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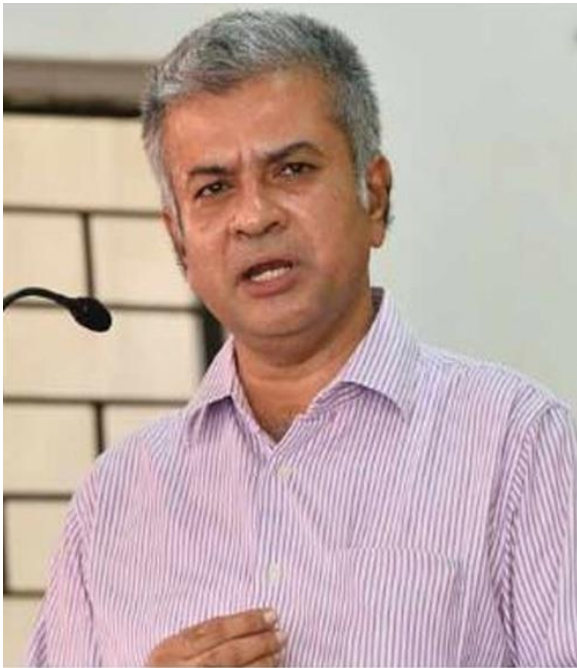
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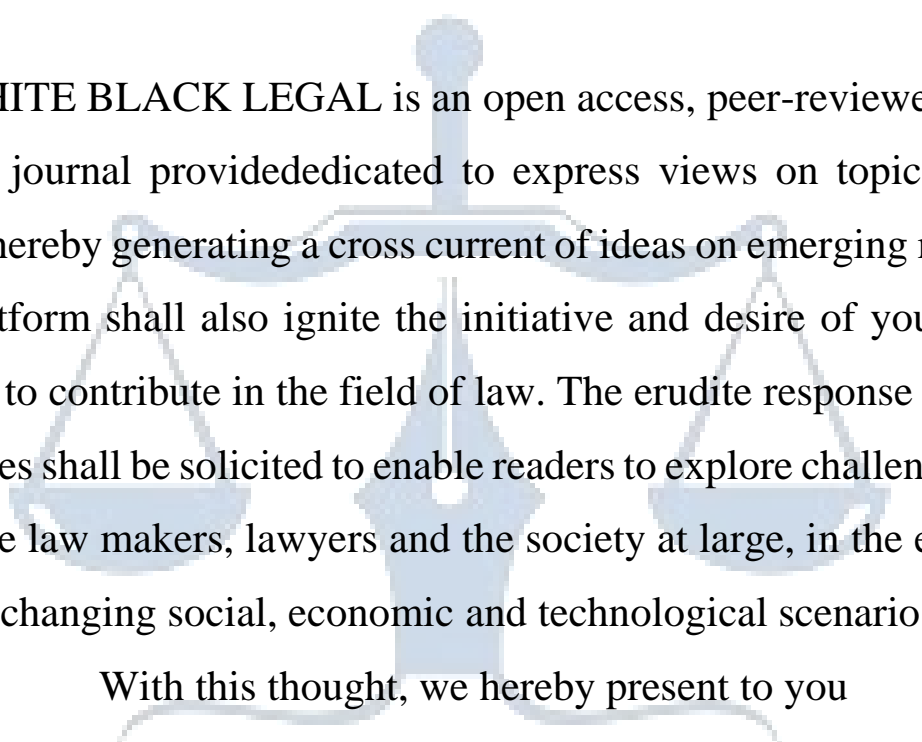


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

W H I T E B L A C K
L E G A L

An Appraisal of the Role of ADR in resolving disputes in Online shopping

Authored By- Tanu Mehta

ABSTRACT

If we look around globally, it is pertinent to note that there has been a tremendous change in the legal systems all across the globe. Among all other countries, India has been continuously attempting to implement a system-design approach for its legal system. Arbitration, conciliation, mediation, judicial settlements, and Lok Adalat have emerged as a result of a transition from traditional courts to alternative dispute resolution methods. Similarly, the idea of online dispute resolution has changed throughout time as a result of the effective and rapid use of technology. In this article, we shall discuss more about Online Dispute Resolution and its importance in e-commerce.

INTRODUCTION

Online Dispute Resolution (ODR) is a method for resolving conflicts, especially those with small- and medium-sized financial stakes, using digital technology and ADR approaches like arbitration, conciliation, and mediation¹. ODR is defined in paragraph 24 of the Technical Notes on Online Dispute Resolution 2016 by the United Nations Commission on International Trade Law (UNCITRAL) as 'A mechanism for resolving disputes through the use of electronic communications and other information and communication technology [ICT]. The process may be implemented differently by different administrators of the process and may evolve over time²'. In simple words, Online Dispute Resolution (ODR) refers to the process of resolving disputes over the internet, using technology to facilitate communication, negotiations and decisionmaking.

¹ NITI Ayog, NITI Aayog Pushes for Online Dispute Resolution for Speedy Access to Justice, available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1776202>

² Technical Notes on Online Dispute Resolution 2016, (UNCITRAL), available at https://uncitral.un.org/en/texts/onlinedispute/explanatorytexts/technical_notes

NEED FOR ODR IN INDIA

In India, the ODR mechanism is used to arbitrate over bulk matters which was earlier impossible. Imagine that a Fintech is assigned with client data running into 15,000 PAN India, In such a scenario, ODR comes as a saviour.

It is evident that India has experienced a significant expansion in the use of legitimate measures, moving from traditional courts to alternative conflict resolution methods that facilitated the emergence of Lok Adalat, Arbitration, Conciliation, and Mediation. The main problem is not how to get access to justice, but rather the growing quantity of cases being submitted every day. ODR not only lessens the court's workload but also expedites and lowers the expense of justice for the general public.

Physical proceedings necessary for the ADR procedure are frequently prohibited by geographical restrictions, and these restrictions have taken on an unusual quality in the COVID-19 era. Online dispute resolution is a potentially beneficial approach that must be adapted in order to overcome this dilemma. It gives us the option of using online dispute resolution techniques like video conferencing and document sharing to settle disputes through arbitration, negotiation, or mediation.

Online dispute resolution is becoming more popular in India, as it is less expensive and less time-consuming. It becomes more advantageous for conflicts that aren't heard for a variety of reasons, such as time or expense constraints; in these cases, ODR, which is both time and money efficient, can be used.

During COVID-19, ODR was used to settle disputes relating to lending, property, credit, commerce, and retail, which are crucial components of economic recovery. There have been instances when the courts have acknowledged the necessity of ODR practises being used by all courts. Even the former Chief Justice, *Justice Bobde*, has stressed the significance of making steps to make courts virtual in order to prevent the closure of the highest courts in light of the COVID-19 pandemic³.

There are numerous ODR platforms available, including CADRE, SAMA, the Centre for Online Dispute Resolution, AGAMI, etc. Key parties were recently brought together at a meeting on "Catalysing Online Dispute Resolution in India" organised by NITI Aayog in 3 SCO Team (2021, May 21) COVID Coverage: Court's Functioning. *The Supreme Court Observer*

<https://www.scobserver.in/journal/covid-coverage-courts-functioning/>

association with Agami and Omidyar Network India⁴. The gathering's goal was to bring online dispute resolution to a larger audience in India.

It was agreed by the dignitaries that ODRs have great opportunities in India especially when it comes to commercial conflicts. Since efficient dispute resolution will be crucial to reviving the

economy in the midst of COVID-19, it has the ability to improve access to justice and ease of doing business.

Video conferencing has been recognised by the Supreme Court of India in the case of the *State of Maharashtra vs. Dr. Praful B. Desais* as a legal way to record witness testimony. Due to this, the legal framework and precedents established by the Supreme Court of India support the use of technology in dispute resolution as well as the use of ODR procedures.

The ability to file a lawsuit electronically using e-Filing and pay court fees or fines online at <https://vcourts.gov> is now available in India as well. Through a variety of channels designed for service delivery, the litigant can also examine the status of the case online.

It is interesting to note that each judge in India receives an average of 1,350 cases, whereas his colleague in the US only has to deal with 388 instances⁶. Hence, promoting and enhancing a technology-driven dispute resolution procedure, as a result, not only seems promising for lawyers but also increases the effectiveness of the Indian legal system.

LEGAL FRAMEWORK OF ODR IN INDIA

A number of relevant laws address the Alternative Dispute Resolution (ADR) and technological aspects of Online Dispute Resolution (ODR). The Arbitration and Conciliation Act, of 1996 provides a detailed mechanism related to Alternative Dispute Resolution in India.

Section 89 Code of Civil Procedure, 1908, provides that the court has the authority to subject the parties to all ADR procedures, not just arbitration, but other mechanisms such as conciliation, judicial settlement, mediation, or Lok Adalat.

The Legal Services Authorities Act of 1987 governs Lok Adalat in India. The Commercial Courts Act, of 2015 also brought pre-litigation mediation to India⁷. Before starting a lawsuit, the parties should think about starting mediation unless the situation calls for immediate temporary relief. According to Section 442 of the Companies Act, 2013, the Central 4 Dalberg (Online Dispute Resolution: Shifting from Disputes to Resolutions)

https://www.indiansmechamber.com/drive/ODR%20Handbook_Revised%20final%20.pdf

⁵ (2003) 4 SCC 601

⁶ Bhaven Shah (Online Dispute Resolution: A possible cure to the virus plaguing the justice deliver system?)

<https://www.barandbench.com/columns/online-dispute-resolution-a-possible-cure-to-the-virus-plaguing-thejustice-delivery-system>

Government is required to maintain a group of professionals known as the "Mediation and Conciliation Panel." As a result of the statute, parties to proceedings before the National Company Law Tribunal (NCLT) or National Company Law Appellate Tribunal (NCLAT), and occasionally even the central government, are now able to ask for the issue to be directed to mediation. After the formation of "Consumer Mediation Cells" in each district, consumers are given access to widespread mediation under section 74 of the Consumer Protection Act of 2019.

Additionally, the Consumer Protection Act (E-Commerce) Rules, 2020, which require e-commerce entities to create internal grievance redressal mechanisms, laid the groundwork for ODR.

The Information and Technology Act, of 2000 also applies to ODR's technical components.

The same can be inferred from reading sections- 4 & 5 which acknowledge electronic records and signatures.



ADVANTAGES OF ONLINE DISPUTE RESOLUTION

1. ODR is a generally non-formal, adaptable, and creative method of resolving disputes that are not constrained by rigid standards of procedure and proof. This could give the parties the opportunity to create or take part in a process that can be tailored to their requirements and promotes a cooperative rather than a combative approach.
2. ODR may lower litigation expenses, which is crucial for both corporate parties looking to control costs and individuals who might not otherwise be able to pay the cost of litigation. All parties typically share in the costs of the procedure or the payment made to the neutral evaluator, giving them an equal stake in the result and a sense of ownership.
3. ODR may be the best option, especially for low-cost, high-volume transactions, because it frequently allows for a timely, cost-effective, and efficient resolution of problems where the amounts in dispute are insufficient to justify the cost of a meetingbased mediation (e.g. consumer disputes)⁸.

⁸ Setia Putra. (2014). Legal Protection for Consumers in Buying and Selling Transactions Through E-Commerce, Journal of Legal Studies, Vol 4 No 2. 290

4. ODR also allows for a more cost-effective resolution of disputes when the parties are separated by a significant geographical distance and the amount in dispute precludes the cost of travel.

5. When there are sensitivities between the parties that may be exacerbated by being in the same room, ODR may be appropriate (e.g. matrimonial disputes).

6. Parties who would be unable to attend an in-person meeting owing to a serious impairment may be able to participate in ODR.

7. ODR is subject to the application of the Access to Information Act and of the Privacy Act when the federal government is a party and is confidential (unless the parties agree otherwise). The procedure is appropriate when the parties feel that confidentiality is important or necessary, which is frequently the case. Parties who use DR mechanisms typically do so on the understanding that they can freely discuss issues in the expectation that they won't be disclosed, either publicly or to a court⁹.

ONLINE DISPUTE RESOLUTION (ODR) IN E-COMMERCE

The COVID-19 pandemic's physical restrictions have caused the Indian e-commerce market to flourish exponentially. People's reliance on e-commerce and the growth of online transactions have brought attention to the necessity for strong regulation to safeguard consumer rights in this industry.

The Consumer Protection (E-Commerce) Rules, 2020 (Rules) were recently notified by the Ministry of Consumer Affairs, Food, and Public Distribution to govern e-commerce in India.

The Rules stipulate the following two conditions in order to make e-commerce safer for consumers: first, that each e-commerce firm integrates proper grievance redressal systems; and second, that they take part in the national consumer helpline programme of the central government. The first is a prerequisite, whilst the second is still optional.

The e-commerce sector is still implementing these compliances even though the rules went into effect on July 24, 2020. The Confederation of Indian Industries (CII) and the Federation of Indian Chambers of Commerce & Industry (FCCI) wrote to the ministry in August 2020 requesting extra time to abide by the rules.

The Central Government is consistently working to create a safer e-commerce sector for consumers. In order to create a safer e-commerce sector for consumers, Information and 9 Richard Laren; Jon B. Sanderson, Innovative Dispute Resolution - The Alternative, (Thomson Canada Ltd.), 1994, p. 3-3.

communication technology (ICT) is used to increase consumer grievance redressal accessibility, effectiveness, and cost-effectiveness. ICT will make it simple to comply with the rules overall.

In such a scenario, Online Dispute Resolution comes to the rescue. ODR can assist in building platforms that allow e-commerce businesses to track down and address customer complaints in a time-efficient manner. ODR methods and platforms, particularly for e-commerce platforms, have recently become the most advocated form of dispute resolution in several nations.

ONLINE DISPUTE RESOLUTION (ODR) AS THE FUTURE OF DISPUTE RESOLUTION MECHANISM

Due to the aftermath of the COVID-19 pandemic, we are now compelled to acknowledge the shortcomings of the established dispute resolution process and search for alternatives. ODR is well known for offering rapid and affordable dispute resolution. E-commerce is one of the industry's best suited for the successful implementation of ODR due to the nature of the business. In E-commerce, buyers and sellers are generally located in different geographical locations and a high frequency of low-value online transactions exists.

ODR is based on alternative dispute resolution (ADR) techniques, such as negotiation, mediation, and arbitration, and uses technology to speed up the process. When compared to ADR, technology is an extra element in ODR. In fact, technology is sometimes referred to as ODR's fourth partner, joining the disputing parties and the conflict resolution expert¹⁰.

ODR allows for simple and flexible communication between the parties without requiring their physical presence by using basic technologies like SMS, e-mails, and video conferencing capabilities. When ODR is at a more advanced stage, it can develop tools that use artificial intelligence and machine learning to help parties better plan their course of action and reduce disagreements.

Explaining the ODR process through an illustration

Satyartha Legal Pvt. Ltd., an Indian company that sells online courses for lawyers worldwide, has a dispute with a client from a different nation. Both parties have chosen online dispute resolution (ODR) as a means of resolving their conflict, and they have chosen online arbitration, one of the ODR mechanisms. As a result, since the parties are engaging in online arbitration, they will communicate via email to discuss and choose the applicable law before signing an arbitration agreement online. Next, they will choose the server's physical location where the arbitration will be conducted online, as well as the location where the arbitrator will sign the arbitrator's award. So, this is how the online dispute resolution process functions.

ONLINE DISPUTE RESOLUTION (ODR) IN ONLINE SHOPPING PROCESS IN ONLINE SHOPPING:-

The diagram above shows how the ODR team settles disputes arising from e-commerce that is facilitated by a marketplace or e-commerce involving parties, such as sellers and purchasers.

1. The interaction between buyers and sellers on online marketplaces or shopping sites.
2. Engaging in online transactions for buying and selling that result in a contract for a sale and purchase between parties.
3. A dispute arose in the sale and purchase of goods. For example, the buyer raised an issue that the product shown by the seller on the website is not similar to the product he received.

SELLER ONLINE SHOPPING
WEBSITES

BUYER

E-COMMERCE

TRANSACTION

DISPUTE AROSE BETWEEN

BUYER AND SELLER

DISPUTE RESOLUTION BY ODR

MECHANISM

AS A THIRD PARTY/

MEDIATOR

4. The ODR team (being the third party), would ask the buyer to provide the photo, video, receipt number of the purchase and other necessary evidence required to proceed further.
5. Then the evidence provided by the buyer will now be reviewed by the ODR team.
6. Finally, a conclusive decision which is amicably accepted by the parties shall be delivered.

SNAPDEAL

Using the pandemic-related disruption as the catalyst, Snapdeal started employing "Online Dispute Resolution" (ODR) to make resolutions via technology, simple, and quick.

To make this possible, Snapdeal hired SAMA, an expert in online dispute resolution (ODR), who uses technology and a network of highly qualified people to settle disputes more quickly and affordably.

In order to address pending customer complaints, Snapdeal started a test operation with “Sama Suljhao Manch”. The pilot's results demonstrate how technology and procedures may be used to speed up projects and ensure that everyone involved benefits.

The study included over 240 instances in which customers indicated an interest in learning more about a reconciliation process. A thorough conflict resolution was reached in roughly 130 of these cases, resulting in a 54% success rate. The “Sama Suljhao Manch” resolved cases that ordinarily take up to three years to resolve in just 15 days!

Through the use of a platform for online mediation services and the assistance of a qualified neutral conciliator, the ODR process managed to bring both parties to the negotiating table.

Under the Indian Arbitration and Conciliation Act, of 1996, the conciliator was given the authority to act as a conciliator and convinced the parties to come to binding agreements. In this approach, Sama was able to promptly and amicably settle a number of customer concerns.

LIMITATIONS OF USING THE ODR MECHANISM

1. To participate in an ODR Process, all participants would need to have the necessary technologies. Parties without sufficient technology could be hindered or unable to engage fully.

2. Because the participants are not present in the same room and frequently have all of their discussions in writing, ODR is a less intimate method of resolving disputes.
3. In an ODR procedure, parties with language barriers and/or written communication issues may be at a disadvantage.
4. ODR cannot set legal precedents because it is a non-binding practice that only occurs during the negotiation or mediation phase. However, if adjudication occurs at the end of the ODR Process, a new legal standard can be established.

CONCLUSION

The use of information and communication technology should be leveraged going forward to make consumer grievance redressal more affordable, effective, and accessible as information and communication technology will make following the rules much easier. This is because the government plans to establish a safe and secure e-commerce market in India. ODR can assist e-commerce businesses in developing a platform where consumer complaints can be heard and resolved at an early stage. ODR platforms and methods are currently thought to be the most popular means of resolving business disputes, particularly for e-commerce platforms.

Therefore, I think the government should consider creating an ODR platform for e-commerce companies in India. This platform could be designed along the same lines as European ODR platforms, under which all E-Commerce Companies in the European Union are required to provide a link to the platform of the website which is easily accessible. Consumers are given the choice of resolving their complaints on that platform directly with the seller or by submitting a complaint to one of the ODR bodies listed there. If the parties are unable to resolve their dispute through ODR, the consumers are advised to seek relief from traditional dispute resolution bodies. If this method is put into place in India in the near future, it is certain that the judiciary's backlog of commercial matters will drop significantly and that it will have more time to devote to pressing national issues.