



## ARBITRATION FOR DISPUTE ARISING FROM E-COMMERCE TRANSACTION

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### ABSTRACT

“Make in India” and “Aatmanirbhar Bharat mission” has been launched by our Prime Minister to make India digital in every sector. In recent time the business sector has transformed their businesses into e-commerce. Every day almost thousand of transactions take place through e-commerce where countless customers get into an agreement of buying and selling of goods and services. When it comes to an agreement, the dispute also arises, but it is very difficult in e-commerce transaction for a customer to resolve the dispute at one physical place. Thus, the need of Alternative Dispute Resolution has emerged where the parties can settle their disputes through online mode. Alternative Dispute Resolution (ADR) is a mechanism where parties can settle their dispute outside the court. ADR is a process of the efficient trail with the fair resolution of the dispute without involving unnecessary delay in dispute resolution with the binding effect of an arbitral award on the parties<sup>1</sup>. ADR has come up with a win-win situation for the parties in dispute as it is less time consuming, low cost of expenditure and more convenient. Thus, the need for Online Dispute Resolution (ODR) is increasing day by day with immense of globalization of e-commerce with the success of ADR. There is a very thin line between ADR and ODR as

ADR is a physical process whereas ODR is an online process which uses Information Technology for resolution of the dispute.

Here in this paper, author has pointed out the need for Online Dispute Resolution in India for resolving disputes arising out of an e-commerce transaction. The paper will also focus on the challenges and the outcome of ODR, whether it suitable for the dispute resolution in India or not. It also focused on the binding nature of the arbitral award in case of Online Dispute Resolution and the jurisdiction of arbitration that is the place or seat of arbitration. The author has also tried to look into the matter the use of Artificial Intelligence in dispute resolution. Also a comparative study is being made in order to analysis the various outcomes of different countries who are implementing the online dispute resolution which allow consumers to resolve their dispute.

**Keywords:** *Dispute Resolution, ADR, ODR, Artificial Intelligence, Information Technology, Arbitration, and E-commerce.*

### INTRODUCTION

Alternative Dispute Resolution is a process of resolving the dispute outside the courtroom proceedings. It has widely accepted in our country in the last few years as a means of resolving disputes. The Hon’ble Supreme Court in case of “*Guru Nanak Foundation v Rattan Singh & Sons*”<sup>2</sup> has also recognised ADR as an alternative option for settlement of dispute without any involvement of the courts. The Court further stated that court proceedings are time taking, lengthy, complex because of lots of

<sup>1</sup> *Centrotrade Minerals & Metal Inc Vs. Hindustan Copper Ltd.*, (2006) 11 SCC 245.

<sup>2</sup> (1981) 4 SCC 634



formalities which results in delay in decision making whereas ADR is less time consuming, less formal, less complex and provide for speedy settlement of the dispute. Alternative Dispute Resolution also allows parties to negotiate on their terms and conditions which give out better satisfaction of settlement of the dispute.<sup>3</sup>

In a meeting held<sup>4</sup> between Chief Ministers and Chief Justice in 1993 in which issue in concern was that it is becoming difficult for the courts to undertake the entire burden of administration of justice. So it is preferable to delegate the power and establish an alternative mechanism for resolving the disputes through different methods like arbitration, conciliation, mediation and negotiation. These methods are suitable for settlement of the disputes which are physical like recovery of money, specific performance of contract etc. but it is not completely suitable of resolving disputes arising out of e-commerce transaction because it might not be possible for the parties to be at one physical place for resolving the dispute as they have transacted through electronic means. So, for the purpose of alternative method for settlement of dispute arising out of e-commerce transactions is Online Dispute Resolution (ODR) method which is most suitable for resolving dispute using Information Technology.

In the case of Thomson v. Handa Lopez Inc.<sup>5</sup> the court has stated that it is necessary for a business to mention the “dispute resolution clause” in the contractual agreement to avoid any inconsistency and to provide better solution for resolving dispute to the aggrieved party. Online Dispute Resolution

works as a bridge between ADR and dispute arising out of e-commerce transaction which helps in filling the gap of physical presence of the parties for resolving disputes.

Online dispute resolution itself a very broad concept as it is similar to ADR in which different methods are used in resolving disputes such as arbitration, mediation etc. but the only area where ODR differ from ADR is that Online Dispute Resolution uses internet, virtual communication through video conferencing or audio conferencing, e-mail conversation, automated complaint system etc. for resolving dispute. Online dispute resolution is said to be an indicator for future dispute resolution in the new digital generation.

#### LEGAL ISSUE

In the digital age, e-commerce has significantly shown a drastic increase in Indian market which also results in increasing of disputes among the seller and consumer. In an e-commerce transaction when a dispute arise it become very difficult for an aggrieved party to institute a suit in court because the parties in transaction are not at one place which make resolution of dispute very difficult. Thus, the need for online dispute resolution is in (OECD, 2016) (Minitel, 2016) (Katsh E. , 2000) great demand. Though it can be proved as most convenient option for settlement of dispute but there is a no such law regulating specifically e-commerce and transactions done through it, which result in improper resolution of dispute. Also ODR uses Information Technology and still in many parts of the country we don't even have

<sup>3</sup> Trustee of the Port of Madras vs. Engg Construction Corporation Ltd. (1995) 5 SCC 531

<sup>4</sup> Held on 04-12-1993

<sup>5</sup> 998 F Supp. 738 (W.D. Tex. 1998)



proper internet connection which stands as a hurdle in proper regulation of online dispute resolution. ODR is an artificial proceeding in which parties virtually come in contact but there is no face to face meeting due to which there is lack of trust among them. Also as of now Arbitration and Conciliation Act, 1996<sup>6</sup> does not contain any provision which defines Online Dispute Resolution as an alternative means for settlement of dispute which result in limited scope of online settlement of dispute. There are different laws such as Information Technology Act, 2000<sup>7</sup>, Section 13 of CPC<sup>8</sup> etc. which emphasise on resolution of dispute through online mode but no law specifically states about ODR which lower down the confidence and confidentiality of the proceedings.

### RESEARCH METHODOLOGY

The author has done descriptive research using qualitative data in which he has relied upon different source of secondary data that are published in various journals on which the author has done content analysis to come on conclusion. The author has also used comparative method to analysis the situation of ODR in India and in other countries.

### WHAT IS ONLINE DISPUTE RESOLUTION?

Online dispute resolution is a method of resolving dispute with the help of information technology and artificial intelligence. It is a type of alternative dispute resolution where the parties are meeting in an online platform for the negotiation in spite of dealing face to face. It is also a process of resolving dispute outside court and without

having any physical presence. Online dispute resolution is new concept in the field of alternative dispute resolution that made the resolution of dispute much faster and easier with greater level of satisfaction among the parties.

According to Ethan Katsh, ODR can be defined as “Dispute resolution processes are generally perceived as having a single function, that of settling problems. What has come to be understood online, perhaps more than it is offline, is that dispute resolution processes have a dual role that of settling disputes and also of building trust.”<sup>9</sup>

Online dispute resolution can be used as a measure to resolve dispute where matters are related to online contractual agreement, cyber crime, dispute arising out of domain name, intellectual property, e-commerce etc. At present, person involved in dispute mainly adopt two either of two approaches:

1. Non-adjudicative
2. Arbitration which is adjudicative.

Currently most of the online service providers are using the second approach for dispute resolution because there is long way to go for the first approach as ODR is still not completely developed in India.

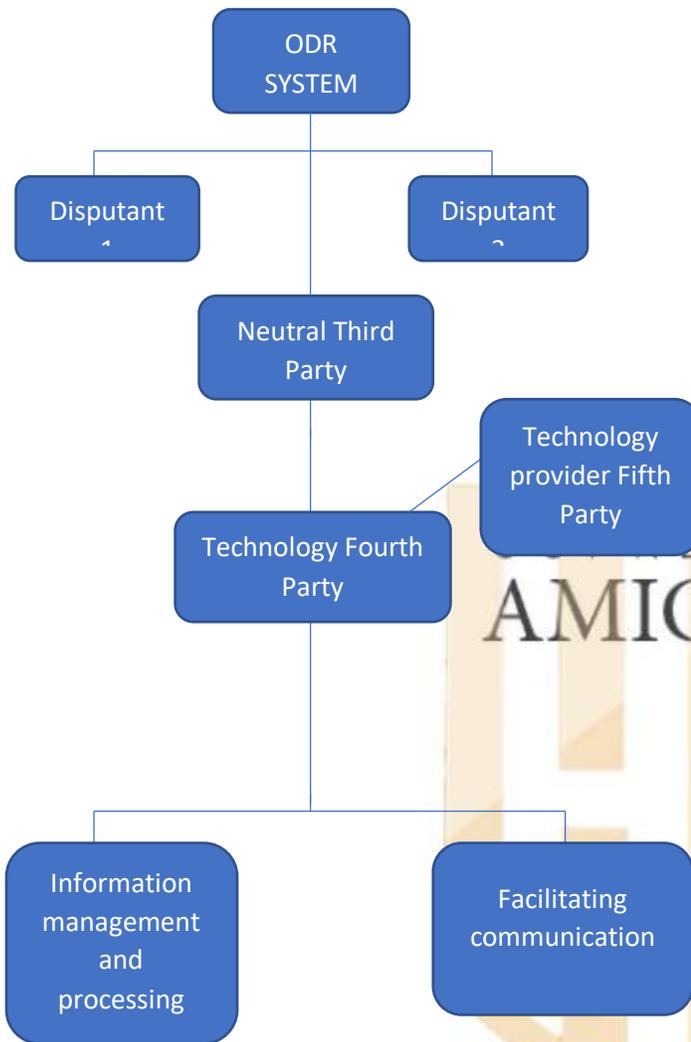
### STRUCTURE OF ODR SYSTEM

<sup>6</sup> Arbitration and Conciliation Act, 1996 (Act 26 of 1996)

<sup>7</sup> Information Technology Act, 2000 (Act 21 of 2000)

<sup>8</sup> § 13, Code of Civil Procedure, 1908

<sup>9</sup> Colin Rule and Larry Friedberg, “The Appropriate Role of Dispute in Building Trust Online” dated: January 2006.



Arbitrator is the neutral person who acts as a mediator in the process of resolving dispute between the parties. Section 11 of the Act<sup>10</sup> speaks about the appointment of the arbitrator. After that both the parties with their arbitrator meet on an online platform with the help of Information Technology and Artificial Intelligence and that online platform is considered as fourth member of the ODR system. And the last member of ODR system is the technology service provider who is an inactive member, his main role is to provide technical assistance to the parties while they are resolving dispute through online dispute resolution. Thus, there are various service providers for dispute resolution but for the resolution of dispute overseas they need to be established worldwide for building trust between the parties.

Trust plays a vital role in online dispute resolution as parties are meeting through online platform where there might be trust issue that can arise as to privacy, legality of proceedings, law and compliance. As per the recommendation of “Organization for Economic Corporation and Development” on ‘customer protection in e-commerce transaction’<sup>11</sup> it is very much necessary for the suppliers to set up online dispute redressal system where the customers can lodge their complaints and can go for negotiation through online mode which creates a form of Online Dispute Resolution. It also states that the redressal mechanism should be impartial and consistent basis. Further OECD has also mentioned in their recommendation that the ODR provide must be accredited with the registered accreditation association which

In online dispute resolution there are 5 major parties facilitating the dispute resolution. In the very first instance there are disputants that can be two or more in numbers. ‘Disputants’ are those who want to resolve their dispute outside the court. After that another member in ODR system is ‘neutral third party’. Neutral third party is basically an arbitrator who facilitates the process of arbitration.

<sup>10</sup> § 11, The Arbitration and Conciliation Act, 1996, (Act 26 of 1996)

<sup>11</sup> OECD, “Recommendation on Consumer Protection in E-commerce”, date: 2016 Available at: <http://dx.doi.org/10.1787/9789264255258-en>.



sets a universal criteria for all ODR providers. OECD has clearly mentioned in their recommendation that it is important for ODR providers to specifically inform the disputants with all the necessary details of online dispute resolution such as method of dispute resolution, choice of participating in online dispute resolution, remedies available, code of conduct, expected time frame for the resolution of the dispute, whether the award is appealable in court of law if the disputant is not satisfied by the award. Further it is required to disclose the terms and condition of the ODR system so as to maintain the confidence between the parties that their data are confidential and will not be disclosed publically.

OECD has also recommended that ODR provider must ensure that they must have used multiple layers of security patch and caches must be secured so as to avoid any interruption and prevent from cyber crime. Also they must employ complex password and sophisticated software integration so that no one can breach into it and there should complete backup of data of its server. OECD has stated that it is necessary for the ODR provider to mention all these information so as to maintain the confidence and trust between the parties.

#### UNCITRAL MODEL LAW AND ODR

In the early 1990s, usage of internet has shown a rapid growth worldwide. Many online transactions were taken place through internet in the international trade market

which had shown a positive response but due to lack of internet security many cyber crime took place in cyberspace which result in many disputes between the parties. Till 1992, there was a temporary ban on the e-commerce transaction due to increase in the cyber crime. National Science Foundation had levied ban on all such e-commerce transaction to eliminate the cyber crime and can enhance the internet security.<sup>12</sup> Till 1990, there was no need of ODR because till then internet was not so popular for e-commerce. Later, in mid half of 1990s, online marketing had shown a greater change in the online environment, which also result in disputes between parties. In 1996, the first article was published in a law review<sup>13</sup> stating the need of online dispute resolution. The very first conference on ODR related to its functioning, and ODR project was sponsored by the National Centre for Automated Information Research at the University of Massachusetts and ODR and family dispute, virtual magistrate, online Ombudsman at the University of Maryland<sup>14</sup>. After few years of the conference “The Centre of Information Technology and Dispute Resolution” was established in University of Massachusetts by Hewlett Foundation. In early, 2000s online dispute resolution was suitable only for the online transactions later as there was evolution in ODR it also become a choice for disputes arising out of offline transaction.<sup>15</sup>

**Pierre Omidyar**, founder of E-Bay one of the leading e-commerce business. He has analyzed the market that price is the prima facie for the online shopping but not the sole

<sup>12</sup> Minitel, “The rise and fall of the France wide web”, BBC News, dated: 19<sup>th</sup> Aug, 2016 Available at: <https://www.bbc.com/news/magazine-18610692>

<sup>13</sup> E. Katsh, “Dispute Resolution in Cyberspace”, 28 Conn. L. Review

<sup>14</sup> Ethan Katsh, “A few Thought About the Present and Some Speculation About the Future”, 2000

<sup>15</sup> Mohammad S. Adbel Wahab and Ethan Katsh, “Online Dispute Resolution: Theory and Practice, a Treatise on Technology and Dispute Resolution”. Dated: 09<sup>th</sup> September, 2019 Available at: <https://conferences.law.stanford.edu/codr2013/wpcontent/uploads/sites/9/2016/09/Katsh-Wahab-ODR-A-Lok-at-History-Ch.1.pdf>



criteria because customer also focus on the trust ensured by the seller. E-Bay for the first time has incorporated a sort of online dispute resolution in which customer can give feedback of the product and the seller which will create trust among the buyer. E-Bay had acquired the marketplace with the low price and low risk scheme but the feedback system was not a complete solution for the dispute resolution. In 1999, E-Bay has thought of employing online grievance redressal mechanism for e-bay had approached to the “University of Massachusetts- Centre for Information Technology and Dispute resolution (CITDR)” to conduct and analysis the working environment of the resolution of dispute through online mode by way of mediation between consumer and seller. After two weeks of continuous resolution of dispute through online mediation CITDR has successfully concluded that e-bay can with online dispute resolution. In the initial stage e-bay had contracted “Square Trade” an internet start-up company dealing in online dispute resolution for resolving dispute between consumer and seller and later, E-Bay has acquired square trade.<sup>16</sup>

In 1999, for the resolution of the dispute arising out in cyberspace with domain name, “Internet Corporation for Assigned Name and Numbers and the Uniform Dispute Resolution Policy” had initially came up with online resolution of the dispute later, they had opted online dispute resolution mechanism to resolve dispute against the malpractice done with domain name. In the meantime many ODR firm was entered in the

market but unfortunately they couldn’t success, only few of them have survived such as “Smart-settle”, “Cyber-settle” and “The Mediation Room.

### ONLINE DISPUTE RESOLUTION ‘WORLDWIDE’

In the era of technology, many countries are focusing on online dispute resolution which will make online trading better and will allow the consumers to resolve their dispute through various online method of dispute resolution such as online arbitration, online negotiation, online mediation etc. On 25<sup>th</sup> Feb, 2016 the European Commission has came up with a new way of resolving dispute with the help of Information Technology and Artificial Intelligence which allows consumers to resolve their dispute arising out of online trading and can settle dispute without having any physical presence of the disputants.<sup>17</sup>

The European Commission has mentioned in their ADR Directive<sup>18</sup> that every member state has to comply with the directive principles of online ADR. It is required by the disputant to lodge a complaint with the trader and the trader will further communicate with the ADR Entity of their respective territories for the settlement of the dispute.

The directive principle of European Commission states that the person who is the In-charge of ADR must possess necessary details and have expertise knowledge in that area. He should also mention all the necessary information about the ODR in their website and the proceeding must be

<sup>16</sup> “E. Katsh, “ODR: A look at history”, Dated: 1996, Available at: <https://www.mediate.com/pdf/katsh.pdf>

<sup>17</sup> “European Commission - Press release, Solving disputes online: New platform for consumers and traders”, Dated 2016, Available at:

[http://europa.eu/rapid/press-release\\_IP-16-297\\_en.htm](http://europa.eu/rapid/press-release_IP-16-297_en.htm)

<sup>18</sup> Article 5 of ADR Directive, European Commission. “European Commission- Press Release Directive 2013/11/EU”. Dated: May 2013.



transparent and fair.<sup>19</sup> “The Commission Implementing Regulation on consumer ODR lays down the modalities for the electronic complaint form, the exercise of the functions of the ODR platform and the cooperation between the ODR contact points.<sup>20</sup>”

Also UK as introduced online dispute resolution for fast resolution of the dispute but ODR in UK is confined only to financial based dispute. UK financial based company has employed ODR for resolving dispute between the consumer and financial company. For the purpose of ODR “UK Financial Ombudsman Service was established under FAINANCIAD Services Markets Act, 2000.”

Also Canada has started its first online dispute resolution in 2016 as “Civil Resolution Tribunal” which completely depends on Information Technology<sup>21</sup>. Civil resolution tribunal has came up with a very new concept where disputant can resolve their petty disputes through ODR in less time and in cost effective manner.

It has been seen that Australia and USA has also accepted ODR method for resolving dispute. In Australia for family dispute resolution it is mandatory for the disputant to undergo online mediation, where as in USA ODR is for settling labour dispute.

We can conclude by seeing that many countries are successfully working with ODR system for the settlement of dispute because

<sup>19</sup> Article 6, Article 7, Article 8 of the ADR Directive.

<sup>20</sup> “Commission Implementing Regulation (EU)” No. 2015/1051, Dated: July 1<sup>st</sup>, 2015.

<sup>21</sup> “Civil Justice Council, Online Dispute Resolution For Low Value Civil Claims, Online Dispute Resolution Advisory Group”, dated: February 2015, Available at:

it is less time consuming, cost effective, consumer satisfaction etc.

### ODR IN INDIA

In India, thousands of cases are registered in courts on daily basis which overburdens the courts proceeding. So, to reduce the burden on courts, Indian judicial system has started resolving dispute through Alternative Dispute Resolution (ADR) with the help of different methods of ADR such as arbitration, conciliation, mediation, negotiation etc. which has not only reduced the pressure on the courts but also ensures resolution of dispute in less time and in cost effective manner. However, ADR is a successful means of resolving dispute even though there are certain disputes mainly those arising out of e-commerce transaction which requires Online Dispute Resolution system because ADR is somehow not suitable in e-commerce transaction<sup>22</sup>. It is so because parties are not physically dealing with each other as they are having e-contractual agreement. So, also in case of any dispute it won't be possible for the parties to physically meet and then resolve their dispute either through court proceedings or ADR. Thus, the need of Online Dispute Resolution is increasing in India.

According to the Section 89<sup>23</sup> r/w Order X Rule 1A states “use of alternative dispute resolution between parties and confer power on courts to direct the parties to a suit to

[www.judiciary.gov.uk/reviews/online-dispute-resolution](http://www.judiciary.gov.uk/reviews/online-dispute-resolution).

<sup>22</sup> § 4, Indian Contract Act, 1872 r/w § 13 of Information Technology Act, 2000

<sup>23</sup> § 89, Civil Procedure Code, 1908



choose any ADR method to settle its dispute.”<sup>24</sup>

In the case of State of Maharashtra vs. Dr. P.B. Desai<sup>25</sup>, the Supreme Court for the first time accepted the use of Information Technology in the court proceedings by allowing the examination of witness through video conferencing or video recording which stand as a revolution in the traditional judicial system. The court has observed that:

“Virtual reality is a state where one is made to feel, hear or imagine what does not really exist. Video-conferencing has nothing to do with virtual reality. Video-conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. This is not virtual reality, it is actual reality. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded Court room. They can observe his or her demeanor. In fact the facility to play back would enable better observation of demeanor. They can hear and rehear the deposition of the witness.”<sup>26</sup>

Another case where Supreme Court has employed electronic means in the court proceeding is in the case of Grid Corporation of Orissa Ltd. vs. AES Corporation<sup>27</sup>. In which the court has observed that:

“It is not so required by the parties to meet at one place for resolving dispute if the resolution of the dispute can take place by

involving electronic means such as video conferencing etc. unless it is required by the law or specifically written in the contract the method of resolution of dispute.”

Thus, from the above cases we can say that the Supreme Court has laid down legal framework which allows the use of technology in resolving dispute and encourages the ODR system in India.

“The practice of ODR is not entirely unknown in India. ODR has been recognized in India under the Banking Ombudsman Scheme, 2006 issued by the Reserve Bank of India where in complaints were allowed to be made online to the Banking Ombudsman<sup>28</sup>. The provisions of the Information Technology Act, 2000 must be used for establishing an Information and Communication technology base that may be conducive for the development of ODR mechanism in India. The IT Act grants legal recognition to use of electronic signatures and electronic records.”

If we analysis the law in relation with ODR, Arbitration and Conciliation Act, 1996 must be r/w Information Technology Act, 2000 which recognize the electronic means of communication. For instance, the Act provides that arbitration agreement must be in writing and the IT Act, 2000 also states that any law which requires that document must be in writing then such documents can be in electronic form and must be easily accessible

<sup>24</sup> S.K. Verma, Raman Mittal, “Legal Dimensions in Cyberspace, 321 (Indian Law Institute, New Delhi, 2004). Pg 312-314.

<sup>25</sup> (2003) 4 SCC 601

<sup>26</sup> ¶¶ 19-20 of the judgment, State of Maharashtra vs. Dr. P.B. Desai, (2003) 4 SCC 601.

<sup>27</sup> AIR SC 3435

<sup>28</sup> The Banking Ombudsman Scheme 2006”, ref. no. 441/13.01.01/2005-06



and available for subsequent reference<sup>29</sup>. Thus, we can say that arbitration agreement can be in electronic form.

The Act provides that the arbitral award must be in writing and signed by the member of arbitral tribunal. Here also the section 4 r/w section 5 of the Act<sup>30</sup> which provides that any document which is in writing can be in electronic form and must be authorized by electronic signature which gives legal recognition to the documents.

Another legal aspect which has partly recognized online redressal mechanism is Consumer Protection Act, 2019<sup>31</sup> which speaks about e-filing of the grievances in the online portal<sup>32</sup>.

### TLCEODRI

Perrylaw organization is working on online dispute resolution since 2007 and is currently working with “Techno Legal centre of Excellence for online Dispute Resolution in India”<sup>33</sup>.

TLCEODRI has come up with a motive to develop and promote the use of ODR system in the Indian legal system which will help in resolution of dispute effectively and efficiently. They are working on the ODR clause which can be taken as reference for adding in an agreement at national and international level. They are also organizing seminars and conferences for creating awareness among the public for ODR system. They have also launched their first ODR mechanism as “Cyber Arbitration Portal” which helps in resolving dispute related to

domain name. TLCEODRI is further working on ODR with a view that in next few years ODR will completely take its place in the Indian legal system for serving many goals. For the purpose of ODR it is required to make necessary amendments in Information Technology Act, Civil Procedure Code, Indian Contract Act, Consumer Protection act etc. and require adding appropriate provision which will recognize ODR system.

In the case of Tamil Nadu vs. Union of India<sup>34</sup>, the Supreme Court has observed “that with growing trend of technology enhancement there is a need for judicial procedural enhancement as well”.

In an another case of State of Maharashtra vs. Parul B Desai<sup>35</sup> the court has observed that “where there was a dispute regarding taking video conferencing as an admissible evidence whereas Court opined that it can come under the purview of Section 273 CR.PC where the situation demands so and hence ordered to dispose of the case as soon as possible by such way because it causes undue delay in the disposal”.

TLCEODRI is working hard for developing ODR in India because it will not only enhance the working of legal system but will also reduce the burden on the courts and make the resolution of dispute easier.

### ADVANTAGES OF ODR

1. **Economically viable:** In the traditional form of dispute resolution, the cost is the major

<sup>29</sup> § 4, Information Technology Act, 2000.

<sup>30</sup> § 4 & 5, Information Technology Act, 2000.

<sup>31</sup> Consumer Protection Act, 2019, (Act no. 35 of 2019)

<sup>32</sup> § 2(6), Consumer Protection Act, 2019.

<sup>33</sup> ODR in India, “Cyber Arbitration Trends in India” by TLCEODRI, Dated: January, 2017

<sup>34</sup> (2005) 6 SCC 344

<sup>35</sup> (2003) 4 SCC 601



factor because not everyone can afford the court and lawyers fees. But in ODR this cost will cut down to minimal because of use of technology.

2. **Speedy resolution:** ODR ensure fast redressal of the dispute as it is less time consuming. It is because party can meet with each for negotiation from anywhere in the world through remote communication or video conferencing.
3. **Non-confrontational mechanism:** “By removing the physical presence of the adversary, ODR enables the adjudicating body to dispassionately resolve the dispute, purely on basis of the merits of the case. Further, since most of the arguments or dialogues take place asynchronously over the internet, it allows the disputants to reflect on their positions before articulating their response. Additionally, such a mechanism neutralizes any economic or other power disparities that may obtain between the disputants, as there may be several instances where one party to the dispute is a small-time manufacturer/supplier and the opposite party is global entity.”
4. **Records:** ODR facilitates maintenance of record on the stream only as the server provides the function of recoding and maintaining data of whole proceedings.

#### DRAWBACKS OF ODR

1. **Lack of Human interaction:** the foremost drawback of ODR is lack of human interaction which leads to miscommunication. In ODR one party sometime unable to understand the context of the other party will results make the case more worst.
2. **Limited range of dispute:** ODR has major limitation is that it comes with very limited range of dispute resolution majorly disputes

related to e-commerce. Rather ADR has greater scope than ODR.

3. **Inadequate confidentiality:** ODR is completely an online process where all the data's are stored on cloud or on server. The technology service provider ensures proper security of the software through firewall which prevents unwanted malware to enter in system. Even though we cannot just say that it is 100% secure because there is chance of loss of data due several reasons like computer virus, third party attack on software, unauthorized access. These entire factors make ODR little risk because of lack of confidentiality.
4. **Jurisdiction:** ADR has limited jurisdiction whereas ODR has no limit. This lead to the problem of determining jurisdiction because transaction can take place anywhere in the world. Thus, it will be a challenge for the parties to identify the place of transaction and jurisdiction.
5. **Challenging an award:** “Since ODR proceedings are conducted online, another issue requiring clarity is the intervention of a court during or after the completion of the proceedings and/or pronouncement of the decision. This will again raise the question of: (a) the enforcement of the decision of the court in the country where the opposite party operates/resides; and (b) appeals against the decision of the court and enforcement of the said decision”.
6. **Publication of proceedings and award:** ODR is complete transparent process but this opposed the objective of ODR that is confidentiality and right to privacy. Online dispute resolution has its own advantages and disadvantages even then it is consider as best practice because it is easily accessible and reduce the burden of the court by fast resolution of dispute which solely make it more viable.



### RECOMMENDATIONS

1. It is required to enact separate legislation for the purpose of ODR which will define each and every process of ODR, its jurisdiction, applicability of ODR award, further appeal to court with appellant jurisdiction.
2. ODR software must comply with all the rules of Information Technology Act, 2000 and must protect the right to privacy of an individual.
3. For proper implementation of ODR in India it is required to amend laws procedural laws<sup>36</sup>.
4. There should be one international body which provides rules for ODR and must ensure that every nation comply the rules laid down by the body for maintaining uniformity. This is so because ODR has not confined to the borders of territories.
5. To make ODR more successful, it must satisfy all the conditions of “due process” and “fair play”. The service provider must reveal information of the arbitrator, and other necessary information.
6. The service provider must use end to end encryption and use layers of firewall of the purpose security. This will prevent from unauthorized access and malware.
7. The ODR must have these three elements that are Trust, Expertise, and Convenience.

### CONCLUSION

ODR system is limitless as it has no boundaries over territories. After going through various articles and UNCITRAL Model Law, the author came to the conclusion that ODR will come as a revolution in the Indian legal system because ever after having huge legal frameworks we are lack behind because of ease in resolving dispute. The traditional method provides

numerous provisions though they are lengthy and expensive and physical presence of the party is required. But ODR will remove all these difficulties and make the resolution of dispute more convenient. It will also help in resolving cross-border dispute arising out of international trade. E-commerce transaction is not just about business strategy and management but more of technological advancement. So, as to secure e-commerce transactions, ODR will be the best solution from the perspective of both seller and consumer. ODR is not completely a new concept for India because many e-commerce traders provide online support services within the guidelines of IT Act, 2000. Thus, it gives a confidence to the ODR service provider that it will provide smooth resolution of dispute.

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