

A STUDY ON CHALLENGES AND EFFICACY OF ONLINE DISPUTE RESOLUTION SYSTEM IN INDIA

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Abstract

Keeping in view the difficult situation occurs due to Coronavirus pandemic, 'work from home' and 'study from home' have become the new norm for businesses and students around the world. In India too, the looming threat of mass infections has received a similar welcome. The situation in Indian courts is no different. Therefore, Online dispute resolution system becomes an inevitable option specially for speedy and distant business to business that is commercial disputes of all sorts. The present paper therefore deals with the concept of online dispute resolution system, its need in the present times, challenges posed before such system and its efficacy in dealing with the cases with suitable recommendations.

INTRODUCTION

Globalization has been a great stimulation in the process of integration of economies and societies of different countries across the globe. It has been a great tool for breaking economic barrier and envisioning world as a market for trade. In the modern techniques of dispute resolution of commercial conflicts, emphasis has drifted from litigation to arbitration. As things are never static, emphasis is further sliding from arbitration to alternate dispute resolution procedures. Online dispute resolution in India is an important part of Legal Enablement of ICT Systems in India and Legal Framework for Information Society in India. Online dispute resolution (ODR) in India is in its infancy stage and it is gaining prominence day by day. With the enactment of Information Technology Act, 2000 in India, e-commerce and e-governance have been given a formal and legal recognition in India. Even the traditional arbitration law of India has been reformulated and now India has Arbitration and Conciliation Act, 1996 in place that is satisfying the harmonized standards of UNCITRAL Model. Even the Code of Civil Procedure, 1908 has been amended and section 89 has been introduced to provide methods of alternative dispute resolution (ADR) in India. The paper aims to analyze the meaning, need and efficacy of online dispute resolution in India. The necessity of the same has arisen due to the growing use of alternative dispute resolving mechanism in India it will reduce the burdening of the already overburdened Courts in India.

HYPOTHESIS

The rapid technological change and digitalization has already had a profound impact on global trade, economic growth, and social progress where E-commerce has generated trillions of dollars in economic activity. Therefore, it can be said that it necessitates the emergence of ODR system to help parties to resolve dispute quickly and effectively by sitting at distant places by overcoming jurisdictional issues and eliminating geographical barriers.

Lack of technological knowledge, confidentiality, enforceability, jurisdiction etc. are the various challenges posed before effectively implementation of ODR system. Therefore, it can be said that effective measures are required to be taken to overcome challenges.

OBJECTIVES

- To study and analyze the meaning, nature and scope of online dispute resolution system.
- To understand and analyze the need of ODR system.
- To study the efficacy of ODR and challenges before it.
- To conclude with proper recommendations.

RESEARCH METHODOLOGY

The researcher has adopted doctrinal method for the purpose of collection of data. It includes online books, articles, various law journals, newspapers and internet. The material was collected and arranged in systematic order.

MEANING & DEFINITION OF ONLINE DISPUTE RESOLUTION

Online dispute resolution (ODR) is a form of online settlement that uses alternative methods for dispute resolution (alternative dispute resolution). The term covers dispute that are partially or fully settled over the Internet, having been initiated in cyberspace but with a source outside it (offline).

HON. Arthur M. Monty Ahalt (ret.) defines the term as:

“ODR is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between the parties. It primarily involves negotiation, mediation or arbitration or combination of all three. In this respect it is often seen as being the online equivalent of ADR (Alternate dispute resolution)”

According to Katsh and Rifkin:

“Three important factors namely convenience, trust and expertise forms the essence of ODR”.

NATURE AND SCOPE OF ONLINE DISPUTE RESOLUTION

It is fair to state that ODR emanated from traditional Alternative Dispute Resolution (ADR). For this reason, many authors have seen ODR simply to mean using the internet to provide ADR. According to Arun, ODR involves the use of information technology to facilitate the application of traditional alternative dispute resolution mechanisms in the cyberspaces.

Being an offspring of ADR, ODR uses the various ADR methods to settle online disputes. Thus, ODR can be defined as the deployment of application and computer networks for resolving disputes with ADR methods.

Online Dispute Resolution is a branch of dispute resolution which uses technology to facilitate the resolution of dispute between parties.

ODR is particularly convenient and efficient where parties are located at a distance, hence, it discards the need to travel since parties can communicate even at a distance. It can be used to resolve internet related disputes more particularly e-commerce disputes. Asides disputes arising from online interactions and transactions, ODR can also be used for traditional offline disputes.

Being a contemporary issue in the ADR community, ODR has attracted so many authors. Most of these authors have further described ODR using other names. Some of the names used are:

Internet Dispute Resolution (iDR).

Electronic Dispute Resolution (eDR).

Electronic ADR (eADR).

Online ADR (oADR).

NEED OF ONLINE DISPUTE RESOLUTION

We know that The Fourth Industrial Revolution – driven by rapid technological change and digitalization has already had a profound impact on global trade, economic growth, and social progress. E-commerce has generated trillions of dollars in economic activity in recent years and continues to accelerate due to the ability of data to move across the borders. It underpins new business models, boosting global GDP by 10% in the last decade alone. Recently, the government of India announced policy initiatives designed for large e-commerce platforms. Still, there is a long way to go when it comes to online dispute mechanism. Basically, ODRS is needed due to following reasons:

Disputes resolution is a tricky affair for all stakeholders including courts, government, companies, individuals, international organizations, etc.

This is more so where the conflict of law is involved as different countries may have different laws for dispute resolution.

To reduce the hardships of such disputes, countries should adopt a model code of conduct that was incorporated in their respective domestic laws.

Indian judicial system is already burdened with piles of cases; things will become much worse with the issues of increasing e-commerce disputes.

For limiting the role of national courts and to give primacy to the will of the parties in establishing the procedure for the settlement of their disputes.

Securing procedural fairness by means of a limited number of provisions from which the parties could not agree to depart.

Putting in place rules which advance arbitration, even if the parties have not reached agreement on all relevant procedural matters.

In spite of the drawbacks linked with online arbitration, it remains one of the most significant methods of resolving Business to Business (B2B) and Business to Consumer (B2C) disputes in the current era.

EFFICACY OF ONLINE DISPUTE RESOLUTION SYSTEM

The use of ODR in India is at a nascent stage and is starting to gain prominence day by day. A joint reading and interpretation of the Arbitration and Conciliation Act, 1996, Information Technology Act, 2000, and Indian Evidence Act, 1872 not only make ODR legally and technically viable, but also helps overcome jurisdictional issues, eliminate geographical barriers, automate administrative tasks, improve productivity of professionals, promote eco-friendly processes, and finally, deliver a quick, economical and effective solution to disputes.

That being said, the three branches of governance have been making strides in optimizing our legal and justice delivery system and are making it conducive to formally induct ODR in mainstream dispute resolution.

In May 2019, a high-level committee constituted by the Reserve Bank of India submitted a report on 'Deepening of Digital Payments' in India and was of the view that payment systems should move towards using a machine driven, online dispute resolution system to handle complaints expeditiously.

CHALLENGES BEFORE ONLINE DISPUTE RESOLUTION SYSTEM

Following challenges are posed before an Online dispute resolution system:

Lack of technical knowledge-

The fact that there are many people who are not tech-savvy can be a big hindrance for Online Dispute Resolution system.

Problem of Confidentiality-

Recently, concerns regarding the security of Zoom - the most used application for all business meetings - were raised. The possibility of confidential information submitted in ODR proceedings being compromised is a real threat.

All kinds of dispute resolution, especially those pertaining to commercial contracts, have very important technical and sensitive information passed during the course of the proceedings. While practicing ODR, this information will have to be submitted and uploaded on servers of the service providers. How safe these servers will be becoming a legitimate concern. Hence, it shall be of prime importance to come up with a secure platform in order to keep the sensitive information private, protected and absolutely confidential.

Place of the proceedings or Jurisdiction of courts-

In case of online hearing parties may be sitting at their own places which gives rise to question of jurisdiction applicable to the proceedings. Application of substantive law becomes very important in all kinds of proceedings, as is the case for ODR as well. A well thought out plan for determining jurisdiction needs to be etched out before initiating the process of commencing ODR.

Problem relating to Enforceability of Award-

Jurisdiction, place of proceeding, and enforceability are inter-connected matters. The resolution reached through ODR, whether in the form of an award and/or a settlement agreement, may ever see the light of day and may not be enforced and/or challenged in courts of law properly. Further the process of challenge or appeal also raises question.

Conduct of the proceeding-

For the conduct of proceedings, all institutions and service providers involved may come up with their own procedural rules, on the basis of their expertise to carry out the process. These rules may also define and clarify important aspects such as the jurisdiction, place of proceeding, seat, enforceability, challenge/appeal procedures etc. Parties shall be at liberty to then pick and choose which service provider or rules they are most comfortable with. Therefore, it requires specific guidelines for ODR passed by the Legislature to make it a success in these times.

CONCLUSION AND RECOMMENDATIONS

It can be concluded that ODR is an effective method of dispute resolution across the specially in developed nations like Europe and USA and with International sanctions and guidelines future of ODR is exceptional. The day is not far when ODR, as a way of arbitration will soon become a necessity for the world. Information technology, society, human relations, human interactions, commercial activities and laws a step higher in all

these fields is a step towards ODR. With respect to India the trend of arbitration has seen considerable growth in past few years. Deeper research in the field of arbitration and other ADR mechanisms need to be strengthened. Legal fraternity is working day and night to mitigate flaws in the current system and to develop upgraded methods for harmonious working of the society. In backdrop of such developments and taking into consideration popular doctrine of “justice delayed is justice denied” by the courts; ODR is indeed the new face of arbitration in India.

Following measures are recommended to make ODR more efficient and viable mechanism of dispute resolution:

Measures should be taken to face the upcoming challenges. If measures towards the same are not taken, then ODR proceedings in India may only be limited to theories redundant and unused.

There is a crying need to develop an appropriate complaint handling mechanism to address disputes that arise on e-commerce platforms.

Any such system we build should be capable of functioning online and operating at a scale that enables it to deal with the high volume of disputes they will doubtless need to process. Ideally, they should be capable of processing some portion of the disputes using automated decision-making algorithms that leverage the digital nature of the platform and the underlying e-commerce transactions.

If we can build a system that addresses these needs of the platform economy, there is no reason why some or all of these processes cannot, in time, be applied to traditional disputes as well.

We could consider embedding digital artefacts into the e-commerce workflow that will allow online dispute resolution frameworks to conclusively establish whether or not contractual obligations have been effectively performed—along with the lines of principles that have been successfully experimented with in the context of block chain-based smart contracts.

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