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THE ROLE OF ONLINE DISPUTE RESOLUTION IN CONSUMER GRIEVANCE MANAGEMENT

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Abstract

As e-commerce and digital transactions have rapidly grown in India, the consumer marketplace has changed and simultaneously, the number of consumer disputes arising out of online transactions have increased. Such disputes are often not adequately addressed by conventional litigation, due to procedural delays, high costs and geographical barriers. Online Dispute Resolution (ODR) is an effective technology enabled mechanism that combines Alternative Dispute Resolution (ADR) with digital platforms to provide accessible, efficient and inexpensive dispute resolution. This article critically examines the role of ODR in improving consumer dispute resolution in India under the Consumer Protection Act, 2019 and India's Digital India initiative. The study analyses the existing legal and institutional framework governing ODR, with particular emphasis on consumer disputes, adopting a doctrinal research methodology. It also looks at how online consumer grievance mechanisms and ODR platforms work, the legal and practical challenges that are critical to their implementation, and what is needed to make them more effective. The paper argues that for ODR to be a trusted and effective method of consumer justice in India's fast-growing digital economy, there is a need for a robust legal infrastructure, greater institutional support, technological availability and consumer awareness.

Keywords: Online Dispute Resolution (ODR), Consumer Protection, E-commerce Disputes, Digital India, Alternative Dispute Resolution (ADR)

I. Introduction

India is rapidly evolving in consumer landscape and has been significantly influenced by the digital revolution, which has led to a surge in e-commerce activities. With the growth in the number of online transactions, there is also a likelihood of dispute between consumers and service providers. Because traditional litigation is expensive and time-consuming, it is unable to deal with the growing volume of Internet transactions. To address the acknowledged gap, online dispute resolution (ODR), has become a viable alternative to traditional dispute resolution methods that rely on technology. ODR aligns with the objective of Digital India, which seeks to transform India's government and population through technology.

The concept of ODR focuses on using information and communication technology (ICT) techniques to help resolve disputes between parties who are not physically present.

The objective is to critically examine ODR's role in consumer dispute resolution in India, examine its legal foundation, and go over the opportunities and difficulties associated with its use, through a doctrinal research methodology.

This study mainly consists of two sections. Firstly, it will analyse the present scenario of ODR in India where focus will be on e-commerce consumer grievance mechanism. Secondly, it will evaluate how these disputes are being managed on ODR platforms and what measures need to be taken to enhance the legal infrastructure of ODR in India.

II. Online Dispute Resolution And its Origin

Using information technology to "resolve" disputes is known as online dispute resolution. Not just mere use of technology for ancillary purposes, such as electronically scheduling sessions, but the active use of technology in the dispute resolution process itself, for example, by conducting hearings through videoconferencing or filing documents through electronic means. However, it is evident that ODR serves a function beyond merely establishing electronic Alternative Dispute Resolution (e-ADR) or technology-facilitated ADR, which is different from ADR. ODR also incorporates AI and machine learning (AI/ML) - powered technical tools, like script-based solutions, automated dispute resolution, and curated platforms that targets specific types of disputes.¹

ODR provides many advantages and goes far beyond just convenience. It reflects a low-cost, fast alternative to conventional dispute resolution methods, with processes and procedures being adjusted according to the needs of the parties. In addition, ODR can reduce implicit bias that may stem from face-to-face interactions and allow for a less biased process of resolving disputes. With respect to the layers of justice, ODR serves not only as a resolver of disputes but also as a prevention and containment measure, thereby enhancing the resilience of the legal ecosystem. With improved contract enforcement, a comprehensive ODR system might greatly enhance society's legal well-being, which would raise India's position in terms of ease of doing business.

The first instance of ODR was the Virtual Magistrate project, which was started in the United States in 1996 with the goal of developing an online arbitration system for the settlement of defamation cases. A further instance of an early Online Ombudsman office was one at the University of Massachusetts that facilitated a copyright infringement resolution between a website owner and a regional newspaper. Since 1999, a number of ODR service providers have been working to resolve disputes between governmental and private organizations in both the public and private sectors.

ODR evolved from the principles of ADR, while India has a long tradition of informal dispute resolutions through institutions such as Parishads (a group of men with legal competence), Srenis and Kulas. ODR was founded on ADR practices in other jurisdictions as well, where technology was incorporated into the ADR process to increase its effectiveness and parties' convenience.

The flexibility of ODR has also been facilitated by the Indian legal system. Order X Rule 1A gave courts the authority to order parties in a suit to investigate alternative dispute resolution techniques in order to resolve their disagreements, and Section 89 of the Code of Civil Procedure, 1908, encouraged the use of these techniques. It was strongly supportive of finding clear alternatives to litigation. Furthermore, the Information Technology Act of 2000 has made it feasible to implement ODR, which has been very beneficial, by granting legal validity to electronic signatures and electronic records.

The Supreme Court in its decision in "Grid Corporation of Orissa Ltd. v. AES Corporation"² had held that "when parties may effectively consult through electronic media with remote conferencing, the parties are not required to be physically present together unless the law or contract so provide." Likewise in *State of Maharashtra v. Dr. Praful B. Desai*³, the apex court allowed recording of evidence by way of video conferencing.

III. The Legislative Overview of ODR

1. Arbitration and Conciliation Act, 1996: The 2015 amendment of this Act recognized agreements, paving the way for online arbitration. The 2019 amendment further emphasized the role of technology in arbitration, reinforcing the potential for online arbitration processes.⁴
2. Information Technology Act, 2000: The use of technology in dispute resolution, including ODR, is made easier by this Act, which formally recognizes electronic records, papers, and signatures.⁵

¹ NITI "Aayog Expert Committee on ODR, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (Oct. 2021)".

² Grid Corp. of "Orissa Ltd. v. AES Corp., AIR 2002 SC 3435.

³ State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 SCC 601.

⁴ Arbitration and Conciliation Act, 1996, No. 26 of 1996, Acts of Parliament, 1996 (India).

⁵ Information Technology Act, 2000, No. 21 of 2000, Acts of Parliament, 2000 (India).

3. Consumer Protection Act, 2019: This Act highlights the role of technology in resolving consumer disputes. It includes provisions for the e-filing of complaints (e-Daakhil), resolving issues through virtual modes, and the establishment of mediation cells for ODR, making consumer dispute resolution more accessible.⁶
4. Consumer Protection (E-Commerce) Rules, 2020: These rules mandate e-commerce businesses to create grievance redressal platforms, allowing consumers to resolve disputes efficiently, including through ODR methods.
5. Indian Evidence Act, 1872: The Indian Evidence Act recognizes the use of electronic evidence, even though it makes no explicit reference to ODR. Electronic records are acknowledged as papers under Section 65A, and the process for their acceptance in court is described in Section 65B.⁷
6. Code of Civil Procedure, 1908: Section 89 of the Code, which encourages the settlement of disputes outside of the courtroom, including the use of ADR techniques like online dispute resolution, highlights the growing popularity of ODR.⁸
7. Legal Services Authorities Act, 1987: This Act governs Lok Adalat and provides a framework for ADR mechanisms, including those involving technology and ODR processes.⁹

IV. ODR Mechanisms in India for Consumer Disputes: Government Initiatives

1. Department of Consumer Affairs: The Department launched a number of initiatives, including the Consumer Protection Application enabling consumers to report issues, the Integrated Consumer Grievance Redressal Mechanism, and the Consumer Helpline. The Consumer Protection (E-Commerce) Rules 2020 required that e-commerce businesses set up grievance redressal processes. These initiatives aim to provide quick, easy, and inexpensive technological solutions for customer complaints.
2. Online Consumer Mediation Centre: This website was created by the Ministry of Consumer Affairs where consumers can register complaints, seek conciliation or negotiation, and have their disputes with traders resolved. Its primary goals are to reduce the workload for our courts, enhance the way e-commerce transactions are conducted, and promote healthy business-consumer relationships by offering simple and efficient mediation services.
3. Securities and Exchange Board of India (SEBI): It has an online complaint management system known as SCORES (SEBI Complaints Redress System) for lodging complaints on securities-related disputes. In case of the nonavailability of the online complaint, the same can be filed in SEBI offices personally. It follows the progress of complaints, and solutions are made where the dispute is not in another court.
4. Reserve Bank of India (RBI): In 2020, RBI launched an ODR mechanism for addressing disputes in Digital transactions aimed at being highly automated, efficient, and transparent. The purpose of this initiative is the growing number of disputes related to digital transactions.
5. National Payments Corporation of India (NPCI): The NPCI has required Payment System Operators (PSOs) to create ODR mechanisms to resolve consumer complaints about digital payments, specifically UPI. It is also beneficial to consumer protection and increases confidence in the use of electronic payment systems.

V. The Need of ODR in E-Commerce Consumer

The advancement of e-commerce has greatly impacted the global economy, and India has experienced a lot of growth since customers can make more decisions and get more convenience. There are now over 50 million internet users in India and consumers have a wider choice of products from national and international suppliers. Nonetheless, this has resulted in an increased number of consumer complaints and disputes on e-commerce platforms, which requires that mechanisms to address such issues should be developed.

⁶ Consumer Protection Act, 2019, No. 35 of 2019, Acts of Parliament, 2019 (India).

⁷ Indian "Evidence Act, 1872, Act No. 1 of 1872 (India).

⁸ Code of Civil Procedure, 1908, Act No. 5 of 1908 (India).

⁹ Legal Services Authorities Act, 1987, Act No. 39 of 1987" (India).

E-commerce disputes can be addressed through traditional litigation but such a process is insignificant; expensive, time-consuming, and suitable for large claims only. In view of the fact that most legal battles take a long time before they are resolved, consumers drop their claims. Further, the courts may not possess the capacity to resolve the new issues that may arise from cross-border transactions in e-commerce. Most of the current laws are archaic and find it difficult to cope with the dynamic flow of e-business.

ODR has been found to have several benefits for resolving such matters. Asynchronous communication enables the parties to type out messages and reply without fear of intimidation which is evident in synchronous communication. In addition, ODR also offers more flexibility and control over the process and the resolutions, particularly in the consensual models where the parties in a dispute can agree on the terms of the resolution themselves as opposed to having those terms dictated by a third party. This level of control, together with the fact that ODR can easily be accessed through a mobile device, makes consumers seek their claims whenever they are dissatisfied with the products or services received thus increasing the efficiency of the dispute resolution.

Therefore, ODR has become an essential instrument in handling consumer complaints in the expanding e-commerce segment, which has taken the load off conventional consumer forums and provided a cheaper, faster, and better resolution to the problems compared to legal actions.

VI. Challenges in ODR for Consumer Grievances

Despite of the advantages of ODR, there are several challenges which persist particularly in resolving consumer grievances.

1. **Absence of Non-Verbal Cues:** Since ODR typically relies on written communication, the lack of non-verbal cues can lead to misunderstandings. Misinterpretation of written messages is common, and there is also the risk of identity misrepresentation, where someone may pretend to be another person, potentially misleading the other party involved in the dispute.
2. **Technological Barriers:** Not all consumers are tech-savvy, especially in rural areas or among older generations. Some individuals are more comfortable with traditional methods of dispute resolution and may resist shifting to an online platform. This reluctance can impede the widespread adoption of ODR, especially in regions where digital literacy is low.
3. **Language Barriers:** Most ODR platforms currently support only a limited number of languages, often English or Hindi. This creates a barrier for consumers who may not be proficient in these languages, affecting their ability to effectively participate in the dispute resolution process.
4. **Lack of Clear Legal Framework:** One of the main challenges to online dispute resolution (ODR) in India is the absence of defined legal norms. Without an established legal framework, enforcement of settlements can become difficult, and parties may find it challenging to ensure that their agreed-upon outcomes are legally binding.
5. **Confidentiality Concerns:** While ODR processes often protect confidentiality, there is a risk that important details about defective products or unethical business practices could be hidden from the public. This lack of transparency could hinder consumer awareness, making it difficult to hold businesses accountable for their actions. Strict legal safeguards and transparency measures could address these issues.

VII. Techniques of ODR for Consumer Grievance

ODR techniques for consumer complaints include a set of effective solutions, which reflect the realities of the digital age. Automated negotiation involves as little as possible human interference, frequently by the “blind bidding” technique, and is appropriate for small and petty litigation such as insurance claims.

In online mediation, a mediator acts as a go-between and helps parties to come to an agreement while in assisted negotiation and online conciliation, third parties or software assist the parties to arrive at a consensus with the conciliation process involving suggestions from the conciliator. Online arbitration provides an opportunity for a third-party decision-maker with the power to enforce it, though it is not widely used in consumer relations because of the consent, while some of them may use the internet to conduct the

procedures. Solutions at small claims courts are fast and affordable since they are administered through online platforms, and no physical appearance is required.

The other methods include Med-Arb which is a mixture of mediation and arbitration, Neutral evaluation whereby a third party makes non-binding recommendations, and ombudsmen services that can make binding decisions through mediation or conciliation.

New approaches such as blockchain technology for smart contract-based dispute resolution especially in electronic business and transactions and video facilitated mediation which makes use of video conferencing for communication also enrich the ODR experience. The above techniques present effective, clear, and easy means of handling consumer complaints.

These methods are most diverse and represent a set of possibilities that may be used to resolve consumer disputes without harm to both parties and with the help of modern technologies.

VIII. Enhancing the Consumer Engagement with ODR Services

In order for the ODR to grow, it is very crucial to educate the general population about the existence of the service. ODR is not well known by the consumers and the benefits that come with the use of ODR may go unnoticed. The promotion of the ODR services means that consumers are informed not only about the services but also about the security and convenience of the ODR in e-commerce. This can go a long way to building consumer trust in the use of the internet for commerce.

In addition, transparency has a significant contribution to enhancing the attraction to the ODR services. Consumers should be able to understand when and how ODR is an option for them, what is expected of them, and what the costs of ODR are, for example, if they will need to enforce the decision made through ODR. It is equally important to inform the consumers about whether the decisions made through ODR are enforceable as this helps to build credibility of the process and assure the consumer that the result is legal.

Another key aspect is also the trust in the ODR systems. To enhance consumer confidence, ODR providers should ensure that their contact information is well provided for through email addresses, phone numbers, and physical addresses. The institutions should also ensure that they offer clear data protection policies and provide simple explanations of how the process will be conducted. Additional trust marks or certification seals of Trustmark from reputable organizations can also enhance the confidence of the consumer in the reliability of the ODR provider. Also, feedback systems can be also incorporated to enable the consumers express their experiences and ways in which the service can be improved to make it better.

Finally, impartiality is a key concern, especially when businesses are involved in multiple cases. To overcome this, ODR processes should therefore be just, clear to users, and easily accessible. When the consumer is assured that, his/her case is being handled fairly without prejudice then ODR can gain more confidence from the consumers to take their cases to the system. Such combined efforts can go a long way in boosting the uptake of ODR services by consumers and improving the efficiency of ODR overall.

IX. The Draft Policy, 2020

The Draft ODR Policy, 2020¹⁰, introduced by Niti Aayog with the goal of using technology to resolve issues, particularly in the wake of the COVID-19 outbreak, and to resolve consumer disputes. As most courts were overwhelmed with cases, few consumers could access legal services, and, through the policy, the government intended to offer a cheap, easily accessible, and convenient solution. It allows individuals to resolve small-value disputes from home via ODR platforms, ensuring legal sanctity for decisions made through these platforms. It also continued virtual court proceedings even post the pandemic and the more

¹⁰ NITI “Aayog Expert Committee on ODR, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (Oct. 2021”).

than three crore consumer disputes pending in Indian courts. Big e-shopping players like eBay committed to resolving millions of consumer complaints through ODR, which explains the future of ODR in increasing digital disputes.

IX. International Efforts to enhance ODR for Consumer Disputes

International initiatives to improve ODR are essential to enhancing consumer dispute resolution, especially in e-commerce. There are two significant initiatives:

European Commission Initiatives: The European Commission is in the process of completing a Directive and a Regulation to build an ODR throughout the EU for consumer complaints arising from e-commerce contracts. This platform will provide easy-to-follow procedures, standard operating procedures, and enforceable outcomes to foster consumer confidence and for solving issues related to cross-border e-commerce.

UNCITRAL Working Group III: The application of the ODR procedural framework in cross border e-commerce contracts is presently being worked on by UNCITRAL. To improve the effectiveness of ODR in international e-commerce, these regulations will include issues pertaining to jurisdiction and decision enforcement.

XI. Conclusion

ODR is therefore a solution for the issues that customers experience in the modern world as a result of the development of information technology. As seen with the current emergence of online shopping and business solutions, it is clear that the physical court system cannot suffice to meet the current need for fast solutions for such issues arising out of online businesses. ODR is a more convenient, faster, and cheaper solution to the traditional model, particularly in consumer relations.

Despite its current lack of popularity in India, ODR has the power to revolutionize solving disputes by increasing its efficacy and accessibility. Consumer disputes can be taken as the starting point to reduce the pressure on Indian courts and to offer a more practical way of dealing with the issues that emerge in e-commerce. Creating a Central Consumer Protection Authority that will be responsible for the administration and coordination of ODR systems will therefore provide a good starting point for ODR and push consumers and businesses toward embracing ODR on a large scale.

However, to optimize the application of ODR in India, its system has to conform to the best systems that are obtainable globally. Liberal democracies like the EU, as well as international organizations like UNCITRAL, are already establishing best practices for ODR, emphasizing usability, openness, and legal compliance. Some of the global initiatives may be useful for India to adapt the best practices that can make the ODR system free from biases and accurate. These are; Establishing crisp and comprehensible process protocols, affording legal recognition to ODR decisions, and covering issues related to cross-border e-commerce.

This way, India will be able to establish an ODR system that is effective, as well as sustainable for the country's growing population of digital disputes. Additionally, this alignment will increase consumer trust in the ODR tool and promote its overall usage in India's expanding ecommerce sector.

By implementing these enhancements, India will be able to establish a strong and long-lasting ODR framework, guaranteeing that customers have access to prompt, reasonably priced, and efficient dispute resolution procedures in the rapidly changing digital economy.