Online Dispute Resolution: An emerging tool of dispute resolution in contemporary era

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Abstract
Globalization has become one of the great stimulators in integrating economies and societies of different nations across the globe and in breaking economic barriers and envisioning the world as a market of trade. In the modern days of dispute resolution of commercial conflicts, there is drift from litigation to arbitration. Online Dispute Resolution (ODR) refers to various Alternative Dispute Resolution processes like arbitration, mediation and negotiation conducted with the assistance of online Information and Communication Technologies (ICTs). In India, ODR is under the infancy stage and is developing day by day. With the advent of Information and Technology Act, 2000 e-commerce and e-governance received its formal recognition in India. Moreover, the standard arbitration law has been reformulated and currently we’ve got Arbitration and Conciliation Act, 1996 in situ that’s satisfying the harmonious standards of UNICITRAL Model. Also, Code of Civil Procedure, 1908 has been amended and Section 89 has been introduced which provides for alternative dispute resolution in India. Through the instant academic venture, a meagre effort has been made by the authors to analyse the development of online dispute resolution (ODR) methods in resolving small value disputes arising out of e-commerce transaction and its importance and the need for designing a regulatory model to realise its full potential in the EU.

Keywords: Alternative Dispute Resolution, Arbitration, Information Technology, Negotiation, Online Dispute Resolution.

INTRODUCTION
Globalization has affected the world in numerous ways. International Trade is one of those which has emerged as a vital aspect of the interdependence of states in International Economy. International trade is the concept of exchanging goods and services between people or entities among different countries. In a conventional way, such kind of trade was done via face to face meeting of parties, where parties gave consent to such agreement. With the advent of the internet, cross-border transactions have also been moulded where most of the transactions of such kind are done via internet. Trading between parties is an agreement in nature where the dispute is inevitable. In International Trade, conflict is much higher in comparison with domestic because jurisdictional submission is the foremost tussle. Computers are a source of communication. It can communicate same as a human being. Where a trade can be done online, why not disputes arising out of the same can be resolved with the same process. As in case of Arbitrators, they have been trained as well before they can act in such capacity that can be done with computers as well. Where a computer may serve the same result then we can opt for such way which can give better result in the earliest way. At present many technologies has been acknowledged in the conventional way of resolution as well such as video conferencing, digital signature because of their ease.

Dispute Settlement Mechanism under International Trade
In the year 1995 International trade entered into a new phase when Uruguay Round lead the creation of WTO. It superseded all the activities earlier GATT performs, also establishes a legal framework where all pacts negotiated through GATT will be dealt in future by WTO. It was propounded as a two-fold body which provides for regulatory measures in International trade as well as dispute settlement. DSB was introduced for resolving such Trade disputes arising out of any agreements. It will function with its other organs when a trade dispute will be brought to the notice of DSB. There are various
responsibilities of DSB such as setting up panels, supervision and others. It was constituted by the contribution of Uruguay Round for providing security and predictability of the trading system.

Dispute Settlement Body under WTO work as follows:

- Consultations: Initial complaint where mediation for settlement is tried by Board. (60 days)
- Review panel set up. Submission of cases by both the parties. (45 days)
- Submission of report by Panel to disputing parties. (Six months)
- Report submitted to all panel members. (Three weeks)
- If no appeal lies report is adopted by Body. (60 days)
- Appeal. (60-90 days)
- Settlement body adopts appeals report. (30 days)
- If the defendant states its intention to comply. (30 days)
- If the defendant doesn’t comply, it must compensate the plaintiff. (20 days)
- If it doesn’t, the plaintiff can ask the WTO to impose trade sanctions. (30 days)

This Body has been set up mainly for the purpose of dispute settlement between nations and not in terms of Individual traders. Also, this body was framed in the structure of Traditional courts where it follows a lengthy procedure. In regard to individual parties some Alternative means were also present where parties may resort directly in trading agreements such as UNICITRAL Model Law on International Commercial Arbitration (1985) which was subsequently revised in (2006), UNICITRAL Conciliation Rules 1980 that provides for procedures on that parties is also arranged in their trade agreements wherever any disputes arise in their business relations. Also, the UNICITRAL Arbitration Rules 1976 that lateron revised in 2010 and 2013 provides such different measures. But in the era of E-commerce where there is an online environment where disputes emerge in cyberspace. There is no such regulatory mechanism yet been developed in dealing with such disputes which is also a cross-border transaction issue. In providing facility to such disputes UNICITRAL in 2016 has adopted Technical Notes on ODR. ODR doesn't lack any immanence of ancient ways like natural justice. In the year of E-Commerce that isn't time-bound can develop day by day associate degree disputes arising out of them also are of inevitable character on-line a timesaving suggests that to settlement. ODR is one amongst the ways by that such disputes will be resolved amicably.

**Concept of Online Dispute Resolution**

The main goal of the traders is to develop a trust relationship with his consumer and it is not something which can be made in a first instance but it develops gradually. International trade has high-risk factor where the disputes arose frequently due to the breach of trust between consumers and traders. If you’re a part of a website or service that’s seeking to develop a way of trust on your site, there are a unit having large sort of techniques you’ll use to achieve that goal. It is important to note that business cannot directly control the trust their customers feel. They can solely produce conditions that encourage individuals to trust.

Trust is built only when the consumers find their money secured and in case of breach their dispute will be resolved in an expeditious manner. ODR can be a tool for trust building mechanism for parties. As Ethan Katsh, the father of ODR has put it:

"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."  

ODR can serve many purposes which can be beneficial for both parties as the working of ODR is done on a neutral basis which does not consist any biases towards any party to dispute and serve expeditiously.

**Structure of ODR System**

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In ODR system there are five parties to it, whereas the fifth party is not considered as an active participant but its role is for providing technical assistance in the same.

In ODR process primarily where any dispute arise then complainant file a complaint to ODR system where a neutral party has been appointed by the same with respect to consent of both the parties then the technology used is regarded as the fourth party which is an active participant where it provides help to both disputants in documentation and other technical complexities. It also helps in clarifying the underlying object if ODR and if such ODR fails then it also provides internet support which assures the communication and other processes to be done hassle-free.

There are a number of service providers in present days who provide such service but for emerging need of solving International trade disputes, such provider has to be established worldwide.

In result, trust can build up more firmly between traders and consumers in International Trade Law.

ODR is a new method which neo in character for resolving disputes through it, one must go through its structural mechanism.

**Historical Background of ODR with Special Significance of UNICITRAL**

ODR’s originated in the early 1990s as a of growth of internet took place, it also evolved many disputes which were a result of development in International trade in cyberspace. Till 1992, the National Science Foundation, the internet was banned for the use for commercial purposes. Even a person having skills to computers was not able to buy anything from there because there was no such e-commerce prevalent at that time. In comparison with the present, there were no disputes when e-commerce evolved because at that stage there were no such technological spams, squatters or violators of cyberspace. Till then there were no such alternative means was required as there were no such disputes. Later in the first half of the 1990s was a period of significant change in the online environment. In 1996, the first article about ODR appeared
in a law review, the National Center for Automated Information Research (NCAIR) sponsored the first conference devoted to ODR and functioning from NCAIR launched the first significant ODR projects, the Virtual Magistrate, the Online Ombudsman Office at the University of Massachusetts and a family dispute ODR project at the University of Maryland. A year after the NCAIR conference, the Hewlett Foundation provided a grant to the University of Massachusetts to establish the Centre for Information technology and Dispute resolution (later the National Centre for Technology and Dispute resolution). The current on-line atmosphere could also be a descendant of the atmosphere that existed fifteen years past however, the context during which disputes area unit occurring is immensely totally different. The range, variety, and the number of online activities has increased. Ten years ago, many were sceptical of the need and potential of ODR; today, it is well understood. Most importantly, ODR, which was originally focused on disputes related to online activities, is now employed in offline disputes.

E-bay-Jeff Bezos launched Amazon on August 1995, and Pierre Omidyar laid the founding stone of eBay a month after. E-commerce depends on users not only being able to conduct transactions, but willing to do so. Decisions regarding price are prima facie important while gaging the attention of potential buyers, however, users yet need to hold trust on the fact that the good exist and will have delivery on the stipulated time. Judgments about acceptable levels of risk are affected by many variables and users may assume higher risk in exchange for lower cost or higher cost in exchange for lower risk. eBay’s success derived considerably from recognizing ODR and from putting in place a feedback system to provide buyers with more information about a seller. This system could be a name device for trust sweetening and risk reduction that involves users posting messages concerning whether or not a dealings with a selected user was triple-crown. eBay’s goal and the goal of all business and marketplaces is to provide both low prices and low risk. The feedback system on eBay created users feel additional assured that issues wouldn’t occur however, it failed to eliminate disputes between consumers and sellers. In 1999, eBay asked the University of Massachusetts Amherst Centre for Information Technology and Dispute resolution to conduct a test to mediate disputes between consumers and sellers. The pilot project handled two hundred disputes in a two-week period, by far the largest number of disputes ever handled online, and it prompted eBay to include dispute resolution as a choice for consumers and sellers within the event a dealings was unsuccessful. Initially, eBay’s dispute resolution process was contracted out to an Internet start-up, Square Trade, and several years later taken over by eBay. By 2010, the quantity of disputes managed by eBay reached the extraordinary figure of sixty million.

Internet Corporation for Assigned Names and Numbers (ICANN) and the Uniform Dispute Resolution Policy for resolving domain name disputes were instituted in 1999. When it began, it was largely an offline process but over time it has become increasingly online. It provides an online legal framework against cybersquatters. During the Internet “bubble” of 1999-2000, many ODR start-ups appeared and then disappeared. Few, such as Smart-settle, Cyber-settle and The Mediation Room, remain. Ebay’s original ODR provider, Square Trade, shifted its attention from ODR to consumer warranties in 2006. Also, Pay Pal has sorted a huge number of disputes overtime doing a commendable job in ODR service.

EU: has also enacted rules on ODR process where disputes over the internet can be sorted by way of ODR.

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5. Ethan Katsh, A Few Thoughts About the Present and Some Speculation About the Future, 2000
UNICITRAL
In the year 1976 Arbitration rules were enacted by UNICITRAL regarding the need for International trade disputes to be adjudged expeditiously which was further replaced by 2013 rules. Later in 1980 UNICITRAL has provided Conciliations rules where through ADR settlement can be done by way of Conciliation. In 2010 in the 43rd session where commission finds that there is a need for dispute resolution to be done online and for such matter, Working Group III was given responsibility for it. ⁸ By going through many sessions and recommendation by different countries such as US-China and European Union in regard to when ODR can be constituted in a contract in International Trade. In 2015 Working Group III submitted its report in the 49th session where ODR needs; constituent and working was briefly given. In 2016 UNICITRAL enacted those technical notes which are non-binding and descriptive in nature.
In those technical notes, ODR mechanism requisites are pointed and also how disputes can be resolved between parties.
In such technical notes, it was also cited that countries are requested to follow and promote ODR mechanism and process by way of enacting and regulation in their nation. At different times, agencies have worked for propounding ODR mechanism. In this stage of the Online transaction, ODR will serve adequate desires and requisites of development of Trade and commerce globally. ⁹

Need and Importance of ODR
The Internet is a 21st-century medium that has revolutionized various areas of our life. It provides various functions and as a common source of information, communication mode and global trading platform. It has become the engine for introducing modern technological solutions within existing fields of activity. The dynamic growth of the Internet in national and international commerce has created a need to look at statutory frameworks for defining and dealing with legal non-compliance. Despite the problems cited, new methods of communication have improved many areas of law – including modernizing processes for the out-of-court settlement of disputes, examples of which are constituted by the system for online dispute resolution.
For disputes arising from an online e-commerce transaction Online Dispute Resolution can be an effective measure. Dispute Resolution is another option to the normal legal method, which usually involves a court, judge, and possibly a jury to decide the dispute. Online Dispute Resolution will involve the parties in mediation, arbitration, and negotiation. The parties might use the net and web-based technology during different type of ways. Online Dispute Resolution may be done entirely on the Internet, or “online,” through email, video conferencing, or both. The parties may also meet in personally, or “offline.” Sometimes, combinations of “online” and “off-line” methods are used in Online Dispute Resolution. Some e-commerce firms give Online Dispute Resolution as a service to customers. A growing range of organizations exist that give Online Dispute Resolution services for buyers and e-commerce businesses. These organizations are called Online Dispute Resolution Providers.
In Zippo Manufacturing Co. V. Zippo Dot Com,¹⁰ where dispute regarding private jurisdiction emerged prominently where Dispute was relating to a domain name. In that time exclusive principles in regard to online disputes were required.

Online Dispute Resolution has gained fame in fixing e-commerce disputes among businesses and buyers. Advantages of Online Dispute Resolution include:
- **Cost** – Online Dispute Resolution is often less expensive than the traditional.
- **Legal process Efficiency** – Online Dispute Resolution can often resolve the dispute quickly.
- **Participation and Control** – parties using Online Dispute Resolution must work with each other to resolve the dispute and often have more control of the outcome of the dispute.

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• **Flexibility** – parties using Online Dispute Resolution can have more flexibility than the traditional legal process.

• **Geographic flexibility** – Online Dispute Resolution can allow parties in different locations or countries to avoid the costs and inconveniences of travel.

Jurisdiction issue remained a factor for concern in many disputes as in case *Panavision International, L.P. V. Toeppen* 11 where dispute incurred online was in question. Here also need for Online Dispute Resolution in infringement was recognized. Hence ODR is in conformity of globalizing world that demands intellectual ways with the utilization of ICT. In gift most of the items complimentary use the web for his or her recognition and services. Also, net is a mode for breakdown disputes in addition during a speedy and honest manner.

**ODR in India**

In India, ODR is at infancy stage where less amount of work has been done on this topic. Whereas in developed states such as the US, UK and EU, good work has been done. EU has significantly acknowledged ODR as a procedure for dispute resolution. Though UNCITRAL has provided guidelines on working and constitution of ODR system, furtherance to it no work has been done in India, but there are instances where ODR has been used which shall be discussed now onwards. 12

• **E-Bay India;** it uses online mode of negotiation, mediation and community courts to resolve disputes which arise out of feedback from consumers. E-bay has provided on its respective site feedback form where consumers out of any dissatisfaction or complaint may submit their dispute and further it will be resolved by them.

• **Tamil Nadu Electricity Board;** introduced a unique procedure by which 10digits unique number has been provided by them to consumers by which they can submit their complaints online in a new body constituted; consumer dispute redressal mechanism.

• **Complain Cyber Crime;** Secure India website provides for the filing of complaint arising out of online activity on social media, which shall be resolved by cybersecurity specialists constituted by the website.

• **Consumer Online Resource Empowerment;** it is managed by Consumer Coordination Council. This is an apex body of India’s leading 89 consumer organizations; its main objective is to provide consumer sovereignty and online support to them. It was an initiative taken in 1993 to resolve consumer disputes through online dispute redressal system.

• **Online Public Grievance Portal;** Government of India has initiated this through its Department of Administrative Reform and Public Grievances where citizens can file complaints against state or state government.

• **ODR Ways;** For promoting mediation in India students of National University of Juridical Science, West Bengal have started ODR ways. They have developed an online mediation platform for small civil claim disputes and are also working towards building an online platform for mediators in India, which will make it easier for the general public to engage with mediators when they have disputes.

These were the ODR processes used in different aspects in India but the major concern of settlement of dispute here is of trade nature. Dispute resolution in itself a complex procedure for all either individual or states. Conflict of laws is of major concern because every country has its own law. As a result, International Commercial Dispute faced many challenges. In India, Arbitration and Conciliation Act was enacted in 1996 which was further amended in 2015, which provided for arbitration and conciliation for both national and international person and entities.

By the growing trend of usage of e-commerce, the role of technology has also emerged in India widely, whereby clicking on mouse consumer can get access to international traders online of their required products and also product details or any other query of the product.

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11. 141 F. 3rd 1316, 1312
Disputes arising out of such online transactions are regulated by conventional modes where they agree to submit by an agreement to resolve them. Conventional modes may not serve the requisite need of parties, which can be a problematic concern for traders and consumers. In future, it may hamper the credibility and fiduciary relationship between them.

For resolving online transaction disputes UNCITRAL has already provided technical notes in 2016 but that is merely a discretion in the hands of states for regulating and abiding it. In India, the Arbitration and Conciliation have not yet incorporated any use of Information and Communication for resolving such disputes.

In India the Perrylaw Organization from past 13 years is advocating for the use of ODR. Presently it is working through Techno Legal Centre of Excellence for Online Dispute Resolution in India (TLCEODRI).13

**Working of TLCEODRI**

The main objective of TLCEODRI is to provide and promote the use of ODR in India. To help national and international stakeholders it has also drafted an “ODR CLAUSE” that they can use in their agreements. They have also introduced a blog for ODR training along with a discussion forum. Also, it has launched first techno legal ODR Portal in India which is serving vast dispute resolution named; ODR and Cyber Arbitration Portal.

In future it is seen that work of TLCEODRI will serve many goals of ODR where techno legal norms by Indian Government can be introduced by way of IT ACT 2000 also PPP Based ODR Models, Consolidation Of ODR Segment, Consumer Protection In Cyberspace whereas growth in E-Commerce disputes in future is also circumventing which can easily be sorted by way of ODR.

In India idea of perception of Courts is also changing, with the advancement of technology courts are also citing demand of time which needs procedural changes in conventional norms.

In Tamil Nadu V Union of India,14 Supreme Court cited that with growing trend of technology enhancement there is a need for judicial procedural enhancement as well.

Also in State of Maharashtra V Parul B Desai,15 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.

The initiative of ODR will also help India in making Digital India and also enhance the E-documentation process. Resolving disputes over the Internet will facilitate India in trade and will enhance technological infrastructures in India.

**Conclusion**

After going through articles and technical notes by UNCITRAL it has been concluded that E-Commerce is rapidly increasing over boundaries. In developing countries like India where the economy is in a transient phase, it has to be protected much wisely.

Though there is a rapid increase in cyberspace and cross-border transactions but still, the International Trade Law lacks any governing and regulatory framework which may serve promptly and adequately. The small investors or start-ups are more prone to risk factors in International trade. India needs a guideline over it where ODR process can be recommended to the parties to the dispute.

Also, in India and worldwide, there is need of awareness about the same because many people and entities are not aware that they can resort to ODR their disputes more easily.

In past decades the use of internet has risen and in future as well its growth is inevitable. By such transactions, disputes will arise as well and due to a lengthy procedure and lack of trust, it may affect the International trade Business.

Where Internet can be a mode of doing business, it can also serve as a dispute settler.

By resorting to ODR many hurdles can be vanished such as cost, travelling, time and many more. ODR will serve more transparency and will also accommodate parties with an easy e-documentation process.

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   http://odrinid.in/ visited on 01/08/2019
15. (2003)4 SCC 601
So, there is need to implement ODR procedure to solve disputes and it is important to note that only implementation of ODR can be done by way of accepting through its norms and applicability. It just an alternative to ADR and it also renders the same required notion of transparency, Natural justice, and consent in its procedure.

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