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A DETAILED ANALYSIS ON ONLINE DISPUTE RESOLUTION: GENESIS, EVOLUTION AND IMPLEMENTATION

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INTRODUCTION

The present world in which we all live is full of security and privacy threats like identity threats, cyber-crimes, etc. that have extended its branches in almost every field of human indulgence, as a result of which the general public is compelled to try anti-security devices or software. However, this all was not expected in the beginning when computer networking and the Internet got invented; instead, it was always interpreted as an invention of a lifetime, which can lead to excellent results in almost every sector, whether it is; educational, institutional, etc. As time passed, people realized that such a productive discovery could also have its own drawbacks like consumer-trader disputes and several e-hazards. It was a time when people must witness the transition from a formal way of dispute resolution to a fully digital methodology of dispute resolution in which a single server network was created with the help of designated software which assigns an arbitrator or mediators to the party to a dispute so that an agreement of clarity can be established between the conflicting parties.¹

BRIEF IDEA ABOUT ADR SERVICES

Alternative Dispute Resolution was an utterly outstanding innovation in the field of legal sciences that really changed the cumbersome approach of dealing with disputes in daily court hearings, which can be termed as a futile exercise of dispute resolution. To be precise, it can be

¹Online Dispute Resolution in India, *available at:* <http://odrindia.in/> (Last Modified October 14, 2019).

defined as an '**Out of court settlement**' that overrides the practice of litigation in disputes resolution.²

Now, to categorize the ADR services, there are four basic types³ of ADR mechanisms which are explained as follows:-

- a. **Arbitration-** In this service, an arbitrator or board is assigned by the parties, which is generally done at the creation of a contract by mentioning an 'arbitration clause'. During the proceeding, the evidence is interpreted deeply before coming to a conclusion.
- b. **Mediation-** This mechanism of mediation is almost the copy of arbitration; in this, a mediator is appointed by the courts who then strive for a settlement between the parties. However, the outcome is not binding on the parties to follow.
- c. **Negotiation-** In negotiation, the conflicting parties are asked to resolve their disputes face to face, which makes it a fruitful exercise for the party because they can fulfill their self-defined demands in a much easier way.
- d. **Conciliation-** The practice which is established in conciliation proceedings requires a conciliator who first deals with the party individually then with everyone together in search of the best outcome.

MEANING AND GENESIS OF ODR MECHANISM

To start with, Online Dispute Resolution is a sub-part of ADR structure whose area of services is in cyberspace and Internet technology. It primarily deals with the contentions via online medium. The system seeks the help of modern computer technologies to help parties reach some solution.⁴ There are several work patterns that are followed for the smooth working of the system like online mediations, video-conferencing, chat rooms, etc. there are even some countries like UK and Australia whose judiciary has provided for cyber-courts or specific courts dealing with

²Edwrd Brunet, Charles B. Craver, et al., *Alternative Dispute Resolution – The Advocates Perspective* 25 (Carolina Academic Press, U.S.A., 5thedn., 2018).

³Alternative Dispute Resolution, *available at*: https://www.law.cornell.edu/wex/alternative_dispute_resolution (Last Modified June 8, 2019).

⁴Dispute Resolution Reference Guide, *available at*: <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/10.html> (Last Modified January 19, 2015).

thesame.⁵ In *MarutiUdyog Ltd vs. Maruti Software Pvt. Ltd.*⁶, The court pronounced that a company's whole ADR policy must be managed by its arbitration and mediation department. This category of ADR mechanism is so convenient that it can quickly provide all the necessary requirements a party asks for.

According to Hon. Arthur M. Monty Ahalt (Ret.) – “ODR is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this respect, it is often seen as being the online equivalent of ADR.”⁷ Then according to, Janet Rifkin and Ethan Katsh, the three most essential components of ODR are – ‘Expertise, Convenience, and Trust’.⁸

Now, to discuss the genesis of ODR, we need to go back in the 1990s; when the National Science Foundation permitted the use of business or commercial activities through Internet, almost after a span of 20 years when the Internet was started in 1969.⁹ After this transition, there was seen a drastic increase in the number of disputes occurring because of this change, and there was no particular system that could deal with this chaotic situation. The aforementioned situation insisted on the National Centre for Automated Information Research in 1996 to organize a symposium which would help to develop a policy that could provide a backbone to the ODR service. After the deliberations, there was an announcement of three path-breaking ODR institutions, namely; The Virtual Magistrate (dealing with disputes occurring between regular users and Internet Service Providers), The Online Ombuds Office at the University of Massachusetts (dealt with activities that take place through online domains) and The University of Maryland (to look after the family-related disagreements).¹⁰

For the first time in 1996, an article related to ODR got published in the Connecticut Law Review, written by a renowned legal professor of the University of Massachusetts, Ethan Katsh. Then after some time, the University Of Massachusetts, in collaboration with the Hewlett Foundation, enacted a new institution named as The Centre for IT and Dispute Resolution, which

⁵*Ibid.*

⁶300/Del/2006.

⁷Moghe, “ODR Mechanism: Prospects and Challenges in India”, *available at*: <http://www.legalserviceindia.com/legal/article-839-online-dispute-resolution-mechanism-prospects-and-challenges-in-india.html> (last visited on October 5, 2019).

⁸*Supra* note 7.

⁹Ethan Katsh, *ODR: A Look At History* (University of Massachusetts).

¹⁰ *Ibid.*

later got named as The National Centre for Technology and Dispute Resolution which was established to provide a new and lasting dimension to the ODR mechanism and got successful in doing so.¹¹ The outcome of the framework institution is obvious after witnessing the growth of the ODR services in modern times. In the day to day scenario, there are numerous and reliable ODR platforms like, for example, SmartSettle, BBB online, NIXI, etc. that have raised the standard of ODR mechanisms and completely renovated work ethics.

EVOLUTION OF ODR SERVICES SINCE ITS INCEPTION

When the whole process of dispute counting and resolution began after the commencement of commercial exercise via the Internet, it was not taken seriously as the ODR mechanism was undermined and was considered to be a less productive methodology. But, with time, it started to gain importance, and its use and reliability factor got increased in the market. It got quite a large number of acceptances by different people, so much so that they even tried to swipe it from the online market usage to the offline services provider. There was an organization named as eBay which implemented the ODR mechanism to check its usage with the help of the Ombuds Office, even they achieved outstanding results in solving out the conflicts. If we kept the Start-ups aside, which have been discussed above, there are some governmental organizations as well who have inducted the mechanics in its dispute handling process like, for example – The Office of Government Information Services in USA.¹²

Now, to study a phase-wise distribution of the rise of the ODR mechanism, we need to know that there were four crucial periods in which the ODR mechanism establishes its command in the dispute resolution industry. The first phase of development ranged from 1990-1997 when the major Internet technologies were being shaped to be implemented like for example– Internet Service Provider, which started in 1992; after this, the second significant time lapse ranged from 1997-1998 when most of the commerce designated dispute solving platforms were setup. Then the next phase lasted around 2000, during which there was an economic surge that leads to the

¹¹*Ibid.*

¹²History of ODR, *available at:* <http://odr.info/history/> (last visited on October 2, 2019).

creation of various IT firms who adopted the ODR mechanism as their dispute resolution approach, like the above-mentioned example of eBay. Now, the most productive phase began after 2001, in which various governmental organizations and juristic bodies started adapting the service and trying to stretch its range of work as far as possible,¹³ one such example is The Department of Administrative Reforms & Public Grievances, Government of India.

The system of ODR is a really profound example of how a legal invention must be handled so as to give lasting results without any space of managing out loopholes and using it against the general public and shows that such a flawless evolution is possible in the present times, thereby setting an example for the new legal enactments being introduced in coming days.

UNDERSTANDING THE WORKING AND IMPLEMENTATION OF ODR SERVICES

To understand the working technique and the *modus operandi* of the mechanism, we first need to know that there are some subtle intricacies which one should follow before undertaking the task of resolving a dispute through the discussed system. The chain of linking each part with different other parts, for giving out the required outcome is an essential part of the respective science, which at last turns out to be the most crucial part of the study.¹⁴

There are two sub-processes to deal with the implementation of ODR mechanism; the first one uses a regular and on-going method of communication between the conflicting parties, named as synchronous communication and the second one named as an asynchronous approach, which extends a channel of irregular communication to solve out the issue. An algorithm, to make things more transparent regarding the perfect implementation of the service is discussed down below: -¹⁵

¹³Karolina Mania, 'Online Dispute Resolution: The future of justice', Volume 1, Issue 1 *International Comparative Jurisprudence* Page No. 76-86 (2015).

¹⁴Deepak Verma and Anshu Banwri, "Online Dispute Resolution", available at: <https://www.intechopen.com/books/digital-communication-management/online-dispute-resolution> (Last Modified (February 28, 2019)).

¹⁵*Supra* note 4.

- a. The most crucial step is to analyse the essence of the dispute and then implement the proper process of ODR, like, for example, it's a commerce-related issue or a related governmental dispute.
- b. The ODR service platform or the provider should be an authorized one, i.e., he must have received all the international standards required for authentication, like a Trademark or authentication proof, and can also be pre-decided before the establishment of a contract.
- c. A fundamental requirement for the smooth working of the mechanism requires that the provider must not be involved with different cases linked with one of the contentious parties.
- d. All the official documents should be showcased appropriately and must be under surveillance so that nothing can be questioned in further proceedings.
- e. Then comes the most crucial part, i.e., proper interpretation and applying the apt mediating or arbitrating techniques prevalent at that time.

One of the primary working body that deals with the implementation of ODR service in a universal way is the United Nations Commission on International Trade Law (UNCITRAL), who has done quite a credible work in the upliftment of the mechanism, such as the Draft Policies on Arbitration and Technical Notes on ODR. The major sub-parts¹⁶ on which the whole ODR works is as follows: -

- a. **Online Mediation** – In this system of dispute resolution, the parties are informed with the help of e-mails, and the meetings are done via asynchronous communication, which is a viable option as the parties get sufficient time to prepare their part in the case and as it is an online system of dispute resolution meeting are kept in chat rooms or through video-conferencing that makes it a convenient mode of resolving a dispute. And, the left-out specialized techniques are the same as offline-mediation proceeding.
- b. **Online Arbitration** – This mode of ODR is almost the same as online mediation if we mainly discuss on the basis of working patterns. Its principal area of expertise is mostly the disputes relating to Internet discontents and consumer disagreements. It receives

¹⁶Deric Yeoh, Is Online Dispute Resolution the Future of Alternative Dispute Resolution? *Kluwer Arbitration Blog* March. 29, 2018.

authentication from a corporation named as Internet Corporation for Assigned Names and Numbers (ICANN).

- c. **Automated ODR Solutions** – The mechanism is specially designed for those issues, which takes place due to the ambiguity of agreements between the parties. Now, to sought out these disagreements, automated instruments are used, which are meant for dispute resolutions like, for example, Blind Bidding, Drafting Collaboration, Automated Negotiation, Online courts, etc.

CONCLUSION

The science of ODR implementation is a pervasive field of work in which there are several productive components in consonance with several negative constraints, but out casting all these developments and restraints, the main focal aim is to bring out the best possible result which one can achieve. The modern perspective related to ODR has seen a significant transition from being a concept totally untouched to being a concept which has totally transformed the legal dispute resolving industry.

There are various drawbacks¹⁷ In the system like; 'in many countries, there are no infrastructural building blocks for ODR mechanisms like Online arbitration and Online mediation are not compatible with every field of law, and hence they are restricted to only certain fields' etc. but it has its own advantages¹⁸ like 'it is a completely adaptive method of ADR as people living at a far distance can easily negotiate to each other, it is a system which is fully public-oriented as it allows a flexible procedure of ADR without any specific regulation to be followed' etc. It also overcomes its material disadvantages which enhances its range of being a correctly assigned technology.

After witnessing the conditions of the present times, the contemporary society must come in hand-to-hand with the National bodies as well as with the International bodies to bring out the

¹⁷The Need for an Online Dispute Resolution Mechanism, *available at*: <https://www.drishtias.com/daily-updates/daily-news-editorials/the-need-for-an-online-dispute-resolution-mechanism> (Last Modified March 6, 2019).

¹⁸*Supra* note 4.

best possible results and take the modern science of ODR to achieve applauds in the field of legal research.

