

## ONLINE DISPUTE RESOLUTION AND CONSUMER PROTECTION

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### INTRODUCTION

An alternative to traditional conflict settlement, online dispute resolution (ODR) leverages technology to help parties settle their differences. The three main methods or processes involved are negotiation, mediation, arbitration, or a mix of all three.

ODR is a broad field that can be used to resolve a variety of conflicts, from court cases and international conflicts to interpersonal conflicts like consumer-to-consumer (C2C).

Effective methods for resolving conflicts online are thought to have an impact on the growth of E-commerce. Although business-to-consumer (B2C) online transactions are not the only disputes that can be resolved through online dispute resolution; these disputes seem to be especially well suited for ODR's application because it makes sense to resolve e-commerce disputes through the same medium- the internet- when parties are geographically apart<sup>1</sup>.

### FEATURES OF ONLINE DISPUTE RESOLUTION

#### Digital Platforms

ODR typically occurs on dedicated online platforms or web-based applications crafted to facilitate the resolution process, serving as virtual spaces for parties to communicate and exchange information

#### Communication Tools

ODR utilises diverse communication tools such as email, messaging systems, and video conferencing. These tools empower parties to interact, present their cases, and engage in negotiations without the need for physical presence.

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<sup>1</sup> DEPARTMENT OF JUSTICE CANADA, 'ONLINE DISPUTE RESOLUTION' (Justice.gc.ca, August 2012)<https://www.justice.gc.ca> 14 June, 2024

### **Neutral Third Parties**

ODR often includes the involvement of third parties, such as mediators or arbitrators, who play a crucial role in facilitating the resolution process. These impartial individuals guide discussions and aid in reaching a mutually acceptable.

### **Flexibility in Dispute**

ODR provides flexibility in selecting the appropriate dispute resolution mechanism. Practices can choose from negotiation, mediation, arbitration, or a combination of these methods based on the nature and complexity of the dispute.

### **Accessibility Across Borders**

ODR allows parties to participate in dispute resolution processes from different geographic locations, offering a global reach that is advantageous for international disputes or transactions involving parties in different jurisdictions.

### **Efficiency and Timeliness**

ODR is meticulously designed to be time-efficient, leveraging technology to expedite the resolution process. Swift communication, document exchange, and decision-making contribute to timely dispute resolution.

### **Cost-Effectiveness**

ODR mitigates costs associated with traditional dispute resolution, including travel expenses and the need for physical facilities. This cost-effectiveness makes ODR an appealing option for parties involved in disputes, particularly in the context of e-commerce.

### **Use of Technology and Automation**

ODR incorporates technology, such as artificial intelligence and algorithms, to aid in analysing information and proposing potential solutions. Automation streamlines specific aspects of the resolution process.

## Security and Privacy Measures

ODR platforms prioritise the security and privacy of involved parties. Encryption, secure communication channels, and data protection measures are implemented to safeguard sensitive information.

## Documentation and Transparency

ODR processes underscore clear documentation of discussions, agreements, and resolutions. Transparent communication contributes to the legitimacy of the process and ensures that parties are well-informed throughout.<sup>2</sup>

## TYPES OF ONLINE DISPUTE RESOLUTION

There are three types of ODR

Mediation

Arbitration

Negotiation

**Arbitration**

Arbitration means any arbitration, whether or not administered by a permanent arbitral institution<sup>3</sup>.

Arbitration is a nonjudicial legal technique for resolving disputes by referring them to a neutral party for a binding decision. Unlike mediation and conciliation, which are frequently used to settle labour disputes between management and labour unions, arbitration is most frequently employed to resolve commercial<sup>4</sup>.

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<sup>2</sup> PRATEEKGARG, 'ONLINE DISPUTE RESOLUTION' (Legal Service India) <https://www.legalserviceindia.com> 14<sup>th</sup> June 2024

<sup>3</sup> The Arbitration and Conciliation Act, 1996, s 2.

<sup>4</sup> MARTIN DOMKE, 'ARBITRATION' (Britannica, June 7, 2024) <https://www.britannica.com> 14<sup>th</sup> June, 2024

## Advantages Of Arbitration

**Expertise in Technical Matters:** Arbitrators, selected for their specific technical expertise, efficiently handle scientific disputes, ensuring effective resolution based on their field of knowledge.

**Cost and Time Efficiency:** Arbitral processes are more cost-effective and time-efficient compared to traditional court resolutions, reducing financial burdens and accelerating dispute resolution.

**Convenience for Parties:** Parties benefit from the flexibility to choose the language, venue, and time of proceedings, enhancing their convenience and participation in the arbitration process.

**Privacy and Confidentiality:** Arbitration maintains the privacy and confidentiality of parties involved, preventing unnecessary publicity of disputes that could occur in traditional court settings.

**Flexibility and Proceedings:** Arbitral proceedings offer greater flexibility as parties set the rules, avoiding the strict regulation of court proceedings and allowing for a more adaptable and customised dispute resolution process.<sup>5</sup>

## Role Of Arbitration In Online Dispute Resolution

A key component of online dispute resolution (ODR) is arbitration, which provides a versatile, effective, and economical substitute for traditional litigation. Arbitration gives parties a neutral platform to settle disagreements without the need for lengthy legal proceedings in the world of e-commerce and digital transactions, where disagreement is frequent.

Due to its flexibility in adapting to the inherent difficulties of online disputes- such as jurisdictional concerns and the global scope of e-commerce arbitration- it is especially helpful in online dispute resolution (ODR). An informed decision-making process is ensured by the party's ability to choose arbitrators with relevant experience. Furthermore, arbitration procedures may be carried out remotely, which enables parties who are spread out throughout the globe to easily access and participate in them.

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<sup>5</sup> PRATEEKGARG, 'ONLINE DISPUTE RESOLUTION' (Legal Service India)  
<https://www.legalserviceindia.com> 14<sup>th</sup> June 2024

Moreover, arbitration rulings are generally enforceable under international treaties such as the New York Convention in a number of jurisdictions, giving parties confidence that their agreements will be respected. All things considered, arbitration is a cornerstone of online dispute resolution (ODR) because it provides parties with an equitable, effective, and enforceable means of settling disagreements in the digital age.<sup>6</sup>

## **Mediation**

Mediation is a voluntary, binding process in which an impartial and neutral mediator facilitates disputing parties in reaching a settlement. A mediator does not impose a solution but creates a conducive environment in which disputing parties can resolve all their disputes.

Mediation is a tried and tested alternative method of dispute resolution. It has proved to be a success in the cities of Delhi, Ranchi, Jamshedpur, Nagpur, Chandigarh, and Aurangabad. Litigants participating in the mediation process have unequivocally endorsed it<sup>7</sup>.

## **Advantages Of Mediation**

**Voluntary Participation:** Mediation is a voluntary process that allows parties to choose whether to engage in the resolution process and promotes a sense of willingness and cooperation.

**Time and Cost Efficiency:** Mediation is often quicker and less expensive than traditional legal proceedings, making it an efficient option for resolving disputes.

**Confidentiality:** Mediation ensures the privacy of discussions, fostering open communication without fear of public disclosure.

**Empowerment and Control:** Parties actively participate in crafting solutions, giving them a sense of ownership over the resolution and greater control over the outcome.

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<sup>6</sup> KARIM BENYEKHELF, FABIEN GELINAS, 'ONLINE DISPUTE RESOLUTION' (SSRN 2<sup>ND</sup> FEB, 2009)<https://papers.ssrn.com> 14<sup>th</sup> June, 2024

<sup>7</sup> LARK LEWIS, J.D, 'WHAT IS MEDIATION' (FindLaw, September 13, 2023)<https://www.findlaw.com> 14<sup>th</sup> June, 2024

Preservation of Relationships: Mediation focuses on collaborative problems, helping maintain or rebuild relationships by seeking mutually beneficial solutions rather than determining winners and losers.<sup>8</sup>

### **Role Of Mediation In Online Dispute Resolution**

In online dispute resolution (ODR), mediation is essential because it helps parties communicate and negotiate their way to a mutually agreeable outcome. In the digital world, where miscommunication and confrontation are common, mediation provides a cooperative and adaptable method of settling disagreements.

A neutral third party, the mediator, helps the parties understand their underlying interests, consider possible solutions, and come to a decision during ODR mediation. Parties can participate in remote mediation sessions via Internet platforms, getting beyond schedule and geographic limitations.

In order to increase satisfaction with the settlement process, mediation encourages positive communication and gives parties the ability to maintain control over the resolution of conflict. Due to its capacity to maintain continuing relationships, which is crucial in the context of e-commerce, online communities, and digital collaborations, it is especially useful in ODR.

Furthermore, mediation frequently turns out to be a more economical and time-efficient alternative to traditional litigation or arbitration, which makes it a desirable choice for settling disputes in the fast-moving and dynamic internet environment. In general, mediation is a fundamental component of alternative online dispute resolution as it provides parties with a cooperative, effective, and efficient way to settle disputes in the digital era.<sup>9</sup>

### **Negotiation**

The term "negotiation" describes a process of communication, either direct or indirect, that people with conflicting interests use to arrange a cooperative action intended to resolve their

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<sup>8</sup> SHORONYA BANARJEE, 'ADVANTAGES OF CHOOSING MEDIATION AS A METHOD OF DISPUTE RESOLUTION IN INDIA' (iPleaders Blog, January 29, 2022)<https://blog.iplayers.in> 14<sup>th</sup> June, 2024

<sup>9</sup> PON STAFF, 'USING E-MEDIATION AND ONLINE MEDIATION TECHNIQUES FOR CONFLICT RESOLUTION' (Program on Negotiation at Harvard Law School, 7<sup>th</sup> May, 2024)<https://www.pon.harvard.edu> 14<sup>th</sup> June, 2024

differences. Negotiation is a useful tool for settling any dispute that arises now and for building future relationships between two or more parties<sup>10</sup>.

### **Negotiation Process Includes Following Steps**

Preparation

Discussion

Clarification of Goals

Negotiate toward a win-win outcome

Agreement

Implementation of course of action

### **Advantages Of Negotiation**

Party Dispute Resolution

One of the main factors contributing to negotiating success is that it engages only the parties involved and excludes all other parties, keeping the process private and confidential. The parties determine the process's duration, its subject matter, the locations of papers to be referred to, etc.

Freedom of Parties

The parties are free to select their own agendas in order to guarantee that the goal of the discussion is met.

Consent of Parties

The negotiating procedure guarantees that no one is coerced into participation in the process and that each party has the free will to do so. Additionally, this flexibility guarantees that there is no play of powers and that all parties are on equal footing.

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<sup>10</sup> RACHIT GARG, 'NEGOTIATION AS A MODE OF ADR' (iPleaders BLOG, 16<sup>th</sup> October, 2023)<https://blog.iplayers.in> 14<sup>th</sup> June 2024

### Not Assisted by a Third Party

Negotiation does not necessitate the use of an impartial third party for dispute resolution, in contrast to the majority of the radius system.

### Convenient Procedure

The process of negotiation is informal. The process is typically quick, and the participants are not bound by the choices made. The most recent is a fully self-build procedure that allows the parties to withdraw from the process at any time and accept or reject the conclusion at their discretion.<sup>11</sup>

### Role Of Negotiation In Online Dispute Resolution

Online Dispute Resolution (ODR) relies heavily on negotiation since it encourages active dialogue between parties in search of solutions to their problems that they can both agree upon. Negotiation offers a flexible and adaptive method for settling conflicts in the digital domain, where disagreements can develop fast and frequently involve participants from varied backgrounds and jurisdictions.

There are several ways that negotiation can occur in online dispute resolution (ODR), such as direct talks between parties, online platforms that enable conversations, or organised talks led by neutral third parties. Parties can negotiate remotely, avoiding time and location restrictions, by utilising technology.

Parties can customise solutions through negotiations to meet their unique needs and goals, encouraging ownership and support from all parties involved. It produces an environment of cooperation that is favourable to arriving at mutually beneficial agreements.

Additionally, compared to more traditional dispute resolution techniques like litigation or arbitration, negotiating in ODR can be quicker and less expensive. Parties can save time and money while keeping more influence over the resolution of their disagreement by ignoring traditional legal procedures.

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<sup>11</sup> SIMRAN SHAIKH, 'BASICS OF NEGOTIATION AND IT'S PROCESS' (Legal Service India)<https://www.legalserviceindia.com> 14<sup>th</sup> June, 2024



All things considered, negotiation is essential to ODR because it provides parties with an adaptable, inclusive, and effective way to settle disputes in the connected and dynamic world of online transactions and interactions.<sup>12</sup>

## LEGAL STRUCTURE OF ONLINE DISPUTE RESOLUTION

"The concept of Online Dispute Resolution (ODR) in India is at a nascent (beginning) stage. In order to create an effective implementation framework for Online Dispute Resolution (ODR) in India, the NITI Aayog constituted a high-level committee in June 2020 under the chairmanship of Justice A.K Sikri, Retired Judge, Supreme Court of India. The Committee was required to develop an action plan that can aid in mainstreaming ODR and thus promote access to justice through ODR.

The report of the committee titled "Designing the Future of Dispute Resolution: the ODR Policy Plan for India" was released on 29.11.2021. The report recommends measures at three levels to tackle challenges in adopting the ODR framework in India.

At the structural level, it suggests actions to increase digital literacy, improve access to digital infrastructure, and train professionals as neutrals to deliver ODR services.

At the behavioural level, the report recommends the adoption of ODR to address disputes involving government departments and ministries.

At the regulatory level, the report recommends a soft-touch approach to regulate ODR platforms and services. This involves laying down design and ethical principles to guide ODR service providers to self-regulate while fostering growth and innovation in the ecosystem.

The report also stresses strengthening the existing legislative framework for ODR by introducing necessary amendments to statutes. The report offers a phased implementation framework for ODR in India.

The Government of India has already initiated the steps to strengthen ODR mechanisms in the country. Acknowledging the importance of online dispute resolution, it has been proposed that online mediation be provided under the Mediation Bill 2021, which was introduced in the Rajya Sabha on 20.12.2021. The online mediation is to be conducted in accordance with the process

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<sup>12</sup> PRISCILA SANSONE, AMANDA RUDZIT, 'ONLINE DISPUTE RESOLUTION AND MEANS OF NEGOTIATION' (International Bar Association, 25<sup>th</sup> Aug, 2022)<https://www.ibanet.org> 14<sup>th</sup> June, 2024

specified by the Mediation Council of India. The bill is presently under examination of the department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice.”<sup>13</sup>

## **ADVANTAGES OF ONLINE DISPUTE RESOLUTION**

### **Accessibility and Convenience**

Online Dispute Resolution (ODR) provides a convenient platform for parties to resolve conflicts without the need for physical presence. Participants can engage in the process from any location with internet access, reducing the barriers of time and travel.

### **Cost Efficiency**

ODR often proves to be more cost-effective than traditional dispute resolution methods, such as litigation or in-person mediation. The elimination of travel expenses and administrative costs and the efficient use of technology contribute to overall savings for both parties involved.

### **Time Efficiency**

ODR platforms streamline the dispute resolution process by leveraging technology for quick and efficient communication. This can significantly reduce the time it takes to reach a resolution compared to traditional methods, which may involve lengthy court processes or scheduling challenges.

### **Neutrality and Impartiality**

ODR platforms can be designed to ensure impartiality and neutrality in the resolution process. Automated systems can help minimise biases, and the use of third-party mediators or arbitrators can further enhance the fairness of the proceedings.

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<sup>13</sup> (DEPARTMENT OF LEGAL AFFAIRS), <https://legalaffairs.gov.in> June 14<sup>th</sup>, 2024

## Flexibility in Resolution Methods

ODR offers a variety of tools and methods for dispute resolution, including negotiation, mediation, and arbitration. This flexibility allows parties to choose the most suitable approach for their specific dispute, tailoring the process to their unique needs and preferences.<sup>14</sup>

## DISADVANTAGES OF ONLINE DISPUTE RESOLUTION

### Limited Personal Interaction

ODR does not provide the in-person interaction that can be essential for deciphering nonverbal clues, body language, and emotion. A lack of personal connection can hinder the growth of understanding and cooperation, which could make it harder to come to solutions that satisfy both parties.

### Technological Barriers

There is a digital divide since not everyone has access to dependable internet connections or the required technology equipment. This may hamper the accessibility and inclusivity of the dispute resolution system by preventing some people or communities from taking part in ODR procedures.

### Security and Privacy Concerns

ODR platforms necessitate the exchange of sensitive data, which raises security and privacy concerns regarding the data involved. Unauthorised access, data breaches, and cyber security risks could jeopardise the dispute resolution process's secrecy.

### Loss of Procedural Formality

Although informality might have benefits, some participants may view it as having less legitimacy and fairness. The more informal style of online dispute resolution (ODR) may be seen as less authoritative than traditional legal proceedings, which frequently have feelings of formality and set rules.

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<sup>14</sup> KHUSHI SHARMA, 'ONLINE DISPUTE RESOLUTION: AN ANALYSIS' (iPleaders Blog, November 21<sup>st</sup>, 2021) <https://blog.iplayers.in> 14<sup>th</sup> June 2024

## Resistance to Change

Certain individuals might be reluctant to accept new technologies and might choose conventional, face-to-face approaches to resolving conflicts. People who resist change may be reluctant to participate in ODR procedures, which restricts the practice's general adoption and application.<sup>15</sup>

## CONSUMER DISPUTES AND ONLINE DISPUTE RESOLUTION

### Online Dispute Resolution in E-Commerce Disputes

In e-commerce, Online Dispute Resolution (ODR) is the process of resolving disputes that occur between customers and businesses that engage in online transactions. As the digital marketplace grows, so does the possibility of disputes over goods, services, payments, and other transaction-related matters. ODR provides a practical and effective substitute for traditional litigation, seeking to resolve conflicts in a timely and economical manner.

One of the main characteristics of ODR is its accessibility. Parties involved in e-commerce transactions are frequently geographically apart, making traditional dispute resolution methods hard and costly. ODR platform allows parties to communicate and negotiate regardless of their actual location, enabling them to engage in the resolution process from the comfort of their own homes or offices.

Additionally, a variety of tools and features catered to the requirements of e-commerce disputes are usually available on ODR platforms. These could include video conferencing tools, safe document sharing, online chat platforms, and online mediation or arbitration services. These technologies improve parties' ability to communicate and work together, which makes it easier to define problems and thoroughly consider possible solutions.

ODR procedures are also made to be flexible enough to accommodate the unique needs of disputes involving e-commerce. For example, disputes may involve complex issues related to digital products, intellectual property rights, or international trade regulations. In order to

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<sup>15</sup> DEPARTMENT OF JUSTICE CANADA, 'ONLINE DISPUTE RESOLUTION' (Justice.gc.ca, August 2012)<https://www.justice.gc.ca> 14 June, 2024

address these particular difficulties, ODR providers might modify their processes and platforms, guaranteeing that the resolution is still unbiased and fair.<sup>16</sup>

## **RESOLUTION OF ONLINE CONSUMER COMPLAINTS**

Addressing problems and disagreements that emerge between customers and companies during online transactions is part of resolving online customers' complaints. In the modern era of digitalisation and e-commerce, fast and efficient handling of customer complaints is essential to preserving faith in the online marketplace.

Accessibility is essential to addressing complaints from online customers. Customers anticipate quick and simple channels for resolving complaints that don't take a lot of time or work. Customers can easily file complaints, follow their progress, and get in touch with businesses during the resolution process through online platforms and portals.

Another crucial component of handling online customer complaints is efficiency. As digital technology has made communication faster, customers want quick responses to their questions and problems to be resolved. It is important for businesses to give priority to swiftly responding to complaints in order to avoid escalation and preserve consumer satisfaction.

During the complaint resolution process, trust is created through transparency. Regarding the status of their complaints, the actions being taken to resolve them, and any potential resolutions being considered, consumers value straightforward and honest communication. Open communication promotes goodwill and shows a dedication to justly settling conflicts.

The ideals of impartiality and fairness are essential when addressing complaints from Internet customers. Customers anticipate that companies would listen to their issues with fairness and will decide each case according to its merits. In order to be fair, companies must regularly stick to set policies and procedures and provide customers the chance to voice their opinions.<sup>17</sup>

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<sup>16</sup> ONLINE DISPUTE RESOLUTION IN E-COMMERCE (LL. B MANIA, December 4, 2021)<https://llbmania.com> 14<sup>th</sup> June, 2024

<sup>17</sup>PRATEEK GARG, 'ONLINE DISPUTE RESOLUTION' (Legal Service India) <https://www.legalserviceindia.com> 14<sup>th</sup> June 2024

## CHALLENGES AND OPPORTUNITIES FOR CONSUMER PROTECTION

### Challenges

#### Digital Market Complexity

Enforcing consumer protection rules across several jurisdictions and uncovering fraudulent acts are made more difficult by the growth of online platforms and digital products.

#### Data Privacy Concern

There is a greater chance of privacy violations and illegal use of personal information due to the collection and use of huge amounts of consumer data, necessitating strict laws and enforcement procedures.

#### Cross-Border Transactions

As a result of globalisation, there has been an increase in cross-border e-commerce transactions. This has made it more difficult to resolve disputes and guarantee uniform consumer protection laws across nations and legal frameworks.

#### Emerging Technologies

The internet and artificial intelligence are examples of rapidly developing technologies that provide new consumer protection issues. These include resolving algorithmic biases and guaranteeing the security and safety of smart devices.

### Opportunities

#### Digital Tools for Consumer Education

Through online resources and digital technologies, the consumer can learn about their rights, obligations, and available channels of resources, enabling them to take preventive measures to protect themselves and make educated decisions.

#### Data Analytics for Fraud Detection

Artificial intelligence and data analytics can be used to detect trends in fraudulent activity as well as proactively identify and stop consumer fraud and dishonest business practices.

### International Cooperation

Greater coordination and cooperation across nations and regulatory agencies can help harmonise consumer protection laws and regulations, improving uniformity and efficiency in handling situations that cross national borders.

### Innovative Dispute Resolution Mechanisms

Online Dispute settlement procedures and online platforms provide quick and easy ways to settle consumer issues, lightening the load on established legal systems and improving consumer confidence in e-commerce.<sup>18</sup>



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<sup>18</sup> A GOWRI NAIR, K.M. AISWARYA, 'EMERGING TRENDS OF E-COMMERCE & CHALLENGES TO THE CONSUMER PROTECTION ACT, 1986' (Law octopus, February 14<sup>th</sup>, 2015)<https://www.lawoctopus.co>, 14<sup>th</sup> June 2024