



INTERNATIONAL LAW  
JOURNAL

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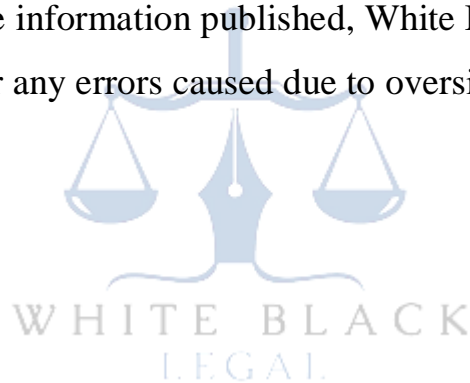
**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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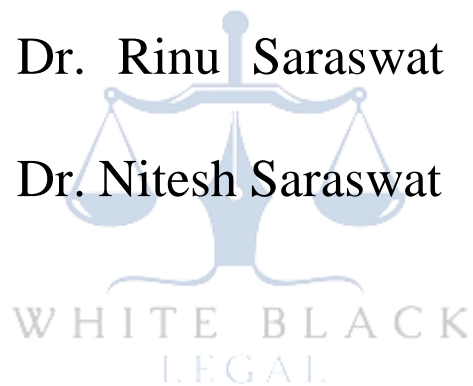
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With this thought, we hereby present to you

# **ODR: THE FUTURE DISPUTE RESOLUTION**

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## **ABSTRACT**

With the rise of e-commerce came the idea of online dispute settlement. It is a field of law that resolves disputes between parties without the involvement of the courts. Arbitration, mediation, and bargaining are all part of it. Consumer-to-consumer disputes are also included. As the world becomes more globalized, the concept of online conflict resolution is becoming more popular. With the rapid expansion of the Internet and electronic commerce, conflict resolution methods are required to assist in the fair, timely, and cost-effective resolution of disputes between parties situated anywhere in the world. Online dispute resolution (ODR) has been dubbed "a logical and natural step" for the resolution of disputes that arise on the Internet without the physical presence of the parties involved. ADRs are evolving with new technologies, making it possible to resolve a dispute through electronic mechanisms.

KEYWORDS:- ODR, Online, Dispute, Resolution, Mediation, Arbitration

## **1. Introduction**

The phenomenon known as online dispute resolution relates, to put it simply, to resolving disputes on the Internet. It is happening in many forms and forums across different countries. Today's ODR mechanisms are said to be early harbingers of the future global dispute resolution landscape in the Digital Age.<sup>1</sup>

It is self-evident that this sort of arbitration falls within the umbrella of electronic arbitration. If the arbitration is conducted online, the parties must discuss the choice of law via e-mail, enter into an online arbitration agreement that is digitally signed by them, and determine the geographical location of the server where the arbitration will take place, as well as the location where the arbitrator will sign the award. When we say "online," we're referring to communication that takes place via an electronic medium, most notably the internet. It would include the use of telephone, mobile, fax, or e-mail facilities, as well as any other mode of communication available on the internet or any other information and communication technology that could be useful in resolving conflicts.

## **2. Definition**

Farah defined 'Online Dispute Resolution' to mean utilizing information technology to carry out alternative dispute resolution.<sup>2</sup>

Schiavetta explained that the online dispute resolution comprises of a process to resolve dispute exclusively online and also other dispute resolution process that use internet.<sup>3</sup>

Not only are e-disagreements settled online in ODR, but traditional disputes like commercial or social disputes can also be resolved using information technology. Automated software may be used in ODR to resolve conflicts transparently and equitably.

## **3. ODR Procedure**

The ODR method comprises the filing of e-documents in which the parties may utilize encryption or electronic signatures to protect the documents' integrity and transaction authentication. In most cases, the parties use the help of an ODR service provider to appoint an impartial panel of judges or panels to resolve disputes via online means. Parties desire a planned and clear system with a simple and definitive resolution process. Institutions like the WIPO, the SIAC, and the ICC have a track record of resolving online conflicts through

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<sup>1</sup>Thomas J. Stipanowich, "Contract and Conflict Management" (2001) Wis. L. Rev. 831.

<sup>2</sup> Farah C, *Critical analysis of online dispute resolution :optimist, realist and the bewildered*, Computer Telecommunications Law Review, 11(4), 123-128.

<sup>3</sup> Schiavetta S., Relationship between e ADR and Article 6 of European Convention of Human Rights pursuant to case law of European Court of Human Rights, Journal of Information Law and Technology, 2004 (1) JILT.

mediation or other forms of alternative dispute resolution. Oral hearings through teleconference or video conference facilities may or may not be part of the procedure. Occasionally, automatic software can mediate a dispute without the need for a third party. The dispute between the parties are resolved if the claimant's offer falls within an acceptable range. In most cases, an ODR service provider acts as an administrator and infrastructure supplier rather than a judge who decides disputes. ODR is notable for resolving disputes in a timely and cost-effective manner while also reducing acrimony between parties.

## **4. Origin Of ODR**

The Virtual Magistrate project was launched in 1996 to provide an online arbitration system to resolve e defamation cases. The Online Ombudsman's office at the University of Massachusetts mediated a copyright infringement dispute between a website owner and a local newspaper owner through mediation.<sup>4</sup> Since 1999, various ODR service providers have actively handled conflicts involving government and commercial enterprises in both the public and private sectors.

When family disputes were first mediated by Kulas, Srenis (competing businessmen), and Parishads in India, ODR arose from ADR (a group of men who possess legal knowledge). ODR was founded on ADR practice in other jurisdictions as well, where technology was used to make the ADR process more efficient and easy for the parties. The Nyaya Panchayat System, Lok Adalat, Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law of Arbitration, and statutory arbitration, among other measures, specifically encourage the use of ADR approaches in India.

The Indian legal structure encourages the use of ODR, notably Section 89 of the Code of Civil Procedure, 1908, which encourages parties to pursue alternative dispute resolution. Similarly, Order X Rule 1A gives the court the authority to order the parties to an action to use an ADR procedure to resolve their differences. Furthermore, the Information Technology Act of 2000 recognizes the use of electronic signatures and electronic records as legal.

## **5. Scope Of ODR**

ODR is used to resolve a wide range of disputes, including civil, commercial, industrial, and banking issues, as well as construction or partnership disputes, product liability, and insurance-related disputes. In Australia, family disagreements must be resolved through obligatory mediation. Criminal law and constitutional law concerns, on the other hand, are primarily dealt

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<sup>4</sup>Supra 2

with through the litigation process and are largely excluded from the ODR realm. New subject areas are being added to the field of applicability of ODR, such as telecommunications law and labor law. For example, the Federal Mediation and Conciliation Service in the United States use ODR to resolve labor disputes. Many government departments are adopting ODR to resolve consumer complaints in e-governance.

## **6. ODR And Technology**

Online dispute resolution establishes an application of existing sorts of ADR that permits its use on the web. The main statement of other methods of dispute resolution – that's, the existence of a 3rd party during the process of reaching an agreement – remains unchanged. However, this has achieved unlike character due to the use of recent methods of communication.<sup>5</sup>

Each method of ODR may use a changed technological system, modifying the course of a given process. Online mediation can take different forms, from an automated Internet platform employing a portal supported electronic chat or video conferencing, to exclusive use of the asynchronous form of communication, i.e. through methods like e-mail (RisolviOnline.com). The first option constitutes a system involving video meetings or online conversations (chat), during which possibilities for dispute resolution are analyzed with the mediator – a more direct sort of ODR. The second option is employed, for instance, in mediation within the scope of pecuniary obligations, employing a system of submitted offers, the parties agree on an amount that's acceptable for all parties without the necessity to satisfy directly. Electronic arbitration, which refers to amicable proceedings conducted via the web, may take either a synchronous or asynchronous form. ODR techniques are often utilized in many ways, with different levels of integration into proceedings. Systems that have an intensive impact on proceedings may “support” parties by suggesting arguments or assessing their levels of satisfaction at each stage. By using advanced technology allows the creation of computer algorithms that analyze all data entered into the system.

## **7. ADR Vis-A-Vis ODR**

ADR is commonly understood as a process of resolving disputes outside of traditional courtroom litigation. It includes arbitration, conciliation, negotiation, mediation, and other formal or informal mechanisms such as through an ombudsman. Therefore, ODR is comprehended to be an ADR process that is primarily conducted using ICT platforms.

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<sup>5</sup> Pankhudikhandelwal and Samarth Singh, blog, “ODR and e-commerce in India” Available at <http://legalreform.com/odr-e-commerce-india> (last visited 5 March 2022)



According to the Niti Aayog Draft Report, e-ADR and ODR are distinguished by their amount of involvement and reliance on ICTs. The function of ICTs should be such that the dispute resolution process cannot be carried out without their aggregate use. Ancillary usage of ICTs, such as a few online hearings or meetings, email exchanges in support of the major form of physically conducted dispute resolution, etc., would not qualify as ODR in the ideal world.<sup>6</sup>

## **8. Benefits**

The principal advantages of ODR are as follows:

**8.1 Economically Viable:** One of the most important considerations in conflict settlement is cost, as disputants prefer to get the best possible outcome for the least amount of money. Because most documents are sent via e-mail and the proceedings are conducted online rather than by post, ODR best matches the budgetary expectations of all parties to a dispute. The expenditures of travel and lodging, as well as the location for holding the proceedings, are all eliminated. As a result, ODR is not only easier and faster, but it is also much less expensive.<sup>7</sup>

**8.2 Speedy Resolution:** One of the key benefits of ODR over traditional ADR is that it takes less time. Whereas ADR may take many months to resolve a dispute, ODR guarantees that issues will be resolved in a matter of weeks. Furthermore, the internet's borderless nature reduces communication issues between parties and their counsel who may be in various time zones. Furthermore, the internet allows parties to get real-time data and other information regarding their cases. In addition to its convenience, e-mail simplifies the burden of organizing ODR procedures and eliminates the need for phone or fax calls. The internet is also a superior and faster mode of communication because it allows several parties to send and store documents at the same time, saving time and money.

**8.3 Non-Confrontational Mechanism:-** By removing the adversary's physical presence, ODR allows the adjudicating body to resolve the issue impartially and solely on the merits of the case. Furthermore, because most discussions or conversations take place asynchronously over the internet, disputants have time to consider their positions before responding. Furthermore, because there may be multiple cases where one party to a disagreement is a small-time manufacturer/supplier and the opposing party is a global entity, such a process neutralizes any economic or other power inequalities that may exist between the disputants.

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<sup>6</sup> Victor Terekhov, 'Online Mediation: A Game Changer or Much Abo about Nothing' (2019) 2019 Access to Just E Eur 33; L Zissis, 'Disputes in the Digital Era: The Evolution of Dispute Resolution and the Model ODR System' (2015) Universite de Toulouse 153

<sup>7</sup> Dr. N.V. Paranjape, *law relating to arbitration and conciliation in India* 375(central law publication) 5th edn.2013

**8.4 Neutral Forum:** The internet provides a neutral forum for adjudication as well as the previously enjoyed "home advantage" by one of the parties.

**8.5 Facilitates Record Keeping:** By depending entirely on digital records, ODR simplifies the process of keeping track of correspondences, pleadings, statements, and other written, oral, or visual exchanges. As a result, the parties save time and money.

## **9. Drawbacks**

The following drawbacks prevail in the ODR process which hampers its growth as an efficient mechanism for resolving disputes:

**9.1 Lack Of Human Interaction And Miscommunication:** Due to the lack of face-to-face interaction, the adjudicating authority is unable to assess the parties' and witnesses' trustworthiness. Furthermore, the impersonal character of the internet can lead to miscommunication between parties, which is especially prevalent when the parties are from different countries and speak different languages.<sup>8</sup>

**9.2 Limited Range Of Disputes:** ODR, like ADR, is best suited to resolving just particular sorts of conflicts, such as those involving e-commerce and domain names. The ODR method may not be appropriate for every type of online dispute; for example, negotiation and mediation may be better appropriate for resolving issues such as the amount of damages that may be owed for breach of contract. Furthermore, tortious matters like defamation and trespass may necessitate discovery, interrogatories, recording witness evidence, and cross-examination, all of which are difficult to handle via the internet.

**9.3 Inadequate Confidentiality And Secrecy Of Proceedings:** The confidentiality of proceedings is essential to the dispute resolution process, which ODRs inherit from ADRs. As a result, ODR providers have put in place technological safeguards, such as the installation of various software, firewalls, and other measures, to protect the data supplied by the parties from interception, alteration, and other threats. Although significant efforts have been made to create and execute data protection regulations, these measures do not guarantee 100 percent security from hackers and other cybercriminals, and they require continual updating, there may still be loopholes that can be exploited. As a result, a lack of internet security may be a major disincentive to the spread of ODR.

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<sup>8</sup>Lan Q. Hang, Comment, "Lan Q. Hang, Comment," *Online Dispute Resolution Systems: The Future of Cyberspace Law*, 41 Santa Clara L. Rev. 837 (2001) Available at: <http://digitalcommons.law.scu.edu/lawreview/vol41/iss3/4> (last visited 15 March 2022)

**9.4 Inadequate Authenticity:** The issue of valid user identification is closely tied to the issue of security. In an ADR process, one party can be confident that the other party with whom it is interacting is the one who is genuinely engaging in the dispute. However, it is difficult to verify the validity of messages received in cyberspace, and it is quite easy for a third party to spoof or misrepresent one of the parties in a dispute, producing confusion and negating the goal of employing ODR.<sup>9</sup>

**9.5 Jurisdiction:** Because the internet is a transnational medium, it challenges and transcends traditional notions of jurisdiction. As a result, determining the proper substantive law to be applied to the disagreement might be difficult. Only by clearly defining the appropriate substantive and procedural legislation in the phrase agreeing to submit the dispute to ODR can this issue be resolved. Finally, the settlement of this matter will be determined by the decisions of courts in various jurisdictions that will study and interpret such ODR clauses, but this process is unavoidable and cannot be avoided.

**9.6 Hindrances At Pre-Trial Stage:** Discovery, interrogatories, and the gathering of evidence to support the parties' separate claims are all important parts of the pre-trial stage. In the ODR process, this discovery or fact-finding procedure may be decreased to speed up the dispute resolution process. In a scenario where the facts are disputed, however, a limited discovery method may help to limit the fact-finding the capacity of the adjudicating discovery process, causing the courts to knock them down for failing to meet the minimum criteria of due process.

**9.7 Publication Of Proceedings And Award:** If ODR is to be promoted as a popular means of dispute resolution, the contents of the proceedings and outcomes must be made public, ensuring openness. However, this goes against the fundamental spirit of ODR, which is to preserve the parties' confidentiality and right to privacy. As a result, the future of ODR hangs in the balance, with one school of thought requiring absolute secrecy of proceedings and the other advocating for public disclosure of proceedings and conclusions. Currently, all ODR providers keep the procedures quiet and only reveal information if all parties agree to the verdict being published.

**9.8 Difficulty In Enforcement Of Online Awards:** In the same way as ADRs require that the decision be enforced in the proper court, online arbitrations require that the decision be enforced in the appropriate court. Orders in execution are subject to appeal in numerous jurisdictions, including India, which prolongs the execution process. According to this notion, disputants may not have much faith in online procedures unless they are assured that the decisions would be enforced and implemented. Furthermore, the enforceability of

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<sup>9</sup> Ibid

foreign decisions made after the conclusion of ODR procedures is a factor to consider when consenting to an ODR clause.

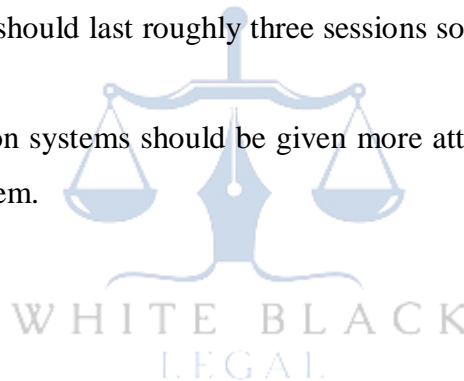
**9.9 Challenging An Award:** Because ODR proceedings are conducted online, another point that needs to be clarified is whether or not a court can intervene during or after the conclusion of the proceedings and/or the announcement of the verdict. This raises the issue of (a) the execution of the court's decision in the country where the opposing party operates/resides, and (b) appeals against the court's decision and enforcement of the said decision.

## 10. Suggestions

10.1 Private ODR and ADR providers must be integrated into the system to ensure that online resolution may reach a variety of industries, regions, and portions of the country, as well as help public institutions.

10.2 Making ODR or ADR optional defeats the purpose; instead, it should be made necessary (for specific categories) and should last roughly three sessions so that parties do not perceive it as a formality.<sup>10</sup>

10.3 Online dispute resolution systems should be given more attention so that their concept is spread and people can use them.



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<sup>10</sup>Drishtiiias, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/online-dispute-resolution>  
(last visited 16 March 2022)

## **11. CONCLUSION**

Traditional forms can be changed to resolve most online disputes due to the adaptive nature of ADR. While there are various obstacles in the way of ODRs being a viable dispute resolution method, it is only a matter of time before they are solved. Furthermore, the explosive rise of online dispute resolution (ODR) companies in recent years demonstrates that ODR is a considerably more effective tool for settling online issues than traditional ADR or litigation. Governments, consumer groups, and the online business working together may go a long way toward establishing the ODR process as a means of resolving disputes quickly and cheaply.

