

ONLINE DISPUTE RESOLUTION: A MODERN ART OF ADJUDICATION

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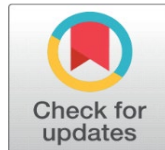
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ABSTRACT

Online dispute resolution is basically a technique where disputes of the physical world and disputes of cyberspace can be solved in a better way, whether the dispute resolution procedure is completely online or partly online. But here the first question is; what are the areas where online dispute resolution processes may be helpful to solve disputes? And the second question is whether it is suitable to a particular environment? Basically, it is mooted by various jurists that e-commerce is the suitable place where online dispute resolution can help to provide justice to the community. But this is not a complete statement and the importance of online dispute resolution processes is much more than this fact. Number of other areas have been identified by various writers and practice in different countries shows the use of ODR in different fields. Online dispute resolution, similarly as ADR, is a range of processes and forms. ODR emphasized on how to do, rather than what to do? In future, most dispute resolution processes will likely migrate to online processes, and ODR will be useful to almost every type of dispute.

Keywords: Online Dispute Resolution, ADR, Process, Resolution

1. INTRODUCTION

Online Dispute Resolution (ODR) is an innovative method to resolve grievances, issues or disputes. Collective term online dispute resolution is accepted internationally for different kinds of online dispute settlements by means of alternative dispute resolution methods. Online dispute resolution supplements present alternative dispute resolution methods based on the assumptions that certain disputes can be solved quickly and adequately via the internet. Online dispute resolution can be defined as development of applications, tools and computer networks for dispute resolution with the help of ADR methods. In this upcoming branch of dispute resolutions, one needs to perform and articulate their art of use of technology in a such manner wherein a dispute would be resolved in win situation for both parties. It requires an art of good listening and also an art of good speaking. One may be physically present at the time of hearing but the same impact needs to be put when parties are visually present physically but visually present in an online mode from some other part of state or country. This art of resolving disputes from any part of the corner may lead to transformation in the dispute resolution domain. To sum up, online dispute resolution is the process of resolving, managing, and preventing disputes through the use of information and communication technologies. Currently, online dispute resolution (ODR)

systems are most often used for four main purposes: online settlement, online negotiation, online mediation, and online arbitration. Please note that none of these approaches are yet complete.

2. FORMS OF ONLINE DISPUTE RESOLUTION

Basically online dispute resolution may be considered to be the developed stage of ADR processes. Our judicial system now has a well-established mechanism for alternative dispute resolution. In the world of international law, various forms of alternative dispute resolution (ADR) systems are in use. Arbitration, mediation, and negotiation are three of the most common of these processes. In a similar vein, traditional dispute resolution methods can benefit from online dispute resolution by incorporating new online system features. It can be said that, dispute resolution through air mode reflects that, one can apply the methods or spectrum on various issues from different manners.

3. ONLINE NEGOTIATION AND E-NEGOTIATION

Online negotiation basically covers an exchange of views and proposals regarding the dispute, when parties want to settle dispute outside the court. There is no need or intervention of the third party. This process is completely voluntary and parties can withdraw at any time. In order to facilitate online negotiation and e-negotiation, numerous countries have developed a variety of tools, software, communication systems, decision support systems, and algorithms. One more thing that happens in ODR processes is e-negotiation. In this system, the disputants are assisted during negotiations by means of technological resources, such as computers and communication tools. One step further in making a decision with the aid of AI is e-negotiation. There is some overlap between e-negotiation and online dispute resolution (ODR), both of which are components of electronic group decision support systems. Online negotiation helps the parties to do some act which if parties would themselves do may lead to conflicts. In this process primary parties can easily involve stakeholders, technicians, engineers and advocates as required. This feature leads to the transmission of this process form e-negotiation to e- mediation. But with fundamental difference that everything is under the control of parties and discretion is of parties either to accept or reject the outcome of this process.

4. AUTOMATED NEGOTIATION

Automated negotiation is a very popular method to be used in negotiation. Complainant approaches the automated negotiation provider and then sends a message to another party, who may accept or reject the jurisdiction of the institution. As a form of alternative dispute resolution (ADR), it involves the parties to a dispute engaging in a blind bidding process in which they each propose or demand a specific monetary amount as a settlement (although some institutions permit non-monetary terms as well). In order to resolve the claim, they submit bids based on what they think is a reasonable and fair amount to pay, without knowing what the other party is offering or demanding.

If the parties come within a certain specified range of each other, that may be specified prior to entering automatic negotiation by rules that may be a different figure of 30% or less than that, then the programme will automatically resolve the issue for them by giving a figure that it deems just and fair. Number of bids allowed to a party may vary from institution to institution; it may be three or unlimited. This method is mostly used in settling in insurance disputes. It is also known as 'Blind-bidding' services. There is a limitation of time for the settlement of disputes that may vary from 15 days to 90 days or even 1 year, depending upon the rules of the institution. Software plays an important role to maintain secrecy and confidentiality of bids till the completion of process, which is difficult in human agency. Communication systems such as emails, chat rooms, and web based platforms support the settlement process.

Blind-bidding tools are very popular in the United States to exercise this method. Electronic Consumer Dispute Resolution (ECODIR) offers a dynamic table of bids and counter bids which can lead the parties to an agreement in a short time. There are two types of automated negotiations (a) Double Blind- bidding, a method for single monetary disputes between two parties, and (b) Visual Blind-bidding, for negotiation among any number of parties and disputes. This procedure is too close to the mediation in one respect that is; there is provision of private discussion between negotiator and one of the parties. This is called a negotiation funnel. SquareTrade has resolved approximately two million disputes out of which one and a half million never involved human agency other than parties. Therefore it shows that even by excluding human being from dispute resolution, decision making process is possible and successful to solve differences. Here computer is considered as judge, but it is wrong to say that computers and automated system will replace judges totally, which is practically not possible in a number of disputes.

5. ASSISTED NEGOTIATION

In this process strictly speaking no negotiation is offered by online service providers, but online assistance is provided to the parties. There are number of institutions providing assisted negotiation in different countries. Institution only provides secure web plot communication means, assistance in preparation of agenda and other facilities to help and assist the parties. Unlike automated negotiation there is no external agency to decide the case or offer solution. Assisted negotiation offered by square trade, provides at its initial stage communication tools that are totally automated and free of charge to all its users. Party who wants to solve dispute may communicate directly with other party. It is claimed by the Square Trade that 60% of disputes are solved by assisted negotiation.

Automated negotiation and assisted negotiation both are managed by ODR service providers throughout the world. But automated negotiation has more advantages than assisted negotiation because latter has lack of decision making power. Nonetheless, both procedures are very important milestone in this digital world. Online negotiation and its potential use opens an opportunity to expand the scope and importance of ODR. This intelligent agent of technology has the ability to reduce human arbitrator and mediator in this busy world. This system will lead to increase in number of cases being processed by this agent. Success of this process will also lead to the create trust in public.

6. ONLINE MEDIATION AND E-MEDIATION

Online Mediation and e-mediation is the next stage of ODR procedure. To put it simply, mediation is like assisted negotiation but with a difference that there is involvement of third party and active involvement of neutrals. This is a method where two parties agree to submit their differences to a neutral third party known as mediator. This process has now become more popular with the advancement of Information and Communication Technology (ICT). At present mediation services are rendered by a number of online service providers globally as well as locally irrespective of different cultures, jurisdictions and borders. SquareTrade, world's leading service provider has solved a number of disputes through e-mediation from across 120 countries and conducted procedures in five different languages. This has led to e-mediation becoming a headway in all countries of the world. Online Mediation and e-mediation is an important tool along with a number of ODR services. At first, numerous service providers—including Online Ombuds Project, Cyber Tribunal Project, SquareTrade, Internet Neutral, E-resolution, and Online Resolution—started these initiatives. Currently, Odrindia, Perry law, Ordway's, Legal Referee, etc. are the online service providers providing this service to the Indian community. Number of disputes including business to business, business to consumer, commercial disputes, workplace disputes, and insurance issues can be dealt with by e-mediation system. In case of online mediation, other features are similar to traditional mediation for example; mediator offers parties the possibility of exploring solutions. In this process the mediator can only make suggestions to the parties and facilitate communication, valuable ideas, and move the discussion toward agreement with no decision making powers. In this method, apart from traditional mediation, parties have twenty four hour access to mediation, communication online, parties need not meet physically which makes the process very fast. Both parties can exercise veto power and unless both parties agree no conclusion is possible. Mediators and tools help the parties to carry on productive discussion and come to conclusions as soon as possible. Parties have no link with mediators personally or physically which helps the mediator to be neutral, impartial and interest free.

Whether the mediation was successful or not, the mediator will document their findings in a report. If that doesn't work, everyone goes back to where they started. If the parties are able to reach an agreement, it will be widely recognized as a unique communication between them to settle a disagreement. The UNCITRAL model has strived to guarantee recognition of agreement in the entire world. However, a standardized procedure for the obligatory execution of cross-border transactional agreements does not yet exist. When it comes to cross-border business disputes, the UNCITRAL Model Law offers a possible solution for the recognition and execution of cross-border business agreements. There are regional as well as global service providers for mediation services. Regional service providers are those who limit their operation only in a country or area for application and services, but majority service providers are not limited to one nation and they have multinational services. Institutions on a national and even global scale offer mediation services. You can also get mediation services from some of the solo practitioners. For a number of reasons, the majority of online dispute resolution systems do not include private practitioners but rather institutional providers, such as online service providers acknowledged by any national or international agency. But that does not mean that individual practitioners cannot be a sole operator of e-mediation services. In the end of 2010, a number of individual practitioners were noticed who were offering individual services of online mediation around the world.

Mediation was formerly thought of as the greatest communication tool for conflict resolution in the conventional ADR process, which centered on ADR institutions' perceptions of a lack of a system for communication and other negotiation issues. By offering a variety of e-negotiation, e-mediation, and e-arbitration tools, ODR has been able to overcome these challenges. This couldn't have happened before Online Dispute Resolution, which positioned new technologies more as communication tools than dispute resolution tools themselves. Nonetheless, these internet service providers are cognizant of the fact that e-negotiation is fruitless and that many cases never reach a final resolution. On the other hand, these service providers do provide e-mediation on their websites at the conclusion of e-negotiation in the event that the primary process fails. In the event that the automated or blind-bidding process does not work, third-party services such as Cybersettle, Smartsettle, PayPal, and eBay offer live mediation or telephone facilitation.

7. ADVANTAGES OF ONLINE MEDIATION

Over and above the advantages of ODR like convenience, less cost time saving, there are specific advantages of online mediation, such as parties can take help of experts who are more able or specialised in practical or field around the world; this is not possible in offline mediation. E-mediation process is not simultaneous as in case of face to face mediation, parties communicate online with mediator at different time and place, and this provides an opportunity to the mediator for more intentional application of mediator's toolbox and adjusts and reframes talk or messages. This process also helps to maintain and preserve records for future help. This process is more dynamic and flexible.

8. ONLINE ARBITRATION OR E-ARBITRATION

Arbitration is a process in which a matter is referred to an arbitrator or tribunal, which gives a decision after hearing parties and examining evidence produced by parties to support their case. Offline arbitration is considered most successful and popular because of its decision making power, strict conditions of its due process that are applicable, its binding nature and easy enforcement of its decision and court's assistance. Online arbitration is the most promising in cyber-space because of two things: firstly because of ineffectiveness of offline arbitration, secondly, because adjudication in court systems is not often operative because of the clash between the territoriality of courts and the global nature of cyberspace. This is an effective and de-territorialised mechanism. Virtual Magistrate is one of the examples to prove the above features of online arbitration. Online and offline arbitration have similar stages therefore it is important to discuss various issues which may create problems in online arbitration.

Recognition of online arbitration b. Arbitration agreements in online arbitration c. Procedure in online arbitration d. Arbitration awards in online arbitration e. Enforcement of arbitral awards in online arbitration Enforcement and recognition of foreign arbitral awards in online arbitration. Most important aspect of online arbitration is its jurisdiction or validity. According to the arbitration laws of various countries, an arbitration agreement is required to confer jurisdiction to the arbitrator. Condition is deemed to be fulfilled if there is an arbitration clause in an agreement. It means consent of the parties is must for the submission of dispute to arbitration whether arisen in his country or outside the country. But it is acknowledged throughout the world that arbitrator may be appointed by the parties or by any other appointing authority referred by parties such as International Chamber of Commerce (ICC) Court of Arbitration. Therefore, in the case of an online environment this condition raises issues of conclusion of arbitration clauses.

In the case of online arbitration, the main concern is regarding the independence of arbitrators. As a practice in online arbitration, a list of arbitrators is prepared by the institutions. Now the question is whether choice given to parties to select arbitrators is good enough to fulfill this condition? Can we say parties themselves appointed the arbitrator? Answers of these questions are possible only by detailed study of procedure and functioning of online dispute resolution providers.

International commercial arbitration in particular has grown in prominence as a method for resolving international disputes in recent decades. The need for a fair and equitable compulsory arbitration procedure has also been acknowledged in international arbitration cases involving forced consent to jurisdiction. Due to the international scope of online arbitration, it is essential that all parties adhere to basic procedural rules, and there should be consistent regulations in place on both the national and international levels to facilitate this. Streamlining processes is a cornerstone of expedited case resolution, which is a crucial aspect of online dispute resolution (ODR).

9. ADR AND ODR SIMILARITIES AND DIFFERENCES

Most thinkers are under the misconception that ADR and ODR are not two different setups but are the same thing and if they admit certain differences, they are of the view that ODR is merely a developed stage of ADR where technology and internet are used by arbitrator and arbitration institutions. But this view is not correct and ODR has been studied by various writers as a separate branch of dispute resolution along with ADR. Existing ODR procedures can be studied from two different angles. One where ODR is in itself a different type of dispute resolution method that emphasis on the needs of internet users and other is based on dispute resolution forms already developed by ADR and thereby replace offline ADR. Undoubtedly, various features of ADR are also present in ODR, but ODR has different rules, requirements, forms and environment.

10. ONLINE AND OFFLINE NEGOTIATION

Negotiation whether offline or online has the same role to play and that is to help find solutions to the problem. But there are few differences between the two. Simplicity, less expensive, fast, easy to approach are the main features of online negotiation procedure. Parties need not go anywhere and need not to take a leave from office or job. Assisted negotiation tools help the parties to connect at their convenience and leave a message in free time. In the case of automated negotiation tools it is easy for the parties to put a figure to a demand or offer according to their wish.

11. ONLINE AND OFFLINE MEDIATION

Online mediation is a subset of assisted negotiation, according to some writers. However, the two are distinct in character and extent. In offline mediation, there are primarily three stages. Experts and parties alike gather in the first stage, where each side presents its case. The second stage involves experts meeting privately with the parties involved. Coming up next is the joint closing session. Due to their impact on the architecture of online mediation websites, these offline procedures are likewise crucial for online mediation systems. Equally important is the provision of technological devices that facilitate communication, as well as shared and private discussion rooms, by online dispute resolution providers. In the case of online mediation, cyberspace stands in for physical space. Save for the modification of technological instruments to suit this system, everything else should stay the same.

12. ONLINE AND OFFLINE ARBITRATION

Online Arbitration is similar to offline arbitration, but with additional feature that all communications and procedures are conducted online. Here we are concerned with how to utilise the ICT application in arbitration. What is different is online procedure followed by online service providers. Other essential elements are similar to offline arbitration. But online arbitration has more benefits than offline arbitration. That is why now all institutions are shifted to provide services online for arbitration.

Online dispute resolution (ODR) emerged in the mid-1990s and has since had an impact on the state's pre existing system of resolving legal disputes. Thus, online dispute resolution (ODR) can be viewed as both an alternative to and a supplement to the conventional legal system. The interpretation of ODR largely determines this dual function. If online dispute resolution (ODR) is broadly understood as a platform that facilitates communication and resolution of disputes, then it can be argued that ODR is a useful tool that augments court proceedings and enhances judicial dispute resolution.⁴⁸ If online dispute resolution (ODR) is considered a component of alternative dispute resolution (ADR) or its subsequent developmental stage, then it is in direct opposition to the judicial system. But this is a narrow definition of the ODR process. In the second model, ODR has yet to make its course into the traditional court system in a significant manner.

Most of the jurists prefer the wider meaning of ODR, ODR has covered both of the above processes within its scope. Online ADR is only one part of ODR procedure. Second part of ODR is cyber court or e- courts where use of exclusively electronic communication tools or systems is covered and this should be covered as a part of ODR system because ODR movement is developed as a solution to extraterritorial internet or other disputes. Online dispute resolution is opposed to the offline procedures and not to the court system, and online ADR is part of it. It covers within its ambit court assisted mediation and non- binding arbitration called court run ODR.

Therefore ODR is not counterproductive to the court system but is an important part of it. The focus should exclusively be directed toward the complementary role of online dispute resolution and development of court annexed ODR set up. Added by the court on a global scale, online dispute resolution (ODR) programs have been implemented in a number of countries through initiatives like the Michigan Cyber Court, E-Court, Money Claim Online, Possession Claim Online, and e-Alternative Dispute Resolution by the Subordinate Courts of Singapore. As a result of these efforts, whole online court

systems have emerged, complete with all the capabilities of online dispute resolution (ODR), including web-based conferencing, virtual courtrooms, and electronic document filing

First cyber court project was inaugurated in 2002, under Michigan legislation in United States which was fully internet based equipped with electronic feature and tools. It established first „Cyber Court“ under the Act. Cyber Court had jurisdiction to deal with business or commercial disputes exceeding

2.5 million USD amount. No doubt this legislation focused on e-filing and courtroom but along with this also put light to incorporate ODR practice in judicial process.

Similarly Federal Court of Arbitration also managed virtual court or e-court for online submission of affidavit evidence and orders completely online within the secure system. Login Ids and passwords are created for the judges to log into system and post a message, inspect the document or attach the document. It has been witnessed that the e-court has proven to reduce delay and costs as compared to traditional court system. Money Claim Online (MCOL) is a United Kingdom based internet service provided by courts and tribunals for the both parties to settle money claims. This programme is based on an electronic programme.

Parties first have to register with MCOL and then user ID and password is generated by system and allotted to parties. The claimant has to file an online form and submit it. If the defendant does not file reply within time allowed then claimants may apply to court for the judgment. If the opposite party files reply or counter claim then it is to be transferred to local court and the court process will start. This programme has been very successful and prevalent at present.

Similarly, Possession Claim Online is another mechanism of the same nature of the court system for possession claims carried through website of PCOL. There are other initiatives prevalent in other countries for the court based ODR such as eAlternative Dispute Resolution is Singapore Subordinate Courts" initiative, relating to e-commerce transactions to solve disputes over the internet.

13. CONCLUSION

In business area disputes are inevitable. Most of the disputes occur in electronic commerce. Economic development of communities depends on effective dispute resolution processes and for effective dispute resolution clear cut rules, well defined and well established legal frame work are required. E- commerce is certainly such an area where ODR can be helpful to solve e-commerce disputes. Basic features of online dispute resolution are certainly similar to e-commerce disputes, for example flexibility of process, international nature of conflicts, difficulty in jurisdictional issues etc.

Less cost of personal computers, mobile phones and increasing use of internet is the main reason for the development of electronic commerce. Business communities are also encouraged by this trend and have invested in this opportunity offered by electronic commerce. No doubt, growth of e-commerce in India is slow as compared to markets like U.S. (266 million 84%) or France (54 million 81%) but it is growing at an unprecedented rate. It is adding 6 million new entrants every month.

Some jurists are of the view that for the development of Online Dispute Resolution, e-commerce has vital role. This search ends with new opportunities provided by ODR mechanism. Delocalisation and internationalisation is the main feature of e- commerce and ODR is suitable to act in these situations. Growing trends of international commercial arbitration is the proof of this tendency. ODR provides easy, quick, cheap, confidential, trustworthy mechanism to resolve commercial disputes, which creates trust and confidence in e- transaction and keeps customers satisfied and save companies from liability. All sorts of business disputes, including those involving intellectual property, insurance claims, and e-commerce between companies and consumers, can benefit from these features. Any of these types of disputes can be adequately resolved through online dispute resolution. Complex issues unrelated to money, such as privacy concerns, workplace conflicts, etc., can give rise to disputes. When attempting to establish a worldwide procedure to resolve domain name disputes, the Internet Corporation for Assigned Names and Numbers (ICANN) encountered significant obstacles. Whose court should have the authority to hear the case? Which statutes ought to be enforced? Domain names are truly an international system; they are not subject to the jurisdiction of any country. To address these issues, ICANN established the Uniform Domain Names Dispute Resolution Policy (UDRP), which is overseen by multiple online dispute resolution providers. This method has resolved thousands of disputes globally since its inception in 1999. Insurance, banking, business, workplace, privacy, and government are just a few of the many sectors that will soon have online dispute resolution systems.

CONFLICT OF INTERESTS

None.

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REFERENCES

- Gabrielle Kaufmann-Kohler and Thomas Schultz, *Online Dispute Resolution: Challenges for Contemporary Justice* 18 (Kluwer Law International, The Hague, The Netherlands, 2004).
- These software tools records parameters of settlements according to wishes of parties and gives different option to parties to settle differences.
- A. Bevan, *Alternative Dispute Resolution* 23 (Sweet and Maxwell, London, 1992).
- Rafal Morek, "Regulation of Online Dispute Resolution: Between Law and Technology" 58 (August 2005). (Unpublished Thesis), available at: [http://www.odr.info/cyber week/Regulation%20of%20ODR_Rafal%20Morek.doc](http://www.odr.info/cyber%20week/Regulation%20of%20ODR_Rafal%20Morek.doc) (last visited on December 12, 2013)
- R. P. Alford, "The Virtual World and the Arbitration World" 18:4 J. Int'l. Arb. 449-461, (2001).
- Thomas Schultz, Gabrielle Kaufmann Kohler, et.al., "Online Dispute Resolution: The State of Art and Issues" 4 (E-com Research Project, the University of Geneva, Geneva, 2001), available at: <http://www.online-adr.org> (last visited on November 14, 2014).
- M. Conley Tyler and J. Bornstein, "Accreditation of Online Dispute Resolution Practitioners" 25:3 C.R.Q. (2005).
- Ethan Katsh, Janet Rifkin and Alan Gaitenby, "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law" 15:3 Ohio St. J. on Disp. Resol. 705-734, 733 (2000). Available at: <http://odrindia.in/> (last visited on December 15, 2017).
- A. Bevan, *Alternative Dispute Resolution* 23 (Sweet and Maxwell, London, 1992).
- Julia Hörnle, "Cross-border Internet Dispute Resolution" 79 (Cambridge University Press, United Kingdom, 2009).