be protected through encryption ODR. Moreover, the providers should disclose the current availability of technology, like possibility of accommodating disputants' differences in language and culture, or incorporating audio and video streaming, or accessibility to persons with disabilities or with low levels of literacy, preservation of confidentiality and privacy of the parties, accessible from anywhere at any time, back-up, costs for the process, selection process of neutrals, ethical standards of neutrals and arrangements for alternative emergency access etc to the users.
- 6.4 In order to protect the impartiality of the dispute resolution process, ODR providers should provide already selected lists of ODR providers to the consumers from which the consumers can select themselves in order to maintain trust that consumer and retailer, both are not directly related to the organization. Moreover, in order to increase individual's faith in the process, a unified system of Trust marks, i.e. a common tag that only certified providers may exhibit on their respective websites, should be made available. Furthermore, Governments can play a tremendous role in improving ODR mechanism by certifying such providers and constantly checking their actions and rights compliance.
- 6.5 To deal a language problem, translation support is required which would prove as vital element of ODR systems to deal with cross-border disputes. However, a great effort on translation is taken by EU ODR portal. It made accessible complaint forms in all official languages of the EU. Furthermore, it made possible to translate the complaint form into the respondent's language and translate the information required for settlement of dispute. Moreover, to improve the communication between the mediators and disputed parties, the development of multilingual mediation is required.
- 6.6 There should be creation of '**cyber courts**' with help of which parties can obtain a court order online at very low cost to put into effect a binding resolution get hold of ODR service or a contractual agreement to put forward a dispute to ODR.

7. CONCLUSION

As we know that ODR mechanism is providing simple, cheap and speedy remedies but because of above discussed various problems, this mechanism is not

able to gain confidence and trust in the global world. We can consider the use of electronic technology as a complementary tool in the frame of ODR but the entire replacement of the human skills of the mediator by technology does not put any positive response since the process becomes then impersonal and distant. Thus, new ideas have to find out in order to overcome the hurdles in the development of ODR mechanism by which a greater confidence can be achieved in consumers. However, with the expected increase in the usage of ODR in the EU for implementing the provisions of the ADR directive and ODR regulation in consumer disputes will not become useful as it is concerned with the specific types of dispute. Thus, it is good to have a system like mediation and arbitration proceeding which would be supported by electronic communications more regularly but this does not mean that the entire process of proceedings of ODR mechanism, which are handled by mediators and arbitrators will be replaced by internet or computer programmes.

REFERENCES

Journals Papers:

- [1] O. Robinovich- Einy and E. Katsh, Technology and the future of Dispute System Design, *Harvard Negotiation Law Review*, Volume 17, 2012, 151,171.
- [2] Jacques de Werra ,Alternative Dispute Resolution in Cyberspace: The Need to Adopt Global ADR Mechanisms for Addressing the Challenges of Massive Online Micro-Justice, *Swiss Review of International and European Law*, Volume 26, Number 2, 2016, 289-290.
- [3] Mireze Philippe, The ODR Redress System for Consumer Dispute: Clarification, UNCTIRAL works and EU Regulations on ODR, *International Journal of Online Dispute Resolution*, Issue 1, 2014, 57-58.
- [4] Karolina Mania, online dispute resolution: the future of justice, *International Comparative Jurisprudence*, Volume 1, issue 1, November 2015, 77.
- [5] Arno R. Lodderd, John Zelenzikowdd, Developing an online dispute resolution environment: Dialogue tools and negotiation support systems in a three –step model, *Harvard Negotiation Law Review*, 2005, 297-300.
- [6] Louis Del Duca, Colin Rule, Zbynek Loeb, Facilitating Expansion of Cross-Border E-Commerce - Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems – Work of the United Nations Commission on International Trade Law, *Penn State Journal of Law & International Affairs*, Volume 1 / Issue 1, April 2012, 66.
- [7] Pablo Cortes and Arno R. Lodder, Consumer Dispute Resolution goes online: Reflections on the evolution of European law for out-of-court redress, *Maastricht Journal of European and Comparative Law*, Volume 21, Issue 1, 2014, 18.
- [8] Colin Rule, Vikki Rogers, and Louis Del Ducia, Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims—OAS Developments, *Uniform Commercial Code Law Journal*, Volume 42, Number 3, June 2010, 228-230.

Books:

- [1] Ernest Uwazie, *Alternative Dispute Resolution and Peace-building in Africa* (Cambridge Scholars Publishing, 2014) 77.

Proceeding Papers:

- [1] Refal Morek, Regulation of online dispute resolution: Between law and technology, available at: www.odr.info/.../Regulation%20of%20ODR_Rafal%20Mor..., August 2005 (Visited on 10 October, 2017).
- [2] Melissa Conley Tyler, 115 and Counting: The State of ODR 2004, available at: www.mediate.com/odrresources/docs/ODR%202004.doc (Visited on 12 October, 2017).

- [3] Catherine Cotsaki, Online Dispute Resolution, available at: file:///C:/Users/user/Downloads/COTSAKI%20%20Catherine%20-%20Presentation_0.pdf (Visited on 14 October, 2017).
- [4] Esther van den Heuvel, Online Dispute Resolution as a solution to Cross- Border E- disputes, available at: <http://www.oecd.org/internet/consumer/1878940.pdf>, 8 (Visited on 15 October, 2017).
- [5] Alankrati Khare, Online Dispute Resolution: An Answer to Cross- Border Disputes, available at: <http://rickychopra.co/blog/wp-content/uploads/2017/05/Online-Dispute-Resolution.pdf> (Visited on 17 October, 2017).
- [6] Karim Benyekhlef and Fabien Gelnas, Online Dispute Resolution, available at: <http://www.mediate.com/Integrating/docs/karim%20ODR%20book.pdf>, 88-93 (Visited on 18 October, 2017).
- [7] Pablo Cortés, What should the ideal ODR system for e-commerce consumers look like? The Hidden World of Consumer ADR: Redress and Behaviour, *CSLS Oxford*, 28 October 2011, available at: https://www.law.ox.ac.uk/sites/files/oxlaw/dr_pablo_cortes.pdf (Visited on 17 October, 2017).
- [8] Steve Abernethy, Building Large-Scale Online Dispute Resolution & Trustmark Systems, available at: <http://www.mediate.com/Integrating/docs/Abernethy.pdf> (Visited on 18 October, 2017).
- [9] Isabelle Manevy, Online dispute resolution: what future? June 2001, available at: <http://lthoumyre.chez.com/uni/mem/17/odr01.pdf> (Visited on 19 October 2017).
- [10] Sanjana Hattotuwa, An Asian perspective on online mediation, available at: <https://sanjanah.Woedpress.com/2006/02/02/an-Asian-perspective-on-online-mediation/> (Visited on 19 October, 2017).
- [11] Pankhudi Khandelwal and Samarth Singh, ODR and E-Commerce in India, available at: <http://legalreferee.com/odr-e-commerce-india/> (Visited on 15 October, 2017)
- [12] Praveen Dalal, Online Dispute Resolution (ODR) in India by TLCEODRI, 31 January 2015, available at: <http://odrindia.in/> (Visited on 16 October, 2017).
- [13] TLCEODRI, Cyber Arbitration Trends in India 2017, 20, January 2017, available at: <http://odrindia.in/?p=53> (Visited on 16 October, 2017).
- [14] Arun Raghu Galexia, The Legal Challenges Facing Online Dispute Resolution: An Overview, August 2000, available at: http://www.galexia.com/public/research/articles/research_articles-art42.html.
- [15] Dawn Nickel, Online Dispute Resolution (ODR) and New Immigrants, May 13, 2010, 10-13, available at: <http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/publications/odr-new-immigrants.pdf>, 10-13 (Visited on 18 October, 2017).
- [16] Julia Hörnle, Online Dispute Resolution-The Emperor's New Clothes? Benefits and Pitfalls of Online Dispute Resolution and its Application to Commercial Arbitration, available at: <http://egov.ufsc.br/portal/sites/default/files/anexos/18561-18562-1-PB.pdf> (Visited on 18 October, 2017).
- [17] Devashish Bharuka, Online Dispute Resolution, available at: <http://14.139.60.114:8080/jspui/bitstream/123456789/722/17/Online%20Dispute%20Resolution.pdf>, 318 (Visited on 18 October, 2017)