

Harnessing Online Dispute Resolution (ODR) for Effective Conflict Resolution in E-Commerce Platforms: Opportunities and Challenges

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Abstract: Post covid, apart from other developments on internet, e-commerce has mushroomed on large scale. Every business entity, either large, small, entrepreneur or service industry, all are availing and using online platform to upscale their business. This has not only helped in business entities but also the consumers are finding it shopping friendly. The platform has many advantages as compared to offline mode. With this development, there is a need for resolving the disputes related to online consumers on the same platform rather than a traditional dispute resolution mechanism which is formally called Alternative Dispute Resolution (hereinafter ADR) mechanism. When contrasting traditional litigation with Online Dispute Resolution (hereinafter ODR), there are a number of advantages. It allows consenting parties to form their own agreements and offers them more control over the process and result of dispute resolution.

Cross-border business expansion and e-commerce have led to an increase in disputes. The existing courts are being burdened by this. ODR offers a less costly and faster way to resolve conflicts than going to court. The article tries to find out the opportunities and challenges associated with ODR as compared to ADR in the e-commerce sector.

Keywords: ADR, ODR, E-commerce, Challenges, Opportunities

1. Introduction

Since the advent of Internet and World Wide Web in 1980s, communication has undergone a significant transformation. This change, which some refer to as disruptive, has changed the way we communicate and do business. Globalization and increasing connectivity have benefited greatly from Internet. The rise of electronic commerce, or e-commerce, especially in the business-to-consumer space, has had an impact on retail marketing. This platform change has requirement of similar platform for dispute resolution. i.e., ODR. (Hornle, J. 2002). Combining ODR and ADR is a workable way to improve access to justice and efficiently resolve issues.

2. Research Objectives:

1. To examine the role of ODR in resolving disputes arising in e-commerce transactions.
2. To identify the opportunities and challenges associated with integrating ODR mechanisms into e-commerce platforms.
3. To assess the effectiveness of ODR systems in enhancing consumer trust and satisfaction in online transactions.
4. To analyze the implications of ODR for platform governance and regulatory frameworks in the context of e-commerce.
5. To propose recommendations for optimizing ODR processes to improve conflict resolution outcomes in e-commerce.

3. Literature Review:

ODR was designed to be a stand-in for face-to-face conversation when it was not practical. Online ADR procedural administration was the origin of ODR. The three phases of the in-person mediation process—cooperative problem solving, assisted narrative, and unsupported storytelling—were attempted to be replicated by early online neutrals. (Hornle, J, 2002). The duties of the online mediator were the same as those of the offline mediator: they included reframing the discussion, guiding the participants, and reality-testing proposed solutions. It doesn't seem like there will be any significant differences between offline and online mediation in the not-too-distant future. Online methods might ultimately get close to mimicking "genuine" dispute resolution processes as technology develops.

The review of literature was done to understand the gap in literature related to compatibility of ODR in ecommerce sector. The literature review was purported to understand the research in the field. Right from its advent of the contemporary scenario was included in the pool of literature. In 1998, the first online mediation session for all ADR was held in the United States of America and Canada. (Law reform commission, 2010) To put things in perspective, ODR was developed in three phases. ODR's growth was restricted to specific fields and circumstances until 1995. It wasn't until the internet took off in 1995–1998 that ODR started to spiral out of control. Independent institutional conflict resolution systems became a concept after 1998, as the e-commerce industry's expectations increased.

The paper by Hornle, J. (2002) explores the advantages of integrating ODR mechanisms into e-commerce platforms. Consequently, a number of commercial and academic non-profit organizations made significant investments in ODR regulation and launched well-known brands like Cyber Settle and e-resolution that are now leaders in the market. The researchers have presented paper discussing the implications of ODR in various domains like family law cases or contracts or settling other disputes. Schmitz, A. J. *et al* (2021), in their paper examined the use of ODR in family law conflicts and looks at both present practices and possible advancements in the field.

The research conducted by Rodriguez, C. G. (2020) is a case study on AirBnB. This study examines the function of ODR in settling conflicts that arise on sharing economy platforms such as AirBnB.

An online legal dictionary defined the mediation as "the attempt to settle a legal dispute through active participation of a third party". A person (mediator) who attempts to reconcile disputing parties and find a just conclusion. Unlike arbitration, which occurs in a less formal setting outside of court, mediation entails a third person serving as a judge without actively taking part in the proceedings. Mediation has grown in popularity as a means of attempting to resolve domestic relations difficulties (such as child custody, visitation, and divorce), and the court may often order it in these cases. In addition, there are now more mediation-related instances involving contracts and civil damages. Menkel-Meadow, C. (1985) in his paper has discussed the various paradigm shifts in the dispute resolution by lawyers and the online mechanism having its impact on lawyers. Ethan Katsh *et al* (2021) - have presented bibliometric analysis of a comprehensive list of literature on ODR, making it a valuable resource for researchers and practitioners. Rainey, D. *et al* (2021), in their article discuss the potential of ODR to transform the delivery of justice and enhance access to dispute resolution mechanisms.

The review of literature pointed out the fact that ODR is there to exist in all the fields as the impact it has legal regime is far more resonating than expected. However, the literature is lacking on the compatibility, its challenges and future opportunities of ODR in e-commerce sector.

4. ODR as a Dispute Resolution Method

We can shop at any time of day, from anywhere in the world, these days. Even while everyone admits that online shopping is convenient, it can nevertheless lead to disagreements just like traditional shopping does. Since trust is the cornerstone of e-commerce, it is imperative that there exists a legal framework that ensures equity, predictability, and the ability to resolve disputes. (Petrauskas, F. & Kybartienė, E. 2011).

The idea behind ODR was to fulfill some of the more general goals of offering a fair and easily accessible conflict resolution process. The phrase is frequently employed to denote several types of online methods for ADR. ODR is intended to be used in addition to current ADR procedures in order to use technology and the Internet to resolve conflicts in a timely and effective manner.

ODR is superior to traditional litigation in a number of ways. Consenting parties are granted greater autonomy in crafting their own contracts and greater influence over the resolution of disputes. (Pandey, S. Bansal, S. 2022). It also allows transacting parties to select neutral third parties—especially subject-matter experts—to arbitrate disputes. Unlike the precedents and procedures that courts are required to follow, ADR approaches offer more method flexibility and the choice to forgo legal assistance. Despite ODR's ability to rekindle hope, there is still

much to be done. Concerns exist over jurisdiction, frameworks, and competence. Still, there's been a discernible shift in the way judges approach cases.

Although ODR has been widely embraced by several developing countries, particularly China, the outcomes have been inconsistent. Nonetheless, the excitement is evident. The National Internet Exchange of India (NIXI), which uses the World Intellectual Property Organization (WIPO) Domain name dispute settlement process, is using ODR, which is still in its infancy in India. An interest in investigating the use of digitization and the Internet as conflict resolution processes is also indicated by the creation of experimental e-courts. The use of the lengthy and complex nature of court processes especially in International disputes driving up the use of ADR.

Role of ODR in Dispute Resolution

The role of ODR in resolving disputes arising in e-commerce transactions is increasingly significant due to the proliferation of online commerce. ODR offers a digital platform for resolving conflicts efficiently, conveniently, and fairly, addressing the unique challenges posed by online transactions. (Hornle, J, 2002). Here are several key roles that ODR plays in the resolution of e-commerce disputes:

1. **Accessibility:** ODR is a means to provide accessible justice to all kinds of people. Sometimes due to communication barriers, transportation barriers or geographical barriers people are unable to attend physical courts. In those kinds of situations also, ODR can be used as a platform to provide access to justice as these barriers can be overcome through online medium. (Cortés, P. 2011). Accessibility in e-commerce transactions, overcoming location or resources barriers, through online medium can act as a mechanism for resolving disputes.
2. **Efficiency:** Compared to traditional legal proceedings, ODR is faster and streamlined. By accessing technology, ODR can facilitate documents exchange, decision making, reducing time etc. to resolve the dispute in ecommerce platform. This is a crucial efficiency in fast-paced environment of e-commerce. (Rainey, D., Katsh, E., and Wahab, M. 2021)
3. **Cost-effectiveness:** Traditional litigation and arbitration involves much higher cost as compared to ODR. (Meadow. C.M, 1985) This reduction of expenses associated with fees of the courts, travelling expenses makes ODR more attractive option for resolving disputes in ecommerce platform. Especially in small businesses etc.
4. **Flexibility:** When we look into the procedural laws, ODR is comparatively more flexible. Based on different nature of the disputes, parties choose different methods to resolve the dispute such as arbitration, mediation, negotiation etc. Now, ODR can make this dispute resolution mechanism more fruitful and can bring more outcomes.
5. **Neutrality and Impartiality:** ODR is impartial in nature wherever any dispute arises between the parties. There is a chance of subjective partiality by the qualified personals, but when we go to digital place that is ODR, no such issues can arise. (Meadow. C.M, 1985)

Opportunities and Challenges in ODR

Opportunities

1. **Enhanced Customer Satisfaction:** The major factor which supports ODR as compared to ADR is less time consuming and fast decisions. The customers get attracted with this policy. (Bygrave, L. A. 2002).
2. **Reduced Costs:** As there is no physical interaction in resolving dispute in case of ODR, it is less expensive and because of this reason it attracts the interest of the parties. (Cortés, P. 2011).
3. **Increased Trust and Confidence:** As there is less partiality and no discrimination in this electronic mechanism of dispute resolution it increases trust and confidence of both the parties that is buyers and sellers. And create a great reputation in market place. (Petrauskas, F & Kybartienė, E 2011).
4. **Regulatory compliances:** The rules and regulations related to mechanisms for dispute resolution in ecommerce needs to be specified to remove confusion between consumers and business entity. This practise is followed in many jurisdiction as on date. (Law reform commission, 2010)

Challenges

1. **Technical Complexity:** Technical support is a must to integrate ODR and e-commerce mechanism. It might be technically difficult to integrate ODR with ecommerce, work with current scenario and be aware of all the privacy concerns. (Bygrave, L. A. 2002).
2. **User Adoption:** It is difficult to adopt new methods by users as they prefer traditional methods of dispute resolution, face to face interaction etc. To build their trust and confidence is a big task. (Cortés, P. 2011).

3. The technology enhances with time and crime follows up. The crime is addendum to various data and privacy issues involved. (Rainey, D., Katsh, E., and Wahab, M. 2021)

Analysis of implications of ODR for platform governance and regulatory frameworks on E-commerce

Feedback analysis, platforms may improve user experiences, address common problems, and improve policies all of which contribute to the overall effectiveness of ODR and the reliability and efficiency of e-commerce.

It appears that 89.5% of respondents shop using an e-commerce platform, compared to 10.5% who do not. This suggests that a sizable portion of the examined population prefers to shop online. However, the 57.9% of respondents did not face any legal issue, and 42.1% of respondents appear to have encountered legal complications. This implies that a considerable segment of the population that was polled has faced legal difficulties. The issues varied from delivery, wrong product delivery, late delivery and broken, destroyed, quality, pre-payment, address issues etc. (Bygrave, L. A. 2002). The respondents were not very satisfied with the resolution system they had to make various calls and follow ups to get a clean closure. However few respondents felt the issue was solved in a systematic manner by some of the ecommerce websites. It reveals that 31.6% of respondents answered as no response, while 68.4% of respondents who had legal concerns used an internet platform to settle them. This implies that the majority of people who ran into legal problems sought help online. The respondents felt the online mode is a better option for dispute resolutions as it saves time, energy and money.

Current ODR Frameworks

ODR is in formative stage in India. The framework can consist of four types of systems, they are:

1. Procedures of agreement
2. Procedures of advice
3. Procedures of decision
4. ODR phenomenon

The OECD's Guidelines were later adopted by the G8 (currently G7) in the Okinawa Charter on the Global Information Society, it says that extra-judicial dispute resolution mechanisms are a way of solving problems related to consumer recourse in cyberspace it points out that the "private sector plays a leading role in the development of information and communications networks in the information society, but it is up to governments to create a predictable, transparent and non-discriminatory policy and regulatory environment necessary for the information society" (UNCITRAL 2016). The European Union and the United States renewed their support for the OECD's guidelines at the 2000 Summit. (The OECD Guidelines, n.d.),

5. Conclusion & Recommendations

Overall, ODR plays a crucial role in resolving disputes arising in e-commerce transactions by providing accessible, efficient, and fair mechanisms for conflict resolution. (Rainey, D., Katsh, E., and Wahab, M. 2021)

By leveraging technology and promoting flexibility, neutrality, and enforcement, ODR contributes to the smooth functioning of online commerce and helps maintain trust and confidence in digital transactions. (Pandey, S. Bansal, S. 2022),

E-commerce sector is intensely replacing offline market day by day. The convenience of the online store has led to many cottage industries to erupt. Although it is a good way for entrepreneurs to start their business at a low cost but lack of experience and sometimes technical glitches may lead to many disputes. The ODR then becomes the best choice for dispute resolution. It is the best option but has many challenges associated with it. TO overcome these challenges, there are a few recommendations:

- **Usefulness and Outcomes:** Although there is a wealth of evidence demonstrating the usefulness of ADR and ODR in certain situations, additional study is required to evaluate these techniques' efficacy in a variety of dispute situations, cultural contexts, and legal frameworks. More robust conflict resolutions processes can be developed by taking into account the constraints and difficulties of these mechanisms as well as the elements that lead to successful outcomes.
- **User Experience and Satisfaction:** Research on the user experience of ADR and ODR participants can provide valuable insights into their perceptions, preferences, and satisfaction levels. Exploring factors such as ease of use, communication effectiveness, and perceived fairness can help identify areas for improvement and enhance the overall user experience.
- **Access to Justice:** Despite the potential of ADR and ODR to improve access to justice, disparities persist in terms of who benefits from these mechanisms. Research is needed to examine the barriers that marginalized or vulnerable populations face in accessing ADR and ODR services and to develop strategies for promoting greater inclusivity and equity in dispute resolution processes.

- Legal and Ethical Considerations: ADR and ODR raise complex legal and ethical issues that require careful examination. Research on topics such as confidentiality, data privacy, neutrality, and enforceability can help ensure that these mechanisms adhere to legal standards and ethical principles while maintaining the trust and confidence of participants.
- Integration with Traditional Legal Systems: A key research gap lies in understanding how ADR and ODR can be effectively integrated with traditional legal systems. Exploring questions related to jurisdictional challenges, enforcement mechanisms, and the relationship between formal and informal dispute resolution mechanisms can help develop frameworks for harmonizing ADR and ODR with existing legal processes.

Technological Innovation and Adoption: As technology continues to evolve, there is a need for research on the latest advancements in ODR platforms and their implications for dispute resolution. Examining topics such as the use of artificial intelligence, block-chain, and online identity verification can provide insights into emerging trends and their potential impact on the future of ADR and ODR.

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