
ONLINE DISPUTE RESOLUTION DURING PANDEMIC IN INDIA

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ABSTRACT

This research paper seeks to comprehend Online Mediation, its history and current applications, as well as the potential benefits, downsides, and solutions to the identified issues. Concerns have been expressed about the survival of techniques such as Online Mediation due to the lack of a single regulation governing mediation. The uncertainty should be addressed, and the central mediation law that is now being written should include the structural modifications that are necessary to allow Online Mediation.

Keywords: Online Dispute Resolution, Law, Technology, Mediation, Covid 19, E-Commerce

INTRODUCTION

Online Dispute Resolution (ODR) has been the decade's most disruptive technology, and it's only gotten more popular now that the globe is under lockdown because to the COVID 19 epidemic. An international migration from traditional means of dispute resolution to ODR on virtual platforms occurred in the year 2020. India, too, saw the need to improve ODR in order to make conflict resolution more accessible to all parties and decrease the strain on the courts.

In October 2020, the Niti Aayog Expert Committee on ODR issued a draught report titled “Designing the Future of Dispute Resolution: The ODR Policy Plan for India” (“Niti Aayog Draft Report”) for further consideration. The Niti Aayog Draft Report reflects the potential for future improvements in the court and government to further the growth of ODR in India. This article focuses on how the landscape of dispute resolution is shifting to online platforms, ODR, and especially online mediation (“Online Mediation”).

HYPOTHETICAL SCENARIO

Raj is a 24-year-old youngster suffering from hair fall and baldness. He comes across a hair oil and hair spray through social media which promises to help in reducing and then when used properly to cure problems like baldness, hair thinning, grey hair and hair fall. Through some research he finds out that the oil is being made by an old couple around 85 years of age, which is their startup. After reading the reviews he orders the hair oil and hair spray.

He receives the order within a week time. And there were instructions and ingredients given in the box about how to use it and with what all herbs and plants it is made.

After using it for more than a month he realizes that there is a great improvement in his hair health. But as promised by the old couple that if the oil is not helpful then they will return the money if the oil and spray are not able to show any difference in a month time.

Raj thinks about duping the couple by saying that the oil and spray was not at all helpful and he sent a mail regarding the concern but the couple asked him to send his old photos and videos and to contact them through a video call so that they can see if whatever he said was true or not.

They got connected through emails and then through a video conferencing app through which the couple got to know that there was no such scenario with Raj and he was just trying to dupe them.

Instead of going to the court they worked it out through talking to each other through online interacting applications and hence it was more convenient, less time taking, cheap etc.

HISTORICAL BACKGROUND

When the e-commerce sector established a dispute resolution mechanism that favored ODR, most notably Online Mediation, ODR became widespread.¹ Sales, purchases, and other services are all part of the e-commerce industry's conflicts, which include both business-to-business and business-to-consumer activities.²

The e-commerce industry's adoption of ODR can be attributed to three factors:

- multi-jurisdictional consumers and business partners;
- e-commerce websites' technological knowledge;
- the level playing field created between the consumer and the e-commerce business, as there is no face-to-face interaction, removing the possibility of intimidation.³

The flagship e-Courts Mission Mode Project of the Supreme Court of India (the "e-Courts Project") was established under the "National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary."⁴ The goal of the e-Courts Project is to create standard ICTs across the country and at all levels of the court.

It has built up the e-Courts websites, developed the National Judicial Data Grid, and created a uniform Case Information System after successfully installing adequate ICT infrastructure in District Courts. By conducting Lok Adalat's on a wide scale, the e-Courts Project has

¹ Dafna Lavi, 'Three Is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes' (2016) 37 U Pa J Int'l L 871

² S Shetty, R R Pathrabe et al, 'Legal Issues in eCommerce' <<https://www.academia.edu/8148042/LegalIssuesInE-Commerce/>> accessed on March 31, 2021

³ cf Lavi (n 20) 875-877

⁴ E-Committee Supreme Court of India, National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary (2005) <<https://main.sci.gov.in/pdf/ecommittee/action-plan-court.pdf>> accessed on 1 April 2021

strengthened ADR procedures such as these. The e-Courts Project's successful endeavours pave the way for ODR growth in India.

As a result, some estimates predicted that Online Mediation would save thirty percent of time and money.

ODR is a relatively new phenomenon in India, having arisen in the last decade. The Internet Corporation for Assigned Names and Numbers ("ICANN") developed a Domain Name Dispute Settlement Policy that stipulated that the first means of dispute resolution be online administrative procedures. Similarly, the National Internet Exchange of India established the using ODR. In 2006, the IN Domain Name Dispute Resolution Policy was established, which mandates online arbitration based only on textual submissions.

The Indian government introduced the 'Vivad se Vishwas Scheme' in 2020 to resolve tax issues using ODR.

CURRENT ISSUES

Traditional mediation also employs techniques to help both parties 'humanise' each other and comprehend opposing viewpoints. The internet interface might prevent the parties from 'humanising' the issues and resolving the conflict more quickly and efficiently. For some sorts of conflicts, such as familial, marital, and child custody, where there is a significant interplay of emotions, the utility of Online Mediation is still being evaluated.⁵

In Online Mediation, mediators also lack effective control over the mediation process. When heated arguments arise during a mediation process in traditional mediation, it is the mediator's job to maintain civility. This can be accomplished by convening secret caucuses or enforcing cooling-off periods on the parties. However, there may be instances in Online Mediation where the mediator's principal means of contact is not under his or her control.

For example, an email-based internet mediation went bad when the parties began exchanging abusive and insulting emails, escalating the dispute, and the mediator was unable to enforce compliance.

⁵ Rachel I. Turner, 'Alternative Dispute Resolution in Cyberspace: There is More On the Line, Than Just Getting "Online,'" (2000) 7 ILSA J. Int'l & Comp. L. 133, 147- 148

Furthermore, the most significant and valuable element of a mediation process is secrecy. Parties in disputes involving the sharing of extremely sensitive and personal data may be wary about Online Mediation because of the digital trails left after each mediation session, particularly for material supplied in writing and potentially retained on the web server.⁶ With the rise in cyber-attacks, the scope of confidentiality should be expanded, and mediators must have ethical responsibility for preventing such assaults.⁷

To secure personal information transmitted during Online Mediation, practices have begun to integrate methods such as multi-layered authentication, textual data encryption, and the usage of a virtual private network, among others.

Furthermore, there is little statutory clarity in India about the enforcement of settlement agreements reached through Online Mediation. This issue becomes much more problematic when the parties are dispersed across different countries and the legality of such settlement agreements is dependent on the jurisdiction seeking enforcement. This is the void in the law that the Singapore Convention seeks to fill. The international structure for mediation is still in its early stages, and it lacks a comprehensive legal foundation, making parties wary of the procedure.

Furthermore, the international agreement on internet-related conflicts is incomplete, and parties involved in multi-jurisdictional online disputes may confront even more complicated legal difficulties.

POSSIBLE SOLUTIONS

The first step toward legitimizing Online Mediation would be the passage of a national mediation law that includes provisions for Online Mediation. Online Mediation settlement agreements should be explicitly recognized, and a framework controlling their enforcement should be established.

Furthermore, because the efficacy of mediation as a method for resolving conflicts is dependent on the mediator, mediators should be obliged to get some degree of certification, which should include mediation training as well as training in the use of ICTs. ODR platforms, particularly

⁶ cf Terekhov (n 14) 46

⁷ A. Foote, 'Hackers are Passing Around a Megaleak of 2.2 Billion Records' accessed on 1 April 2021

those that employ computer software as mediators, should adhere to the same guidelines as professional mediators. This will, among other things, ensure that important values for parties, such as impartiality and secrecy, be respected even by ODR platforms, therefore increasing their profitability.

The fast growth of Artificial Intelligence (“AI”) and its incorporation into conflict resolution procedures will also affect the future of ODR. Smart mediators are being created to tailor customized answers to individuals based on their circumstances. The Supreme Court is creating the Supreme Court Vidhik Anuvaad Software, which will use artificial intelligence to translate court papers from English to nine vernacular language scripts and back. If the findings are positive, AI's influence on the legal process, particularly ODR, may grow, and it will need to be regulated properly.

For Online Mediation to be an effective ODR method, structural imbalances and problems such as inaccessibility to ICT services by the general public must be addressed. Despite the fact that ODR promotes access to justice, it is not widely used by the general people due to

- a lack of ICT infrastructure and
- a lack of digital literacy.

The digital gap in India is influenced by characteristics such as gender, class, caste, age, ethnicity, and geographic location.⁸ Digital literacy and access to ICT infrastructure are now expanding rapidly in urban regions while remaining static in rural areas.

However, in a nation like India, where there are many different types of conflicts, ODR has the potential to change the dispute resolution landscape in a variety of ways.

⁸ Julian Granka Ferguson, ‘Navigating Cybersecurity in ADR’ (December 2020)
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