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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**ONLINE DISPUTE RESOLUTIONS – ORIGIN OF
ALTERNATE DISPUTE RESOLUTION AND ONLINE
DISPUTE RESOLUTION – LEGAL FRAMEWORK –
DIFFERENT METHODS OF ONLINE DISPUTE
RESOLUTION – MAJOR CHALLENGES IN ONLINE
DISPUTE RESOLUTION**

AUTHORED BY - DRISYA .P

I. INTRODUCTION

Digital dispute resolution (DDR), often referred to as online dispute resolution (ODR), is a process of resolving disputes and conflicts using digital technologies and the internet. It is a set of dispute resolution techniques that use information and communications technology for automating and speeding up information processing and for overcoming distances through the use of remote communications.

Depending on the jurisdiction and nature of the dispute, the resolutions reached through ODR may be legally binding. Even if not legally binding, it may serve as a basis for further legal action if necessary.

Dispute resolution has traditionally relied on face-to-face interactions, fostering trust and understanding between conflicting parties. However, the digital revolution has necessitated a shift towards online platforms. While concerns exist regarding the effectiveness of online mediation, its convenience, accessibility, and potential for improved communication highlight its growing role in conflict resolution.

Online Dispute Resolution (ODR) is a present-day mechanism to resolve disputes and conflicts without going to court. The proliferation and increase in usage of the internet and the growth of e-commerce have necessitated the need for such a mechanism. ODR is essentially the usage of technology in the conventional dispute resolution process. It employs a variety of digital communication tools, including video conferencing, email, and chat, to resolve disputes efficiently. ODR is becoming increasingly popular across the world as a dispute resolution mechanism, and India is no exception to this. ODR dispute resolution is conducted online and

it predominantly involves the use of technology to facilitate the resolution of disputes. ODR can take many forms, like negotiation, mediation, and arbitration. In ODR, the parties can interact with each other and the neutral third party through the usage of different forms of communication technology. The objective of ODR is to provide a fast, efficient, and savvy method of resolving disputes as compared to the traditional dispute resolution process. India has a large and quickly developing e-commerce market. The growth of e-commerce has increased disputes between consumers and e-commerce platforms. ODR can provide a fast and efficient method of resolving such disputes.

ODR is additionally significant in India because the conventional legal system is overburdened and slow. Indian courts have a significant backlog of cases that need to be handled, which might take years to resolve the disputes. ODR can provide a faster and more efficient method of resolving disputes, without the need for parties to go to court for the settlement of their disputes. Moreover, ODR can provide access to justice to those who might not have the means to pursue legal action in a conventional court. ODR can be conducted from anywhere, and parties can participate in the process utilizing their mobile phones or computers. This can make it easier for people in remote areas or with limited resources to access dispute resolution services. Overall, the importance of ODR in India can't be overstated. This method of dispute resolution process can revolutionize how disputes are resolved in the nation, making the process faster, more efficient, and more accessible to all¹.

THE SCOPE OF ONLINE DISPUTE RESOLUTION

ODR started in the 1990s as a mechanism to solve disputes related to e-commerce transactions. The scope of ODR has since then expanded from such consumer disputes to cover a wide range of areas, including family law, workplace disputes, and international commercial arbitration. International organizations, such as the World Bank and the World Trade Organization, have also embraced ODR. ²

¹ DR. P. JOGI NAIDU, AND BHAGAVATULA NAGA SAI SRIRAM, Online Dispute Resolution (ODR) in India: Opportunities, Challenges, and Future Prospects, INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION, [Vol. 6 Iss 4; 750]2024.

² Ms. Apoorva Dixit, "Online Dispute Resolution: An Indian Perspective International Journal of Law Management & Humanities Volume 2, Issue 1 ISSN: 2581-5369" available at <https://www.ijlmh.com/wp-content/uploads/2019/04/Online-Dispute-Resolution-An-Indian-Perspective.pdf>

CONCEPT OF ODR (ONLINE DISPUTE RESOLUTION):

Online Dispute Resolution (ODR) is a conflict-resolving method using Information and Communication Technology (ICT). This procedure is conducted at two different places, generally through websites, different from the physical mode where the presence of the disputants is required. This is viewed in two different aspects; firstly this is an extra-judicial dispute resolution method, which is different and outside the ordinary court system, using online dispute resolution applications by ODR providers.³

American Bar Association (ABA) Task Force on E-commerce and ADR defines this concept as: "Online Dispute Resolution is a broad term that encompasses many forms of Alternative Dispute Resolution (ADR) that incorporate the use of the Internet, websites, email communications, streaming media and other information technology as part of the dispute resolution process. Parties may never meet face-to-face when participating in ODR. Rather, they might communicate solely online."⁴

Online Dispute Resolution can also be defined as the development of applications, software, and computer networks for resolving disputes with alternative methods of dispute resolution. There are four types of online dispute resolution systems that are more popular:

"Online settlement, with the help of an expert system to settle financial disputes automatically, Online arbitration, using websites to resolve disputes with the help of qualified arbitrators, Online resolution of consumer complaints, with the help of email, etc, resolving consumer claims, Online mediation, through websites to resolve disputes with the help of qualified arbitrators".⁵

But this categorization is not exhaustive. There are other methods of ODR such as e-negotiation and e-conciliation. All of the above methods are not fully developed yet. Till date, online settlement and online mediation are mostly used and advanced methods. ODR is interpreted in a wider sense as an online environment to help communication and dispute resolution, and as a supplementary tool to help court proceedings and the court system. It includes both courts

³ Esther Van Den Heuvel, "ODR as a Solution to Cross Border E-disputes" University of Utrecht, at 8 (August 2000), available at: <http://www.oecd.org/internet/consumer/1878940.pdf>

⁴ American Bar Association, "Addressing Disputes in Electronic Commerce Final Report and Recommendations of ABA Task Force on E-Commerce and ADR", available at: <https://www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalReport102802.authcheckdam.pdf>

⁵ Ethan Katsh, "Cyber Law: Issues Affecting the Internet and Its Governance" 28, N. Ky. L. Rev. 810, 813 (2001).

run ODR and e-courts.⁶

THE FOLLOWING ARE THE MOST COMMON TYPES OF DISPUTES THAT MAKE ITS WAY TO ODR.

1. E-commerce disputes

E-commerce disputes involve conflicts between buyers and sellers in online marketplaces, such as disputes over product quality, delivery issues, refunds, or misrepresentations in product listings. The majority of disputes in the ODR system relate to ecommerce disputes.

Disputes involving online payment systems, fraud, chargeback, and unauthorized transactions are also commonplace.

Another popular area of conflicts that find increasing adoption in ODR is conflicts within online gaming communities, including disputes related to in-game assets and virtual property.

2. Online contract disputes

Another major area of disputes that find its way to ODR is conflicts related to digital contracts, including disputes related to terms of service agreements and breaches of online agreements between parties.

Some of the common types of dispute under these categories include conflicts between employers and remote workers, freelancers, or gig economy participants over issues like payment disputes, contract violations, or non-performance. Such disputes can be settled through ODR mechanism even if the underlying contract is executed in the physical mode and not online.⁷

3. Intellectual property disputes

Intellectual property disputes involve disputes related to copyright, trademark, and patent infringement. In the digital space, these disputes assume the form of piracy and plagiarism.

It may involve conflicts related to ownership, transfer and licensing of digital assets. The common types of digital assets that are the bone of contention of late include crypto currencies, digital media, and online accounts, including social media accounts.

⁶ Nicolas W. Vermeys and Karim Benyekhlef, "ODR and the Courts" in Mohamad S. Abdul Wahab, Ethan Katsh, et.al., (eds.), *Online Dispute Resolution: Theory and Practice- A Treatise on Technology and Dispute Resolution*, 308 (Eleven International Publishing, The Hague, The Netherlands, 2012).

⁷ Ananya Singhal & Dhriti Hundia, *Online Dispute Resolution: A Concept Note*, PRESOLV360, <https://presolv360.com/resources/concept-note-on-odr/>

A related type of dispute is domain name disputes. Disputes over internet domains, including issues like cyber squatting, trademark infringement, and domain name hijacking are common type of disputes that involve ODR.

Conflicts over the ownership and use of internet domain names are typically resolved through domain name arbitration processes such as World Intellectual property Organisation (WIPO)'s Uniform Domain-Name Dispute-Resolution Policy (UDRP)⁸

4. Other online disputes

Many parties to a dispute related to online harassment, libel, slander, or the spread of false information on social media platforms or websites may take the ODR route to avoid the hassles of visiting the court.

Conflicts arising from social media interactions, such as cyber stalking, harassment, or disputes over content removal and moderation also increasingly find adoption in ODR platforms.⁹

5. Family and relationship disputes

Many parties to family and relationship disputes, including conflicts related to online dating, social media relationships, and issues such as online harassment or stalking in personal relationships find resolution through ODR mechanisms. Most parties to such disputes prefer the online route due to the anonymity it provides.¹⁰

Main ODR platforms

1. Online portals dispute resolution mechanisms

Online communities, social networks, and forums often have their own mechanisms for resolving disputes among members. These methods may involve community moderators, rules, and guidelines for addressing conflicts.

Many online auction and e-commerce platforms have built-in dispute resolution mechanisms. These platforms often provide structured processes for buyers and sellers to resolve disputes related to transactions on their websites. Examples include the dispute resolution process of ecommerce platforms such as ebay and Amazon. In a majority of the cases, this involves chargebacks in favour of the customer.

⁸ Online Dispute Resolution (ODR): Meaning, Benefits, Challenges & Trends, THE LEGAL SCHOOL, <https://thelegalschool.in/blog/online-dispute-resolution>

⁹ ibid

¹⁰ Ananya Singhal & Dhriti Hundia, Online Dispute Resolution: A Concept Note, PRESOLV360, <https://presolv360.com/resources/concept-note-on-odr/>

2. Government sponsored ADR and Online small claims courts

Some governments and public agencies offer ODR services to help citizens resolve disputes with government entities or between citizens. These services may cover various types of disputes, including tax issues and public services.

Many jurisdictions have implemented online small claims courts that allow individuals to file and resolve small claims disputes entirely through digital platforms. These platforms streamline the process for resolving lower-value disputes.

The jurisdictions with online small claims courts include Australia, Canada, European Union, Ireland, Hong Kong, New Zealand, Singapore, UK, and most states of the USA.

Online family dispute resolution: ODR methods are also applied to family law matters, such as divorce and child custody disputes. These platforms often provide a structured process for negotiation and agreement.¹¹

TYPES AND METHODS OF ODR

The basic types of ADR, which is conciliation, mediation, and arbitration, hold true in ODR as well. But the scope of ODR is vast, and it can take place in several methods. Online dispute resolution takes place in several forms, and in different methods.

1. Mediation and arbitration via online platforms

In mediation, a neutral third party, the mediator, helps parties in dispute reach a mutually acceptable resolution. Online mediation platforms facilitate this process by allowing participants to communicate and negotiate through text, video, or audio channels. Mediation is commonly used for a wide range of disputes, including e-commerce, workplace, and family disputes. Some ODR services are accessible through mobile apps, making it convenient for users to initiate and participate in dispute resolution processes from their smartphones and tablets.¹²

Online arbitration involves a neutral arbitrator or panel of arbitrators who render a binding decision on a dispute after reviewing evidence and arguments submitted electronically. This method is often used in commercial and contractual disputes. The decision is enforceable like a court judgment. Traditional arbitration creates the impression that it replaces court proceedings. By agreeing, parties exclude the jurisdiction of the court. Hence, an arbitrator has

¹¹ Pranshul Khurana, Top Online Dispute Resolution (ODR) startups in India, iPleaders (Aug. 13, 2020), <https://blog.ipleaders.in/top-online-dispute-resolution-odr-startups-india/>

¹² A. Bevan, Alternative Dispute Resolution 23 (Sweet and Maxwell, London, 1992).

the power to make decisions that have binding force. Yet there is one more form of online arbitration which is called non-binding arbitration. This unique feature of online arbitration makes it more useful. Uniform Domain Name Dispute Resolution Policy (UDRP) is a form of non-binding online arbitration.¹³

Online platforms or software assist parties in dispute with negotiation. Automated negotiation is AI algorithms making decisions automatically based on pre-set rules..Assisted negotiation is when the parties to the dispute use AI to gain enhanced insights before making decisions. In both cases, the software provides features such as secure messaging, document sharing, and structured negotiation processes.

2. Blockchain-Based ODR

Blockchain technology has been explored for its potential to provide transparent and tamper-proof records of transactions and agreements. Some ODR platforms use block chain to document dispute resolutions and maintain a verifiable record of outcomes.

Key Features

- **Immutability:** All information submitted to the blockchain, including case details and the final decision, becomes part of an immutable record. This creates transparency and prevents tampering with evidence.
- **Decentralization:** There's no single authority controlling the process. This reduces the risk of bias and promotes a more trust-worthy environment.
- **Efficiency:** Smart contracts can automate many aspects of dispute resolution, potentially leading to faster and more cost-effective settlements compared to traditional litigation.

The technology aims to establish an anonymous and decentralized mechanism without any state oversight or intermediary for transactions. When a party initiates a transaction, it is cryptographically represented online as a block. The block is broadcast to every party in the network. Those in the network approve the transaction as valid, in other words they reach a consensus. The process is considered to be democratic because it needs a majority decision to add a new block. The modification or tampering of older blocks become more difficult¹⁴

¹³ Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union* 69 (Routledge, New York, 2011).

¹⁴ Ankur Lal, *Blockchain-Empowered Online Dispute Resolution: A Decentralized Approach to Enhancing Trust and Efficiency*, Ankur Lal Advocate, <https://ankurlaladvocate.com/blockchain-empowered-online-dispute-resolution-a-decentralized-approach-to-enhancing-trust-and-efficiency/>

How it works

At the heart of blockchain-based ODR lie smart contracts. These are self-executing contracts written in code and stored on the blockchain. Imagine a digital agreement outlining the terms of dispute resolution, including the selection of arbitrators or the criteria for a fair settlement. When a disagreement arises, one party can initiate the dispute resolution process outlined in the smart contract. This might involve submitting relevant information or evidence to the blockchain.

There are two main approaches to solve disputes in blockchain based ODR

- **Decentralized Arbitration:** A pool of arbitrators (often cryptocurrency holders) can be chosen through the platform. The smart contract can manage the selection process based on pre-defined criteria like expertise or reputation. These arbitrators, acting as jurors, review the case details and vote on a solution based on the smart contract's rules.
- **Mediation:** Similar to traditional mediation, a neutral third party can be selected through the platform to facilitate communication and guide the parties towards a mutually agreeable solution¹⁵

3. Blind Bidding

Blind bidding is the process of the disputing parties submitting settlement offers to a computer or a neutral third-party. If the offers are within a certain range, the parties split the difference and settle the dispute. If they are not within range, negotiation continues in a traditional manner and neither party learns of the other's offer. Blind bidding works best when there is a single issue in controversy and that issue involve money, or something that can be represented numerically. By promoting anonymity and encouraging realistic offers, it fosters a fair and efficient environment for settling minor disagreements.

Double-blind bidding operates by having both parties in a dispute submit their desired settlement amounts confidentially. A neutral third-party, such as an ODR platform or mediator, facilitates the process. The bids are then compared. If one party's offer falls within the other's range, a settlement is reached. Crucially, neither party is aware of the other's bid, eliminating the possibility of strategic bidding or emotional responses influencing the outcome.

¹⁵ Houman Shadab, Blockchains and Online Dispute Resolution: Smart Contracts as an Alternative to Enforcement, *SCRIPTed – A Journal of Law, Technology & Society* 13 (2016), <https://script-ed.org/article/blockchains-and-online-dispute-resolution-smart-contracts-as-an-alternative-to-enforcement/>.

The key advantage of blind bidding lies in its potential for fairness and efficiency.

1. It removes anchor bias– the tendency to fixate on an initial offer– and encourages both parties to consider a realistic settlement range.
2. The swiftness of the process compared to traditional litigation makes it a cost-effective option for both consumers and businesses.

However, blind bidding is not without limitations.

1. For complex disputes with multiple issues, blind bidding might struggle to address all aspects of the disagreement.
2. The success of this method relies heavily on the good faith of both parties. If either party submits an unreasonable bid outside the realm of a fair settlement, the process can collapse¹⁶

To address these limitations, blind bidding can be integrated with other ODR methods

1. mediation could precede blind bidding to explore underlying interests and facilitate a more nuanced understanding of the dispute
2. platforms could implement mechanisms to discourage unrealistic bids, such as requiring justifications or setting boundaries based on the nature of the dispute.

While limitations exist, combining blind bidding with other ODR methods and establishing safeguards can make it a valuable addition to the online dispute resolution toolbox in the digital age.¹⁷

ORIGIN AND DEVELOPMENT OF ADR

The concept of alternative dispute resolution took concrete shape in renaissance Europe, when mercantilism flourished and international trade developed. European merchants developed their own system of dispute resolution known as the “Lex Mercatoria” or “Merchant Law.” This system relied on arbitration by respected members of the merchant community and contributed to the development of modern arbitration. The trigger was to overcome the problem

¹⁶ Stephens Scown, Alternative Dispute Resolution – what is a blind bid mediation?, Stephens Scown, <https://www.stephens-scown.co.uk/business-disputes/alternative-dispute-resolution-what-is-a-blind-bid-mediation/>

¹⁷ ibid

of conflict jurisdiction and fill the void of lack of laws in the seas.¹⁸

The first formal legislation related to ADR was in the United States. The Massachusetts Arbitration Act of 1838 is considered the landmark in ADR laws. The turn of the century saw the expansion and formalization of arbitration processes. The establishment of organizations such as the American Arbitration Association (AAA) in the United States and the International Chamber of Commerce (ICC) in France gave a fillip to ADR.

ADR became popular in the UK after the Industrial Revolution. In the late 19th and early 20th centuries, industrial arbitration became prominent in the UK, particularly in labour disputes. This practice involved the appointment of an arbitrator to resolve conflicts between labour unions and employers. The Arbitration Act 1950 provided a legal framework for arbitration in the UK, making it easier for parties to agree to arbitration as a means of resolving disputes.¹⁹

Position in India

The origins of ADR in India go back to the Bengal resolution of 1793 (Act XVI of 1793) that empowered courts to address a matter of arbitration with the consent of the parties involved where, the value of suit did not exceed 200 rupees, Matters related to accounts, partnership, debts, non-performance of contractual obligations were dealt through such arbitration instead of through the formal judicial process.

The Civil Procedure Code, 1859 empowered the court to refer disputes to arbitration.

The Indian Arbitration Act, 1899 was the first Indian legislation regarding ADR. This act provided matters that could be settled by agreement between parties and did not require court supervision. The Arbitration Act of 1940 consolidated and amended the existing laws of arbitration, but was technically complicated, time-consuming, and expensive. It had no provision for international arbitration either.

International conventions

During the early 20th century, as nation states were established and international trade and diplomacy grew, several efforts were made to promote peaceful dispute resolution and prevent conflicts. A series of conventions under the aegis of League of Nations and later the United Nations established international arbitration.

¹⁸ Cross-Border Alternative Dispute Resolution in the European Union, European Parliament, 1, https://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/adr_study_/adr_study_en.pdf

¹⁹ Brief History of Alternative Dispute Resolution in the United States, Cadmus Journal, <https://www.cadmusjournal.org/node/98>

The 1923 Geneva Protocol on Arbitration clauses

The 1923 Geneva Protocol on Arbitration clauses was one of the earliest international treaties to promote the use of arbitration as a means of resolving disputes. This protocol primarily focuses on settling disputes among nation states using compulsory arbitration, with the International Court of Justice serving as the arbitrator.

1927 Geneva Convention on the Execution of Foreign Arbitral Awards:

One of the earliest international convention related to commercial arbitration was the 1927 Geneva convention. The 1927 Geneva convention specified that contracting parties could refuse to enforce an arbitral award even if the conditions of the said article were fulfilled, if

- It is annulled in the country in which the award was made.
- The party against whom the award is sought was not given ample time or opportunity to present their case or were not properly represented in a legal capacity.
- The dispute between the parties decided on, was beyond the scope of what was submitted to arbitration in the agreement.

1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention):

The New York convention strived to prevent discrimination between domestic and foreign arbitral awards. It provided for recognition of arbitral awards made by “foreign” courts and strove for uniform legislative standards. The signatories to the convention had to enforce foreign awards with the same standard as domestic awards, subject to some exceptions such as

1. Lack of valid arbitration agreement.
2. Violation of due process.
3. Excess of the arbitral tribunal’s authority.
4. Irregularity in the composition of the arbitral tribunal or arbitral procedure.

1961 European Convention on International Commercial Arbitration (Geneva Convention):

The 1961 Geneva convention was applicable on agreements to settle disputes arising out of any trade relationship between the two or more physical or legal persons when such agreement is concluded at their habitual place of residence or they are seated in different contracting states. This convention was concerned with making the process of arbitration organized and uniform. This convention also deals with the jurisdictions of domestic courts of law. While taking the

decisions that concern the validity or existence of agreement of arbitration, these domestic courts of respective contracting parties examine the validity based on the contracting capacity of parties, under the laws which apply to them. Certain provisions for refusal or setting aside an arbitral award have also been stated in this convention.

1965 Convention on the settlement of Investment Disputes between States and Nationals of Other States (Washington or ICSID Convention):

The 1965 Washington convention established the International Centre for Settlement of International Disputes (ICSID) under the aegis of the World Bank Group. ICSID strove to settle disputes arising between foreign investors and contracting parties through arbitration and conciliation.²⁰

By the late 20th century, many jurisdictions around the world began implementing court-annexed ADR programs. These programs encouraged parties to consider mediation or arbitration before proceeding to formal litigation. Side-by-side, most countries enacted modern ADR legislation to promote and regulate ADR processes. These laws provide a legal framework for arbitration, mediation, and other forms of ADR.

The trigger was to reduce the burden on the overworked formal judicial system. Also, the slow and rigid judicial process was fast becoming unsuited to the demands of the past-faced modern world.

ORIGIN OF ONLINE DISPUTE RESOLUTION

The rise of online dispute resolution coincides with the emergence of the Internet as a viable medium of communication. The rapid growth of e-commerce in the 1990s led to an increase in online transactions and disputes. As more people began buying and selling goods and services online, the need for a dispute resolution mechanism in the similar platform became apparent. The increase of transnational trades through e-markets raised the number of low value high volume disputes in the ecommerce arena, creating a pressing need for an effective mechanism to protect consumer's rights. ODR rose as an alternative form of justice available and accessible to anyone who operates online.

In 1996, researchers at the University of Massachusetts and the University of Maryland took

²⁰ R. Masood, Historical Background of Alternative Dispute Resolution, LawBhoomi (2024), <https://lawbhoomi.com/historical-background-of-alternative-dispute-resolution/>

the first steps towards developing ODR programmes.²¹

Ebay's online dispute resolution platform

In 1999, eBay's launched an online mediation model for buyer-seller disagreements. This was the first large-scale online dispute model in the world. The online mediation system devised by eBay settled 200 disagreements in the first two weeks. By 2010, eBay's online mediation process resolved more than 60 million conflicts. eBay's dispute resolution system is built around a model of problem diagnosis followed up by automated negotiation and ends with mediation and arbitration.

The automated process helps buyers and sellers communicate directly when there is a problem with a transaction. If the parties to the transaction cannot solve the issue between themselves, the issue is escalated and eBay intervenes. Under the eBay money back guarantee, if the buyer claims the goods was "not as described," the seller has three business days to respond to the buyer with a solution, through either a replacement, a return, or a refund. If the seller does not offer a solution or the buyer is unsatisfied with the solution, the buyer has 30 days to ask eBay to step in and help otherwise. In this case, eBay reviews the case and decides within 48 hours. Once a decision is made, buyers and sellers have 30 days to appeal the decision by providing appropriate documentation. eBay's dispute resolution center remains one of the biggest and most successful ODR systems in the world.

Several private corporations attempted similar initiatives. By 2004, New York County, Brazil's Consumidor.gov and Europe's European Online Disputes Resolution Platform were well established and achieved high degree of success.

Other online providers such as Amazon and Alibaba also established their own low-cost dispute-resolution systems with the primary goal of maximizing the number of successful transactions.²²

ICANN's Domain name dispute settlement platform

In late 1999, the Internet Corporation for Assigned Names and Numbers (ICANN) put in place a dispute resolution process for resolving disputes over domain names. These are disputes in which a trademark owner asserts that the registration and use of the domain name by someone

²¹ Ethan M. Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace 3* (Jossey Bass, A Wiley Company, San Francisco, 2001).

²² Dev Sareen, "Online Dispute Resolution- Application and Challenges International Journal of Law Management & Humanities Volume 1, Issue 5 ISSN: 2581-5369" available at <https://www.ijlmh.com/wp-content/uploads/2019/03/Online-Dispute-Resolution-Application-and-Challenges.pdf>

else is infringing upon the rights of the trademark owner.

The ICANN process has been the subject of some controversy, mainly on account of jurisdictional issues. ICANN effectively arbitrates over the process, sidestepping the legal process of the host nations. Nevertheless, the platform has settled over five thousand decisions in a fast time-span. The process is also inexpensive for parties.

Today, the World Intellectual Property Organization (WIPO) offer online dispute resolution services specifically for domain name disputes. These processes help resolve disputes over domain names through arbitration or mediation. The WIPO Arbitration and Mediation Center offers time- and cost-efficient alternative dispute resolution (ADR) options, such as mediation, arbitration, expedited arbitration, and expert determination to enable private parties to settle their domestic or cross-border commercial disputes.

UNCITRAL working group III on Online Dispute Resolution

UNCITRAL adopted the Model Law on Electronic Commerce in 1996 and the Model Law on Electronic Signatures in 2001, which laid the groundwork for ODR. One of the main challenges faced by early ODR platforms was the lack of adequate redressal mechanisms for international disputes arising out of cross-border e-commerce transactions. The background for the initiative was the realisation that small claims that result from transnational e-commerce needed a legal framework that would favor speedy means of resolution. Traditional judicial venues such as national courts cannot overcome the issues of conflict of laws and jurisdiction, making it hard for consumers to access justice remedies and resolve disputes that originate from online transactions. An option for fast and easy resolution of online disputes would expand global commerce and economic growth. In 2010, based on a UN mandate, the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on Online Dispute Resolution (ODR) established standards and mechanisms for online dispute resolution, in both B2B and B2C space.²³

The working group met with a significant challenge to conceive rules that would overcome the differences and restrictions imposed by national laws regarding pre-dispute agreements to use ODR. For instance, U.S. allowed pre-dispute agreements to arbitrate with consumers and consider the resulting arbitral awards valid and enforceable. But member-states of the European

²³ 5Duhsyant Chauhan & Charu Bajaj “A STEP TOWARDS THE FUTURE: ONLINE DISPUTE RESOLUTION” Indian Journal of Integrated Research in Law Volume II Issue II ISSN: 2583-0538 available at <https://ijirl.com/wp-content/uploads/2022/04/A-STEP-TOWARDS-THE-FUTURE-ONLINE-DISPUTE-RESOLUTION.pdf>

Union deem pre-dispute agreements to arbitrate as non-binding upon consumers. There was also disagreement among members on whether to make the process compatible with the 1958 New York Convention that deal with small value claims. The UNCITRAL Commission finalized and adopted the Technical Notes on Online Dispute Resolution at its forty-ninth session in 2016. The UN General Assembly recommended all members states to promote and the “use of the Technical Notes in designing and implementing online dispute resolution systems for cross-border commercial transactions. These notes however are not rules for any ODR proceeding and do not impose any legal requirement that is binding upon the parties. They are only proposed to be of assistance regardless of the structure and framework of the ODR system. These technical notes mandate a two-track system that separated binding arbitration from other non-binding ODR processes. Both tracks involves a three-stage process that comprises of negotiation, negotiation settlement facilitated by a third neutral party, and a final determination presented by the ODR administrator to the parties. The recommendation would be either a non-binding recommendation or a binding arbitration depending on the chosen track.

In the first stage the parties negotiate directly with one another through the ODR platform. If that negotiation process fails, the process may move to a second, “facilitated settlement” stage, in which the ODR provider assigns a third neutral who helps the parties to reach an agreement. If the facilitated settlement stage also fails for any reasons or where one or both parties to the dispute request to move directly to the next stage of proceeding, a third and final stage occurs where the ODR administrator inform the parties of the possible process options to choose.

The other key points in the technical notes include:

- ODR platforms should embrace the principles of principles of fairness, due process, accountability, and transparency.
- The ODR system be based on the principles of fairness, due process, accountability, and transparency
- It should be simple, fast and efficient.
- The ODR process should provide a platform for generating, sending, receiving, storing, exchanging or otherwise processing communications.
- There should be specific direction on the commencement of the proceedings, appointment, power and functions of the neutral, language to be used, and governance

of the proceedings.²⁴

NCTDR and ICODR standards

The National Center for Technology and Dispute Resolution (NCTDR) established in 1998 played a pivotal role in researching and promoting ODR methods. It is affiliated with the University of Massachusetts Amherst. It provided a platform for academics and practitioners to collaborate on developing ODR tools and techniques.²⁵

ICODR is an international nonprofit that incorporated in the United States that drives the development, convergence, and adoption of open standards for the global effort to resolve disputes and conflicts using information and communications technology. ICODR promotes worldwide standards for all forms of technology-assisted dispute resolution, including diagnosis, negotiation, mediation, arbitration and courts. ICODR's open standards offer the potential to lower cost, stimulate innovation, protect consumers and citizens, and protect the right of free access to justice.

The NCTDR issued an Online Dispute Resolution (ODR) Standards in 2009. In 2016 it presented a set of Ethical Principles for Online Dispute Resolution. The International Council for Online Dispute Resolution (ICODR) issued updated ODR Standards in 2017 based on the Ethical Principles for Online Dispute Resolution and the NCTDR 2009 ODR Standards.²⁶

These standards require that online dispute resolution platforms and processes must be;

- a. Accessible: ODR must be easy for parties to find and available in communication channels accessible to all the parties.
- b. Accountable: ODR systems must be accountable to the institutions, legal frameworks, and communities that they serve. These platforms must be auditable and the audit made available to users. There should be human oversight for i) traceability of the originality of documents and of the path to outcome when artificial intelligence is employed, ii) determination of the relative control given to human and artificial decision making strategies, iii) outcomes, and iv) the process of ensuring availability of outcomes to the parties.
- c. Competent: ODR providers must have the relevant expertise in dispute resolution, legal, technical execution, language, and culture required to deliver competent, effective services.

²⁴ *ibid*

²⁵ Online Dispute Resolution: Effortless Justice Accessible to All available at <https://resolvedisputes.com/>

²⁶ *ibid*

- d. Confidential: ODR providers must make genuine effort to maintain the confidentiality of party communications. They should set policies as to i) who will see what data, ii) how and to what purposes that data can be used, iii) how data will be stored, iv) if, how, and when data will be destroyed or modified, and v) how disclosures of breaches will be communicated and the steps that will be taken to prevent reoccurrence.
- e. Equal: ODR providers must treat all participants with respect and dignity. ODR must seek to enable often silenced or marginalized voices to be heard and strive to ensure that offline privileges and disadvantages are not replicated in the ODR process. Bias must be proactively avoided.
- f. Fair and Impartial: ODR must treat all parties equitably and with due process, without bias or benefits for or against individuals, groups, or entities. Conflicts of interest of providers, participants, and system administrators must be disclosed in advance of commencement of ODR services.
- g. Legal: ODR providers must abide by, uphold, and disclose to the parties relevant laws and regulations under which the process falls.
- h. Secure: ODR providers must ensure that ODR platforms are secure and data collected are not shared with any unauthorized parties. Disclosures of breaches must be communicated along with the steps taken to prevent reoccurrence.
- i. Transparent: ODR providers must explicitly disclose: i) the form and enforceability of dispute resolution processes and outcomes and ii) the risks, costs including and benefits of participation.²⁷

LEGAL FRAMEWORK FOR ODR

The EU ODR Regulation

The EU ODR Regulation, also known as Regulation (EU) No 524/2013, is a legislation enacted by the European Union (EU) to facilitate the resolution of disputes related to online purchases of goods and services. The ODR Regulation applied to online sales or service contracts between consumers and traders that were conducted within the EU. It covered a wide range of sectors, including e-commerce, travel, and digital services. It provides consumers and traders with an accessible and efficient mechanism for resolving disputes without the need for traditional litigation. It marked a significant step toward promoting ODR as a means of resolving cross-

²⁷ Stephens Scown, Alternative Dispute Resolution – what is a blind bid mediation?, Stephens Scown, <https://www.stephens-scown.co.uk/business-disputes/alternative-dispute-resolution-what-is-a-blind-bid-mediation/>

border e-commerce disputes within the EU.

The ODR Regulation did not impose binding solutions on parties but aim to facilitate voluntary resolutions. However, if an agreement was reached through the ADR process, it could be enforced in accordance with national laws.

The key features and components of the EU ODR regulation include:

- **Online Dispute Resolution (ODR) platform:** The central element of the regulation was the establishment of the ODR platform, provided by the European Commission. Customers and traders could use the online platform to resolve disputes related to online transactions. The platform is accessible in all official languages of the EU.
- **Information obligations:** Traders engaged in online sales or services were required to provide a link to the ODR platform on their websites and in their online sales or service contracts. They also had to inform consumers about the existence of the ODR platform and the option to use it for dispute resolution.
- **ADR Entities:** The ODR Regulation encourages the use of Alternative Dispute Resolution (ADR) entities to facilitate dispute resolution. ADR entities, accredited by competent authorities, could assist consumers and traders in reaching a mutually acceptable resolution.
- **Exemptions:** Some sectors and types of disputes are exempted from the ODR Regulation, such as disputes related to health services, public procurement, and rental of residential property.²⁸

The legal framework for ODR in the UK

Various ADR schemes exist in the UK to facilitate ODR for consumer disputes. These schemes cover various sectors, such as retail, finance, and telecommunications, and help consumers and businesses resolve disputes online.²⁹

Arbitration Act 1996

The Arbitration Act 1996, which governs arbitration in England and Wales, specifically provides for the use of electronic communications in arbitral proceedings. Parties to an arbitration process can agree to use digital tools and platforms to conduct their dispute, such as

²⁸ European Parliament, EU Framework on Alternative Dispute Resolution for Consumers, 1 (EPRS Briefing, 2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757788/EPRS_BRI\(2024\)757788_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757788/EPRS_BRI(2024)757788_EN.pdf)

²⁹ Victor Terekhov, Online Mediation: A Game Changer Or Much Ado About Nothing? https://ajecjournal.com/upload/attaches/att_1569575810.pdf

video conferencing, online document sharing, and electronic signature.

A primary challenge facing ODR is Sn 67 of the act. This section allows a party to arbitral proceedings to challenge any award of the arbitral tribunal as to its substantive jurisdiction. Sn 68 further allows any party to a party to arbitral proceedings to challenge an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. The section further lists irregularity as;

1. Failure by the tribunal to comply with section 33, which is the general duty of tribunal.
2. The tribunal exceeding its powers or jurisdiction
3. Failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;
4. Failure by the tribunal to deal with all the issues that were put to it;
5. Any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers
6. Uncertainty or ambiguity as to the effect of the award;
7. The award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;
8. Failure to comply with the requirements as to the form of the award; or
9. any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.³⁰

The scope to list ODR proceedings under such irregularities are very high.

In Buheiry v VistaJet Ltd³¹

Mr Buheiry, the claimant, sought to set aside a London Court of International Arbitration (LCIA) arbitration award under sections 67 and 68 of the Arbitration Act 1996 made in favour of the defendant, VistaJet Ltd. The challenge was under 275 the grounds that there was no valid arbitration as the defendant had failed to take a valid assignment of the contract between one of its group companies and the claimant, and also failed to provide correct notice of the request for arbitration. The court considered the principles of kompetenz-kompetenz, where the tribunal is deemed to have full autonomy, and severability in making its decision, and ultimately found that there was a valid assignment and notice was given properly, so that the

³⁰ ibid

³¹ Buheiry v VistaJet Ltd [2022] EWHC 2998 (Comm)

claim must necessarily fail. As this case proves, there are several hurdles to set aside an arbitration award. In 2019–2020 of all the section 68 applications, only 11% of 28 applications were successful or partly successful, with that figure being 8% for the year before. In 2019–2020 of section 67 applications, similarly only 11% of 19 applications were successful.

Civil Justice Act 2013

The UK also has a system of court-annexed ADR, where judges may encourage parties to consider mediation or other ADR methods before proceeding to formal litigation. Such ADR methods may include ODR as well. The Civil Justice Act, 2013 provides a general framework for the use of ADR in civil disputes. The Act also gives the courts the power to direct parties to ADR at any stage of a court proceeding.

Consumer Disputes Act, 2015 and rules

The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 establishes competent authorities responsible for the accreditation and oversight of ADR entities handling consumer disputes. They also require businesses to inform consumers about ADR options.

These ADR entities are bound by;

- 1. Electronic Communications Act, 2000:** The Electronic Communications Act 2000 and the Electronic Identification and Trust Services (eIDAS) Regulation set the legal framework for online contracts and electronic signatures in the UK, which are often integral to ODR processes.
- 2. Data Protection Laws:** ODR platforms in the UK must comply with data protection laws, including the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, to ensure the privacy and security of user data.³²

In Intel Corp. v. Advanced Micro Devices, Inc.³³, the court held that an arbitral award made using electronic means was valid and enforceable. The court found that the use of electronic means did not affect the fairness of the proceedings or the ability of the parties to participate effectively.

³² *ibid*

³³ 542 U.S. 241 (2004)

In Green v Betfred (Gibraltar)³⁴, a clause hidden deep in the online terms and conditions was held unenforceable because it was not brought to the attention of the customer sufficiently. Such “clickwrap” or “clickthrough” agreements can be an impediment in the enforceability of online agreements, and can subvert the online dispute resolution process.

In India

The first major initiative for ODR in India was in June 2020, when the NitiAayog brought together senior judges of the Supreme Court, secretaries from key government ministries, and leaders of the industry, for advancing ODR in India. On June 10, 2021, the NitiAayog released an handbook containing rules, policies, and expectations from the system.

The following are the legal hooks for the validity of ODR processes in India.

The Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 provides the framework for the conduct of arbitration proceedings in India. Section 7 of the Act defines the arbitration agreement as “an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.” The section mandates the arbitration agreement to be in writing, and deems the agreement to be in writing if it is a document signed by the parties, or an exchange of letters, telex, telegram, or other means of communications. The 2015 amendment to the act inserted “including communication in electronic means” as a valid means to arbitration agreement. When parties make an arbitration agreement, they agree to resolve their disputes through arbitration rather than through court proceedings. The agreement must specify the disputes covered by the arbitration agreement. It could be all disputes or only certain disputes that have arisen or may arise between the parties.

The disputes covered by the arbitration agreement must arise out of a defined legal relationship between the parties, whether contractual or not. This means that the parties must have a legal basis or connection for their disputes.³⁵

The Information Technology Act, 2000

The Information Technology Act governs electronic transactions and provides legal

³⁴|2021| EWHC 842 (QB)

³⁵ Karim Benyekhlef and Fabien Gélinas, “Online Dispute Resolution” 10:2 Lex Electronica 1- 129, 47 (2005), available at: <http://ssrn.com/abstract=1336379>

recognition to electronic documents and signatures. Section 65B of the Act deals with the admissibility of electronic records as evidence.

Section 75 provides for the establishment of an ODR mechanism for resolving disputes related to electronic transactions. The government has the power to prescribe rules for ODR, including the appointment of neutrals and the enforcement of their decisions. However, as of now, specific rules or regulations for ODR have not been prescribed.

Indian Contract Act, 1972

The Indian Contract Act governs the validity and enforceability of contracts entered into online. Section 10 of the Indian Contract Act states that agreements made by means of electronic communication are valid and enforceable, provided that they meet the essential elements of a valid contract.

The essentials of a valid contract as per the Contract Act, 1972 include:

1. **Offer and Acceptance:** A contract begins with a valid offer made by one party to another, which is then accepted by the other party. Both the offer and acceptance must be clear, specific, and communicated between the parties.
2. **Intention to Create Legal Relations:** The parties involved must have a genuine intention to enter into a legally binding agreement.
3. **Lawful Consideration:** Consideration refers to something of value that is exchanged between the parties as the basis of the contract. It can be in the form of money, goods, services, or abstinence from doing something. The consideration must be lawful and sufficient.
4. **Capacity of the Parties:** The parties to a contract must be competent to enter into a contract. This means they should be of sound mind, not disqualified by law, and of legal age (18 years in most cases).
5. **Free Consent:** The consent of the parties must be freely given. It should not be obtained through coercion, undue influence, fraud, misrepresentation, or mistake. The consent should be genuine and voluntary.
6. **Lawful Object:** The object or subject matter of the contract must be lawful. It should not be illegal, immoral, or against public policy. Any agreement that involves an unlawful object or consideration is considered void.
7. **Certainty and Possibility of Performance:** The terms and conditions of the contract must be clear, definite, and capable of being performed. Vague or uncertain terms may render

the contract void.

The Civil Procedure Code, 1908

The Civil procedure Code (CPC) governs civil proceedings in India. Order X Rule 1A provides for the use of video-conferencing or other audio-visual devices for recording evidence.

Principles of fairness and due process

Any legal process should provide parties with a fair and equal process. There is no short cut to due process either. Due process is “a course of formal proceedings carried out regularly and in accordance with the prevalent law.”

The two cardinal principles of natural justice are

1. No person should be a judge in a case in which they have an interest
2. Principle of fair hearing or audi alterum partem.

Each party should have an equal opportunity to present evidence and law, and the third party, i.e. the mediator or arbitrator treats each party equally and impartially.³⁶

CHALLENGES TO ODR IN INDIA

- Lack of awareness and trust: Lack of awareness and trust among the general people is one of the key problems for ODR in India. Many people are not familiar with ODR and may be hesitant to use it, especially in important disputes.
- Digital Divide: A considerable portion of the Indian population lives in rural and isolated locations with limited access to technology and the Internet.
- Language Barriers: India is a multilingual country with several languages and dialects. This makes it difficult to provide ODR services in different languages, as there is a need for trained mediators who are proficient in multiple languages.
- Quality of Mediators: The quality of mediators in ODR platforms is a crucial factor that affects the success of the system. There is a need for skilled and experienced mediators who can comprehend the complexities of various disputes and assist parties in reaching mutually acceptable solutions.
- Legal recognition: Currently, there is no specific legislation governing ODR in India. Although the IT Act, of 2000 recognizes electronic records and digital signatures as

³⁶ Vakul Sharma and Seema Sharma, Information Technology Law and Practice (Lexis Nexis, 9th edn.,2025)

legally valid, there is no clarity on the legal enforceability of ODR decisions.

- Technical challenges: Technical challenges such as network connectivity issues, power outages, and cybersecurity concerns can impact the efficiency and effectiveness of ODR processes.
- Limited scope: Currently, ODR is primarily used for resolving disputes in e-commerce transactions. However, it has yet to be widely accepted for other sorts of conflicts such as family, property, and civil.
- Privacy concerns: There are concerns about the privacy of data exchanged during ODR processes, especially when it involves sensitive information.

CONCLUSION

Online Dispute Resolution (ODR) in India is still in the nascent stages, however, it holds enormous potential for changing the traditional dispute resolution mechanisms in the country. ODR offers numerous advantages such as convenience, accessibility, cost-effectiveness, and faster resolution of disputes. However, adopting ODR in India also faces significant challenges, such as the lack of awareness, infrastructure, and trust in online systems. The future of ODR in India is bright, as the government has already taken initiatives to promote its use, and businesses are increasingly adopting ODR systems. However, the challenges of adoption need to be addressed to ensure its widespread use.

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