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# Online Dispute Resolution Platforms - A Comparative Approach

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**ABSTRACT**

*Online Dispute Resolution (ODR) brings considerable advantages over traditional litigation. It empowers consenting parties to create their own agreements and provides a greater degree of control over the dispute resolution process and the decision. With the growth of e-commerce and cross border business, the number of disputes have increased many fold which the traditional courts are feeling the burden. ODR offers a cheaper and swift way to resolve the cases outside the courts. This paper analyses the legal aspects of ODR in India while making a comparative analysis with European system.*

***Keywords:*** *Online; Dispute; Resolution, Internet; Communication.*

## 1.0 Introduction

The emergence of the Internet and the World Wide Web in the nineteen eighties has radically altered the way we communicate. The transformation is often referred to as disruptive and has changed the way we communicate and transact. The Internet has played a big role in globalization and brought the world closer. The development of electronic commerce (e-commerce) has transformed the retail ecosystem, especially in the business to consumer arena.

## 2 0 Odr As a Model for Dispute Resolution

We can now shop from any place, at any time of our choice, and across geographies. While the convenience is widely acknowledged, online transactions can give rise to disputes much the same way that off-line transactions can lead to problems and disputes.

The world of e-commerce is built on trust and to ensure that all parties concerned are adequately protected from uncertainty, it is imperative that there is a legal framework that assures certainty, fairness and the ability for disputes to be resolved. The problems become even more complex when a dispute is cross-border. As cross-border e-commerce transactions increase, the potential for cross-border e-disputes increase proportionately.

Online dispute resolution (ODR) was conceived as a means to achieve some of the broader objectives of providing a fair and accessible dispute resolution mechanism. The term is often used to refer to different forms of online Alternate Dispute Resolution (ADR) mechanisms. ODR is thought to supplement existing ADR methods to address disputes quickly and adequately using technology and the Internet [1].

ODR brings considerable advantages over traditional litigation. It empowers consenting parties to create their own agreements and provides a greater degree of control over the dispute resolution process and the decision. In addition, it allows transacting parties to select neutral third parties to arbitrate, particularly professionals who are experts in the subject matter of the dispute. Compared to the constraints of procedures and precedents that judges are compelled to follow, ODR methods offer flexibility of methods and also the freedom to not be represented by a legal practitioner [2].

ODR has given new hope but it still is a long way to go. Issues of jurisdiction, of expertise, of frameworks exist. However, there is a perceptible shift in judicial thinking.

While some developing nations, especially China have adopted ODR extensively, the results have been mixed. However, the enthusiasm is palpable. Still in its infancy in India, ODR is being used by the National Internet Exchange of India

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(NIXI), which follows the World Intellectual Property Organization (WIPO) Domain name dispute settlement mechanism. The establishment of e-courts on an experimental basis also points to an interest in exploring the use of digitization and the Internet as dispute settlement mechanisms. Recognition that judicial processes are slow, expensive, and complicated, especially in cross-border disputes, is encouraging the use of ADR.

**3 0 Evolution of ODR**

The use of information technology in the area of dispute resolution is a subject that has been widely debated. Initially systems were designed to address issues within a single organization. The objective was to institutionalize mechanisms by which causes and patterns of disputes could be identified and conflict between the organization's stakeholders could be addressed.

Interest in adopting digital technology to design dispute resolution systems has expanded during the course of the last two decades. While it is still viewed as an alternative only in disputes arising online between distant parties, attempts are also being made to stage traditional ADR processes online [3-7].

ODR started out as the administration of ADR processes online, it was seen as a way to replicate face-to-face interaction when such interaction was not possible. If the face-to-face mediation process involved three stages (such as unassisted storytelling, assisted storytelling, and joint problem solving), then that was exactly what early online neutrals attempted to do. The tasks of the online mediator were the tasks of the offline mediator: reframing the discussion, keeping the parties on track, and reality-testing proposed solutions. Online mediation still strongly resembles offline mediation, and it does not seem likely to change in the not-so-distant future. Online processes can even get closer to replicating "true" dispute resolution procedures as technology is perfected [8].

Alternate dispute resolution was first catered online in 1998 in the United States of America and Canada. To give a background, ODR was developed in three phases. Till 1995, ODR's growth was restricted in niche areas and specific contexts. It was only between 1995 to1998 in which ODR spiraled by coinciding with the internet boom. Post 1998, to quench the demands of the ever-expanding e-commerce market, the idea of autonomous institutional setups for dispute resolution came into existence. Consequently, academic non-profit organizations and commercial entities alike poured funds into ODR regulation and founded brand names that we now associate as the leaders in the field like **c**yber **s**ettle and e-resolution.

ODR may have two connotations from a preliminary understanding. It could either mean the resolution of online disputes or the resolution of disputes in an online environment. There are three approaches to ODR. The cyberspace approach revolves on the pivot of the internet and IT advancement with the intent of finding better and efficient ways to resolve the disputes through technology. The non-adjudicative ADR approach depends on the principles of negotiation and mediation in virtual space to improve communication and party relationships. The arbitration approach is bundled by the success of the traditional arbitration with the underlying principle that the success of traditional arbitration can be mimicked by cyber-arbitration [9].

There are a few misguided judgments about ODR, for example, the possibility that ODR is legitimate for little cases, or that ODR only depends on mechanized innovation, or that ODR can just manage online conflict. In actuality, ODR has demonstrated effective in determining logged off and substantial worth question, and it by and large joins impartial outsiders [10].

**4 0 Litigation and its Purpose**

What is it that gets two parties to litigate? To end a dispute one that brings finality and prevents parties from re-addressing the arguments. On the other hand, ADR is designed around communication and allows parties to address the hurts and focus on issues so that the dispute can be resolved with an aim to avoid litigation. Using trained arbitrators or mediators provides parties with an expert to evaluate the issues and help focus parties on problem solving the dispute.

Mediation is a participatory approach and it is through consensus that a final agreement is reached. The final agreement is documented by the mediator and signed by the parties. The notable aspect of this is that parties to the dispute are usually satisfied with the result as it was achieved through consensus and

guidance rather than a forced ruling. The success of alternative dispute resolution mechanisms stems from this approach of consensus and therefore parties are more willing to bind themselves with the results.

**5 0 Origins of Dispute Systems Design**

Dispute Systems Design as an area of study originated in the nineteen eighties. From the book-Getting Disputes Resolved: designing systems to cut the costs of conflict, in 1988, was a move towards establishing patterns of disputes. Authors studied the mining industry and the communication between management and miners. They noted that while such communication was not just an adjunct arising from a dispute but that it could be proactive on an ongoing basis. The superiority of such a structure lies in the fact that it is based on interest based processes and is likely to yield positive relationships and fruitful long-lasting outcomes.

In many respects, DSD has been an activity of setting professional, physical, and conceptual boundaries, all of which are supported by controlling and shaping processes of communication.

**6.0 Dispute Resolutions and Information Technology**

Information technology provides opportunities to facilitate communication and so assist in prevention and management of disputes. Where disputes arise, ADR services can use information technology to provide information to parties and to complement, or substitute for, traditional face to face interventions. Information technology can also play a valuable role in supporting the quality of ADR practice through more effective supervision, assessment, training, information management, research and evaluation.

Dispute resolution services may use whiteboards, telephones, fax machines or word processors. Parties and providers communicate via telephone networks, information and agreements are entered onto computers, information may be accessed and down-loaded from the Web, parties and providers may communicate via e-mail, forms may be lodged electronically, fees may be paid by the Internet. Many dispute resolution services use video-conferencing facilities. Some provide their services predominantly or entirely on-line. Some may integrate multiple telecommunication forms with intelligent software. In future, nanotechnology, virtual reality, holography and robotics may be taken for granted like telephones are today [4-6].

Information technology has the potential to enhance access to some otherwise disadvantaged groups. Barriers that can be removed or reduced through technology include: geographical isolation; mobility impairment; confinement or imprisonment; sight or hearing impairment (e.g. through voice recognition software); language difficulties (through translating software); lack of confidence or competence in face to face communication; and physical violence or intimidation. On-line communication operates globally and is not constrained by physical distance and geography (but is confined by the availability of carriers and media). Practitioners and parties can be from anywhere in the world.

While information technology theoretically promotes access, digital divide may prevent this potential from being realized in practice. Lacks of computer literacy, lack of access to appropriate hardware, software and telecommunication infrastructure, are key barriers. Those on low incomes, those with low literacy and older people may find it harder to access on-line services. Those in rural and remote areas frequently do not have the reliable high bandwidth telecommunications forms required for effective on-line use of services, and may also be more likely than their urban counterparts to experience the social barriers mentioned above.

Accessibility and acceptability will influence whether a new process, such as on-line ADR, is accepted in the first place. By contrast, fairness concerns the actual and perceived equity of outcomes for parties once they use the service.

While ADR services may use on-line communication to complement face to face services, some processes are conducted entirely on-line. Acronym ODR (on-line dispute resolution) is often used to describe these processes. ODR processes include:

- Automated negotiation,
- blind bidding
- Mock juries
- On-line arbitration
- On-line mediation
- Credit card charge back and escrow arrangements.

Some ODR processes, such as on-line mediation and arbitration, attempt to reproduce traditional face to face processes. However, unique forms of ADR, such as automated blind-bidding and mock juries, have also developed out of the virtual environment. These new forms challenge the definitions and standards developed for traditional ADR processes [4].

**7 0 Move Towards ODR**

At present, ODR is most commonly used to resolve disputes concerning on-line transactions such as e-commerce or domain names. Processes may also be conducted entirely on-line where geography or disability or other factors prevent other forms of communication.

Parties who are very comfortable and confident in the virtual environment may have no difficulty using an on-line process conducted entirely on-line. Many, however, may be newcomers to the Internet and may well be discouraged and disadvantaged if ADR were only available on-line. Thought, therefore, needs to be given to the provision of back-up systems in the event that the on-line communication process breaks down.

Specific legal issues arise out of the nature of digital data, and the global nature of telecommunications. However, divergent legislation across national and international boundaries, combined with a lack of case law, means that many of the legal issues associated with the use of technology in ADR are uncertain.

In the global communications associated with the Internet, there are multiple and overlapping sovereignties, comprising national and state statutes, international treaties and self-regulatory arrangements, contract law, and virtual law. It may be difficult to determine the site of the ADR process and, in turn, legal implications for the conduct of the process, the status of communication and the enforceability of outcomes. In the case of arbitration, the question arises as to what is the seat (or place) of the arbitration, or indeed whether such a place exists in any event (as the arbitrator is 'nowhere'). As outlined earlier in this paper the virtual community to some extent has its own quasi or virtual sovereignty.

There are potential legal risks for parties and for on-line ADR providers that action may be brought against them in a court anywhere in the world. While there is little case law directly relevant to on-line ADR, publication of material over the Internet has raised important jurisdictional issues.

Privacy and security of on-line communications create many new legal challenges. As digital data can be copied and manipulated infinitely, the authentication of data is a critical issue. Public key infrastructure (PKI) enables electronic signatures to be recognized and validated. Legal issues relating to contractual arrangements, the payment of fees or exchange of money as a result of an agreement or decision made in an ADR process may need to take account statutes and legislation relating to electronic transactions in different countries.

Due to the rising cost and length of litigation, and a desire for privacy, companies are turning to alternative dispute resolution (ADR) to settle legal clashes. There are many reasons for the same. First, courts are backlogged with cases. It typically takes years to get a court judgment and years more to conclude appeals. By then the technology in question may be obsolete. In contrast, ADR allows for a quick resolution, typically measured in months not years. Second, the courts don't offer efficiency. Court cases are burdensome and costly - ADR provides the opportunity for cost-efficient dispute resolution. Third, there is too much uncertainty in the judicial process. Today, company cases often involve complex technologies that are beyond most judges and juries and procedural issues, runaway juries, and appellate reversals drag down the process. In contrast, ADR allows the parties to self-select tech savvy legal experts to resolve disputes objectively and with finality based on the law. Lastly, the court process can expose company trade secrets and business plans. ADR can better protect confidential information and provides privacy, allowing business discussions stay at the boardroom level. FADR provides neutral decision-makers and allows for awards that can be readily enforced internationally.

**8 0 Existing ODR Frameworks**

At the moment there are four types of ODR systems:

- Online settlement, using an expert system to automatically settle financial claims;
- Online arbitration, using a website to resolve disputes with the aid of qualified arbitrators;

- Online resolution of consumer complaints, using e-mail to handle certain types of consumer complaints;
- Online mediation

ODR represents the gamut of dispute resolution possibilities which are difficult to measure and classify by any coherent set of criteria and principles. It may involve automated negotiation processes administered by a computer, or it can provide world-class experts to administer arbitration procedures remotely. While some ODR mechanisms are procedures of agreement (for example online mediation), others belong to procedures of advice (e.g. tools supporting negotiation) or procedures of decision (e.g. online arbitration).

ODR phenomenon encompasses a collection of diverse procedures intended to prevent, manage or resolve disputes in the online environment. Fitting them into a coherent theoretical framework suitable for dispute resolution is certainly a difficult task. The role of technology in mediating communication between parties is seen as the main difference between ODR and other methods of dispute resolution.

ADR was the original model for ODR, and many goals and techniques of ADR will certainly remain goals and techniques of ODR. The necessity for new methods of dispute resolution arises from the fundamental nature of the Internet itself. First, the global character of the Internet undermines the notion of territoriality, one of the foundations of traditional locus-based systems of dispute resolution. Because the Internet does not correspond to the jurisdiction of any sole existing sovereign entity, territorially defined laws and rules are difficult to apply to the Internet and activities of Internet users.

Traditional, state-run and territorial courts are too slow, expensive, and inaccessible to address all problems that arise on the Internet. The Internet collapses not only physical space, but also time, in many ways. Information travels rapidly on the web, cyberspace allows people in all corners of the world to send and receive information 24/7.

In 1999 the OECD has published guidelines for consumer protection in the context of electronic commerce. These guidelines encourage businesses, consumer representatives and governments to work together to provide consumers with meaningful access to fair and timely alternative dispute resolution and redress, without undue cost or burden. Special attention is given to cross-border transactions. Special emphasis is placed on the innovative use of information technologies in implementing ADR systems.

The EU has addressed this issue in the European 'Directive on electronic commerce' (98/0325 (COD)). The first part of article 17 of the directive states:

'Member States shall ensure that, in the event of disagreement between an Information Society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, 'including appropriate electronic means'.

The OECD's Guidelines were later adopted by the G8 in the Okinawa charter on the global information society, which says that extra-judicial dispute resolution mechanisms are a way of solving problems related to consumer recourse in cyberspace and 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. The European Union and the United States renewed their support for the OECD's guidelines at the 2000 Summit.

**9 0 Conclusions**

Some of the major advantages of alternative dispute resolution are the facts that it can solve the problem of jurisdiction, it is swift and can be provided at low or no cost to e-consumers, but quality guarantees are necessary as well as guarantees that the solutions will be followed (compliance). ODR brings out a lot of advantages to people mainly because of the accessibility ease provided and also the affordability.

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