

ONLINE DISPUTE RESOLUTION (ODR) IN PAKISTAN

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Abstract In Corona Pandemic hit world where online transactions have boomed drastically at one hand, the legal complexities have also amplified on the other. Normally alternate dispute resolutions (ADR) fail in settling high value commercial claims. Such claims finally end up in courts, taking years in adjudication, causing the loss of millions to the parties. In these circumstances, in reality, courts neither have time nor the resources to adjudicate upon the dispute involving lower value. Online Dispute Resolution (ODR) is a court-annexed public facing digital space in which parties can convene to resolve their disputes. Many multinational online vendors are currently using ODR to make their trading activity more efficient and independent from the conventional court system. As far as Pakistan is concerned, the concept of online trade is comparatively new, therefore, not supported by substantial legislation. Development on effective legal mechanism annexed with online dispute resolution algorithm is a dire need of the hour.

This paper examines the hurdles faced by ODR in Pakistan, discusses its future and makes some recommendations for the implementation of an advanced technological system for redressal of consumer grievances regarding small claim cases.

Key Words- Online Dispute Resolution (ODR), Pakistan, Arbitration, Business Disputes, Small Claim Cases, Low-Value Claims.

INTRODUCTION:

ODR is a modernized form of ADR which was firstly introduced in 1996 with a pilot project named "Virtual Magistrate". The Project was conceived by Villanova University as a means to create easy, accessible, faster and cost-effective tool to administer justice. Though, the project failed and the ODR system was not thought to be very useful. However, with the passage of time distinguished organizations such as World Intellectual Property Organization, American Arbitration Association and American Bar Association have strengthened this concept (Kaya, 2020).

ODR refers to ways for resolving disputes online, which is the sole comprehensive definition of it (Kaufmann-Kohler, 2004). A virtual world where people and things interact, transact, and argue has been made possible by the internet. Over the past many decades, our state and courts are much concerned about the inability of the citizen to access to justice in their routine matters. In developing countries such as Pakistan judicial systems are marred by delays, instigating consideration of the old legal maxim, "justice delayed is justice denied." (Library of Cong., Respectfully Quoted, 2010) Delayed proceedings are one of the major reasons causing frustration among the litigants. When individuals are encountered with the fact that pursuing low-value claims are often not worth the effort, justice is being denied to millions of individuals (Raymond & Shackelford, (2013-2014)).

Online dispute resolution (ODR) has torched a new hope among the litigants for ensuring reduce barriers to accessing justice but it is not going to be a smooth ride (Mohamed, Wahab, Katsh, & Rain, 2012). Countries, such as Pakistan, neither have any noteworthy legislation nor any published literature to back ODR. Although a lot of foreign literature is available but nothing specifically related to Pakistan. The positive implementation and extensive adoption of ODR in Pakistan require overcoming certain barriers. These involve confirming the security and confidentiality of online proceedings, tackling technological infrastructure curbs, fostering digital literacy among residents and building faith in online dispute resolution mechanism etc.



It is pertinent to mention here, though huge challenges exist in the way, the use of ODR will definitely have several advantages. Some people with social anxiety, who express themselves better online than in a face-to-face setting, may find this type of situation advantageous. ODR platform is capable to provide a level playing field that could enable the parties to participate in dispute resolution proceeding from the comfort of their homes or work places, irrespective of the financial constraints or their geographical locations. Moreover, ODR can assist in settling disputes more quickly by rationalizing processes and lessening adjective complexities. This can be acutely advantageous for small-value claims, specific type of family cases, consumer complaints and business disputes, which comprise a noteworthy portion of the legal workload in Pakistan.

As Pakistan moves towards a more digital and connected future, the capability of online dispute resolution to alter the landscape of dispute resolution is becoming progressively evident. By accepting the benefits of technology and nurturing an environment conducive to ODR, Pakistan can enhance access to justice, decrease the burden on courts and can also provide efficient and cost-effective dispute resolution mechanisms to its citizens.

ODR AS AN EFFECTIVE TOOL FOR CONFLICT RESOLUTION:

When “getting it right” is what matters most, arbitrations are better than trials (Brazil, 2017). The reason for such conception arises because of one thing that is “Delay in cases”. Why? Mainly because of the reason that Pakistan has become one of the most litigious countries of the world (Ali & Aziz-ur-Rehman, 2021) and its judiciary has basically become synonymous with this phrase. Trials are said to start after extended delays and proceed at turtle’s pace once they do, as the courts are more concerned about legal technicalities. This ends in cases not being decided on time, particularly small claim cases, for which our court system is too costly, too slow, and too complex, especially for litigants in person. Besides, over 2 million cases are currently pending in Pakistan’s courts, making it beyond the capability of not only that country’s legal system but also of every other body in existence to resolve them all.

Alternative dispute resolution (ADR) techniques thus offer a remedy for this. It contains a variety of methods, such as negotiation, mediation, conciliation, arbitration, and a combination of these, that we can use to settle our conflicts without choosing litigation and going to court, or, to put it another way, resolving matters outside of the courtroom. These techniques are currently gaining reputation for resolving conflicts. However, we are in the fourth generation, and technology use has grown. Today, everything—teaching, games, studies, combat and any kind of transaction—takes place online, which might lead to conflicts. Consequently, there has been a need for ways to settle disagreements that result from such online activities. Online dispute resolution (ODR) is one such tool.

ODR is a branch of dispute resolution that involves technology to settle disagreements between disputants (Wang, 2018). According to the United Nations Conference on Trade and Development (UNCTAD), when ADR takes place using computer-mediated communications in the online environment, it is often referred to as ODR (UNCTAD, 2003). The same techniques used in negotiation, mediation, and arbitration are also utilized in ODR. Online dispute resolution (ODR) is clearly a substituted to alternative dispute resolution (ADR), and it is thought to be considerably more straightforward. One of the main advantages of ODR is that it encourages the use of recently developed technology, such as artificial intelligence (AI), in the legal sector, which could eventually help us to decrease caseload on our courts. In order to settle conflicts between consumers and sellers more effectively, online marketplaces like paypal, ebay, and Amazon launched the first ODR Programmes. Worldwide a small number of courts have started implementing ODR Programmes in a range of case categories during the past few years, including small claims, consumer debt uncomplicated divorce proceedings including child support, custody and visitation as well as noncriminal traffic cases (Agor, 2020).

Utilizing information technology in dispute resolution is very important, especially as several ADR and dispute resolution processes include the sharing or transfer of information. Telecommunications, computer, and audio-visual technology are the three types of information



technology that are relevant to dispute resolution (Clark, Sourdin, Alexander, & Lopez, 2002). The American Arbitration Association (AAA), the largest US organization for business-to-business dispute resolution, recently established its electronic commerce Group (ECG) project to provide dispute resolution in online marketplaces around the world in response to the expansion of ODR. When it is used efficiently, ODR can lead to consumer satisfaction by speedily resolving issues. The challenge with ODR, though, is defining how much contact must happen online for a dispute resolution procedure to be categorized as online dispute resolution (ODR). This is crucial because if all we have is the knowledge that the award was received via mail, we cannot say that this type of communication constitutes ODR.

ODR can be utilized as an alternate for regular in-person court proceedings. As a result, there is no need for parties to travel to a courthouse in order to participate, and this also saves their time and money, which can make the process more accessible and effective. For instance, the "Online Dispute Resolution" programme was launched in California in 2017. In one situation before the programme, a disagreement over a car repair bill was settled between the parties through an online mediation session. Also in the UK, the HM Courts & Tribunals Service introduced an online small claims mediation service in 2018 (Frazer, 2018) where an online mediation procedure was used to settle a dispute between a landlord and tenant regarding a deposit, leading to the tenant receiving a partial reimbursement of the deposit.

INTERNATIONAL PERSPECTIVE ON INTEGRATION OF ODR INTO FORMAL LEGAL SYSTEM:

The concept of Online dispute resolution (ODR) and its integration into formal legal system is comparatively new. The first ever successful ODR platform was introduced by ebay in March 1999 with the help of National Centre for Technology and Dispute Resolution (NCTDR), a center established by University of Massachusetts. With the help of this newly established mechanism, ebay successfully resolved fifty percent of their registered consumer's disputes (Katsh & Rabinovich-Einy, 2017). Subsequently, with the collaboration of SquareTrade, a protection plan company, ebay devised a 'two-stage' tech-assisted negotiation platform which involved a human mediator only at the later stage if the disputant themselves failed to achieve resolution at the earlier stage (Larson, 2019). Inspired from the success of eBay's ODR, many other tech-driven companies such as Alibaba, paypal and Amazon also took such initiatives (Habuka & Rule, 2017) and (Tan, 2019). Success story of ODR does not end with the resolution of disputes involving e-commerce rather it goes beyond that. Since 2014, Netherlands is successful resolving family disputes involving separating couples by using "Rechtwijzer", an online dispute resolution platform (Kistemaker, 2021).

In order to facilitate the resolution of cross-border online low-value claims, United Nations Commission on Int. Trade Law (UNCITRAL) in 2017 in its 49th session adopted the Technical Notes on Online Dispute Resolution (UNCITRAL, 2017). This model involves three stages with the use of ODR platform: negotiation, settlement and the final verdict on the dispute by a neutral arbitrator. Similarly, European Union has also introduced ODR model by adopting Regulation (EU) 524/2013. Likewise, Association of Southeast Asian Nations (ASEAN) has also required from its member nations to introduce their online dispute resolution platforms so that the e-commerce related disputes among these nations could be resolved more efficiently and quickly (ASEAN, 2016). Brazil's ODR platform Consumidor.gov.br has been proved even more successful than the EU's. The said platform is administered by Brazilian National Consumer Secretariat (Schmidt-Kessen, Nogueira, & Cantero, 2019).

ODR which was originally developed in the 1990s in order to resolve the disputes relating to e-commerce, has now been used extensively for other cases as well which are not originated from internet (Lodder & Zeleznikow, 2010). Recently, ODR has been recognized as important part of traditional legal system in order to adjudicate some specific types of offline cases in many jurisdictions. National Centre for Technology and Dispute resolution (NCTDR) has issued a list of 32 courts which have fully incorporated ODR (NCTDR, 2022). A huge inclination of integration of ODR into formal legal system has been observed worldwide during the last few years, for example the

state of Utah in the USA (Himonas, 2018) and the state of British Columbia in the Canada have formally integrated ODR into their regular court system (CRT, 2015), proposed mechanism of ODR in UK (CJC's, 2015) have also received appreciation worldwide.

CHALLENGES IN THE IMPLEMENTATION OF EFFECTIVE ODR IN PAKISTAN

Progressed nations for instance US and EU, have successfully established ODR systems a long time ago and presently have sophisticated structures to deal with the disputes arising in a number of fields. However, developing countries, like Pakistan, are far behind in ODR, unable to have full advantage of the modern technologies (Khan, Kaya, & Habib, 2018). ODR is on a rocky path in Pakistan. Effective online dispute resolution (ODR) implementation is facing a number of technological, cultural, legal and regulatory barriers.

i. **Technological Challenges:** Despite a growth in internet usage in Pakistan, rural areas still have a restricted availability of the service. Many people's ability to use ODR may be limited by their inability to access the internet. Poor internet access and connectivity in some locations may make it challenging for parties to take part in ODR proceedings.

Moreover, traditional or conservative parties are reluctant to adopt new technology or online forums for dispute resolution. Some people in Pakistan refuse to even use bank ATMs out of concern that no one will be available to listen to their complaints if the machine does not give them the right amount. A fear of technology exists as a result of unfamiliarity and a feeling of outside interference. People are also concerned about the security and privacy of their personal information, as well as the possibility of technical errors or hacking. Technology use is increasingly mastered by younger generations. They have a lot more self-assurance because they have been a part in the development of this technology.

Though Pakistan is moving towards digitalization, still sizeable percentage of Pakistan's population lacks access to modern technologies such as computers and cell phones, resulting in a digital split. Consequently, only a small portion of the population might be beneficiary of ODR forums.

ii. **Cultural Challenges:** Many researches are evident that Pakistanis are much more inclined to visit shopping malls and markets, in order to buy goods and services, as compared to have such services or goods online (Khan, Zubair, & Malik, 2019). The reason of such social behaviour lies in the fact that people trust what they can physically see, touch or verify. The general population has little knowledge of ODR and its benefits. The adoption of the technology may be constrained by this lack of knowledge. This fact raises serious concerns regarding utility and usefulness of ODR forums in our society. Another challenge could be the English language as it is the language that is often used for the internet and ODR. Specifically in the lower courts of Pakistan, a significant amount of work is conducted in local language so the natives will suffer because of the preference of English.

iii. **Legal & Regulatory Challenges:** ODR is not only concerned with the online transactions, it could potentially be used in other fields as well such as e-commerce. At the moment, Pakistan does not have any appropriate national or international law mainly concerning ODR (Ullah, 2021). What we actually need is comprehensive legislation in order to tackle the complications posed by this digital age (Gilani & Begum, 2021).

Furthermore, it would be nearly impossible for lawyers who have spent decades training for the traditional type of practice, to get expertise in ODR. For this unique responsibility, ODR arbitrators (decision makers in any function, including negotiator, mediator, conciliator etc.) must receive particular training. ODR is not taught at universities or professional schools at all, which makes it challenging for the party in dispute to decide to use ODR when the lawyer is vehemently in favour of litigation. Legal counsel is acceptable for court cases, but without the right training for ODR procedures, who will advise them?

Pakistan is not the only country that is facing these challenges rather almost all other developing countries that are looking at using ODR as an effective means to unburden the traditional courts to some extents are also facing it. Yet, many of these trials may be overcome if addressed tactfully ultimately resulting in improved access to justice for all.



THE WAY FORWARD

The application of ODR is a gradual process that necessitates collaboration between a number of stakeholders including the government, legal fraternity, technology suppliers and the public. First of all, the Supreme Court of Pakistan would have to do all the research in order to identify the suitable cases for ODR. Some of the initial instances that could be taken into consideration for ODR are small value claims such as consumer disputes, landlord-tenant issues and employment disputes etc. Another important task for Supreme Court will be to collaborate with the governmental agencies and the educational institutions to devise a befitting plan beforehand in order to respond the resistance and criticism that may arise from any segment of the society questioning the legitimacy and authenticity of ODR. Mandate from the Supreme Court shall confer credibility and authority to this technologically embedded legal process (Larson, 2019).

Most of the masses of Pakistan is not techno-literate enough to file an online application for ODR. Irrespective of the fact that most of them are capable of utilizing mobile phones and internet, such statistics at national level could be interpreted as “digital exclusion”. Undoubtedly, technology has great potential to dispense swift, low-cost and reposeful justice; likewise, it is also undisputable that ‘digital exclusion’ could be a problem for mass population. Navigation through a smart ODR system of the mass population of Pakistan is a point of concern. We don’t have any empirical study available with us, in the context of Pakistan, on this point. Though, research conducted by JUSTICE with reference to UK concluded that the individuals with the compromised educational background are not only more prone to digital exclusion rather left excluded from the traditional legal system as well. Moreover, there are issues involving digital skills, access to modern communication devices and internet, inspiration and self-assurance (JUSTICE, 2018). Nevertheless, use of “assisted digital” methodology, as implemented in the courts of UK and Wales could be of great help in order to minimize this digital exclusion (Susskind, 2019). To make this service user friendly, the users are helped with face to face interaction, web chat facility or through telephone call. Additionally, pro-bono lawyers and social volunteers are also there if any further practical help is required. It is evident from the experiences of other jurisdictions that the “digital exclusion” could be reduced in Pakistan to some extent by pro-bono lawyers, volunteers and NGOs working for the elimination of digital exclusion. However, the fundamental initiative must come from the state by investing more in installing ICT-driven courts, offering technical support to the users, starting skills development Programmes and pilot projects.

CONCLUSION:

This paper has discussed enormous case backlog and the ineffective efforts of the state to contain it. We have recognized the online dispute resolution (ODR) as an efficient, cost-effective, and accessible alternative to traditional legal proceedings. Its integration into our formal legal system will be a huge success in the process of administration of justice by providing greater access to justice for all in Pakistan. We have noticed particular challenges too, such as insufficient technological infrastructure, selection of disputes for ODR, legal framework, allocation of funding, techno-literacy of huge population and reduction of digital exclusion.

Notwithstanding the challenges, the introduction of “E-Court Project” in 2019 by Government of Pakistan and successful online case hearing by the lower judiciary as well as the High Courts in 2020 followed by COVID- 19 pandemic gives us the hope to be optimistic for ODR in Pakistan. Unarguably, technology change is quick, complicated, extensive, and ongoing, only if we could adopt the new schemes prudently and control them with skill and competence our efforts for the establishment of a better legal system shall not be frustrated. Finally, it is the improvement that we should be seeking rather than perfection while modernizing our court system.

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