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Online Dispute Resolution

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Abstract

The contemporary world belongs to communication where lot of interactions, trading, and business dealings are happening between people, organizations, and business partners. This has led to the sharp rise in disputes and conflicts, and they have become an unavoidable part of our ecosystem. Disputes and conflicts are not only related to online communication but also crops up during face-to-face or offline communication. The disputes/conflicts need to be handled, managed, and resolved timely and in a cost-effective manner. These days, online communication medium is used very effectively for such dispute resolutions. Online dispute resolution is mostly done through video conferencing, email exchanges, instant chat, and interaction through mobile phones. In order to understand the corporate perspective of India related to the online communication and online dispute resolution, interviews of 50 working professionals were conducted. Each of these professionals is at the leadership position and uses online communication more often in their day-to-day professional work. Their views were recorded and interpreted in order to understand practical issues related to online communication and online dispute resolution. In this chapter, we will be discussing the pertinent process of online dispute resolution for both online and offline disputes pertaining to the business environment.

Keywords: online dispute resolution (ODR), process, tools and impact of ODR, corporate perspective of India

1. Introduction

Online dispute resolution (ODR) is the settlement of disputes through online mode of communication/interaction between the disputed parties. Online dispute resolution undertakes disputes that are partially or fully settled over the Internet, having been initiated in cyberspace

but with a source outside it (offline) [1]. In the literature and practice, ODR is also called as an alternate dispute resolution (ADR) and Internet dispute resolution (iDR), and these terms are used interchangeably.

Online dispute resolution (ODR) uses alternative dispute resolution processes to resolve a conflict or dispute. Online dispute resolution can be used for disputes arising from an online mode of communication/transaction and also for disputes not involving the Internet, known as “offline disputes.” Online dispute resolution is an alternative to the traditional legal system where litigations are filed in court and justice is sought through legal proceedings. Traditional legal system involves a courtroom, lawyers, judges to register, and resolve the dispute.

The parties involved in dispute may use Internet and web-based technology in a variety of ways. Online dispute resolution can be done entirely on the Internet through email, chat, and videoconferencing and if needed parties may also meet in person for face-to-face interaction. Often, a combination of “online” and “offline” (such as face-to-face) methods are used in online dispute resolution.

ODR systems use synchronous as well as asynchronous communication in the process of resolution [2]. Synchronous communication means communication/interaction is happening on a continuous basis between disputed parties and mediator/arbitrator/negotiator (appointed by the dispute resolution agency), for example, videoconferencing and instant chat. However, in case of asynchronous communication, interaction is happening in intervals or in discontinuous manner, for example, email exchanges. Online dispute resolution can involve the parties in mediation, arbitration, and negotiation.

2. Types of online dispute resolution

Online dispute resolution involves mediation, arbitration, and negotiation to enable the dispute resolution.

2.1. Mediation

Mediation is exercised to initiate a broad-based consultation between parties which are involved in conflict [3]. In this process, mediator, who is a neutral, third-party person does the mediation. Mediation is a private process, where the mediator helps the disputed parties to discuss the issue and try to resolve the dispute. The parties who are involved in the conflict have the opportunity to present their point of views, present evidence, and argue for the satisfactory resolution. Mediation can be done entirely online with Internet technology, and parties can have a face-to-face interaction also by meeting personally in the presence of the mediator if required. Some online dispute resolution methods involve a combination of these methods. In the mediation process, the mediator is only a facilitator and does not have the discretion to make a decision. Mediation resolves the dispute while maintaining a consensual and nonbinding approach [4]. Mediator interacts with the parties in dispute to set common rules for the resolution process and assist the parties by identifying and pointing out possibilities for agreement/solution between parties, and it is up to the parties to agree or disagree

toward the end of the process. After seeking the parties' consent, the mediator may evaluate the parties' rights/interests and suggest possible settlements. The resolution of the dispute is the choice of involved parties only, and they will have to reach an agreement/settlement. If they will reach an agreement, the parties complete a written documentation that contains the complete specification of the settlement. In many instances, parties go to the court for the enforcement of the agreement.

2.2. Arbitration

Arbitration is a process where a third party makes a decision about the dispute after going through the issues, arguments, and evidence. Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute. This neutral arbitrator is approached by the involved parties and seeks his help for the resolution of the dispute. As compared to traditional litigation process, arbitration is less formal, less complicated, and more importantly can be completed in lesser time. Like mediation, this process can also be done entirely online with Internet technology (email, instant chat, or videoconferencing) or the parties can physically meet in the presence of the arbitrator. Arbitration is either binding or nonbinding. In binding arbitration, the parties are supposed to follow the arbitrator's decision. The arbitrator's decision may get the enforcement from the court also. Generally, the arbitrator's decision has an influence on the final judgment of the court. However, in nonbinding arbitration, the arbitrator's decision is only advisory and not binding, and it is up to the parties' discretion to follow the judgment. In case of further proceedings of the dispute in court, the arbitrator's decision may be submitted as evidence. The arbitration process is similar to a court trial, but it has less rules as compared to trial court rules of evidence and the arbitrator need not apply the governing law in totality. After the hearing process, the arbitrator issues a decision mostly along with the required explanation for his opinion. The arbitrator's decision can be enforced by the court if the involved parties have agreed toward a binding arbitration. Only in certain cases, the arbitrator's decision is appealed and overturned by the court.

2.3. Negotiation

Negotiation is defined as a process of making offers, counteroffers, and concessions in between two or more parties so that they can arrive at an agreement [4, 5]. Negotiation can also be taken as an emotional and complex decision-making process which assists in reaching for an agreement in exchange of goods and services [5, 6]. ODR is not much used in case of negotiation, but mostly it is used in mediation and arbitration.

3. Process of online dispute resolution

Dispute resolution through online mode came actually into light in late 1990, when Internet access became easily available and more and more people started using emails and web-based communication. Online dispute resolution evolves not only to resolve disputes arising from online communication but also to resolve offline disputes.

We have both automated and assisted mode of mediation to resolve online and offline disputes. First, we will discuss about assisted online dispute resolution. The ways and means of assisted online dispute resolution are as follows:

In case of assisted online dispute resolution, a mediator coordinates between the parties in dispute and tries to resolve the matter. Here, the mediator mostly uses the email as the communication mode and both the disputed parties access each other's statements. The mediator tries to arrive at the acceptable terms for both the parties and resolve the issue. Other than the email, chat rooms and videoconferencing are also used for instant messaging for dispute resolution. These days due to the advancement in technology and better connectivity, videoconferencing provides lot of convenience. Videoconferencing not only enables live conversation, but it also provides personal connection because of virtual face-to-face interaction. However, usage of email or instant chat or videoconferencing is subject to the nature of the dispute and availability of the persons involved [7].

Disputes originating from offline communication also get resolved with the same process as mentioned earlier. Presently, there are many professional companies that are providing ODR services to their clients. These companies are easily accessible and their service charges are also quite competitive and worthy to their efforts. The mediator, appointed by the company with their constant interaction with the client, acts as a facilitator as well as the evaluator. Sometimes, mediator needs to guide the involved parties and direct them to arrive at an agreement. Hammond [8] conducted a study on the process of online mediation and mediators and pointed out that a mediator needs to adept his communication behavior keeping in mind the online environment. For the mediator, good listening skills and ability to ask relevant and to the point questions are very critical to provide clarity to the involved parties.

3.1. Automated online dispute resolution

Automated dispute resolution is mostly used in cases where dispute has originated because terms have not been agreed/negotiated properly [8]. Here, automated systems help in negotiation between disputed parties and the system usually helps in arriving at a win-win situation for disputants. There are many software packages available, which assist in negotiation through blind-bid negotiation [9]. Here, the disputed parties submit their acceptable amount to them in the online portal system/software, and then the software checks the amount entered in the system and points out whether the deal will materialize between the disputed parties or not. If the amount entered by both the parties matches and overlaps, then the software confirms the deal, and if there is lot of gap between the agreed amount, the deal is called off. Simultaneously, there are softwares, which use game theory concepts to help in resolving disputes. These softwares are quite sophisticated and apply adjusted winner procedure. This adjusted winner procedure was coined by Brams and Taylor [11]. This procedure is based on the assumption that all items are divisible. The adjusted winner procedure was famously applied to resolve the issues of Israel and Palestinians, Panama canal treaty and Camp David accords. There is another program called Family winner, which assists in dividing the assets between the family members or when couples decide to get separated and assets needs to be divided between them.

3.2. Automated technology/tools used for online dispute resolution

The following are the mostly used automated tools for online dispute resolution [10, 11]:

Blind bidding:

These systems invite parties in dispute and ask them to submit their acceptable settlement offers with confidentiality and determine acceptable terms for both the parties.

For example, Smartsettle.

Drafting collaboration:

These are based on tools, which facilitate parties to review draft documents and forms to resolve a dispute amicably.

For example, SettlementIQ, MicroPact.

Automated negotiation:

These systems help in calculating all possible outcomes and also help the parties to arrive at a win-win situation as an outcome of the negotiation process.

For example, Modria, Smartsettle.

Virtual mediation rooms:

It facilitates mediation remotely in real time through videoconferencing.

For example, ADR Group's ADRg Express, Virtual Courthouse, Skype, and Zoom.

Arbitration systems:

It facilitates arbitrators to conduct arbitration process online from different locations, through videoconferencing, and so on.

For example, AAA /DecisionQuest's CaseXplorer Arbitration eQuibbly, Traffic Penalty Tribunal.

Online court case initiation:

Here, disputed parties or their legal representatives file claims and supporting documents through an online tool.

For example, Rolls Building.

Online courts:

Judges do the hearing and pass their judgments on cases by using an official online platform, without the need for face-to-face interaction with disputed parties.

For example, eCourtroom.

Agreement monitoring:

These are based on compliance and monitoring tools, which helps in reporting and analysis of agreements and identifying the breach of agreement.

For example: Rechtwijzer, Our Family Wizard.

4. Online dispute resolution and corporate executives of India

Personal interviews were conducted on 50 senior professionals working in different companies and in different fields like marketing, sales, finance, human resource, software development, and so on in India. These companies belong to the Banking, Consulting, Fast-Moving Consumer Goods (FMCG), Information Technology (IT), and Service sector. From the sample of 50 working professionals, 46 professionals were working in big multinational companies and 4 were entrepreneurs having their own business setup. Each professional interviewed had more than 10 years of working experience and were at the leadership position using online communication most often in their day-to-day professional work. These professionals belonged to the age category of 35–50 years and the sample consists of 31 males and 19 females. During the personal interaction (Interview) with these senior executives of corporate India, they pointed out that most of the conflicts arise because of the misinterpretation/misunderstanding of the written communication through email. Emails are overtly used in the corporate system for communication and is very important to develop the proper email-writing skills [12]. In most of the cases of disputes/conflicts, the other person misunderstands the intended meaning of the email, or it may also happen that the person who is writing the email makes wrong choices of words in the email. The respondents also pointed out that in many instances, it so happen that the email is made c.c. to multiple persons for information sharing and certain message is intended for a particular person but the other person misinterprets the intention and takes it on him and this results in ego clashes and emotional turmoil and affects the relationship of the parties involved. Some executives have suggested that we must take email writing very seriously and use lot of caution before sending it to the recipients.

They further agreed that there are many email exchanges on a daily basis and sometimes people write emails in a hurry without understanding the gravity of the message and without realizing that this may be interpreted in many ways by the recipient and end up committing mistakes. To resolve such kind of disputes they either clarify their point by writing another email and clarify the confusion and if it does not get resolved, then either by making a phone call to the person or by meeting in person to have a face-to-face discussion. For certain issues where things become difficult to manage, they mostly take the help of their senior person who is well respected by both parties and request him to mediate and resolve the issue. To resolve the conflict, mostly they follow “dual concern model” of Black and Mouton [13], where they try to reach to the amicable solution by creating a balance between the needs and expectation of all involved persons, while having concern for self as well as for others. Typically, they follow “cooperation conflict resolution style” more often, which is suggested in the dual concern model. In cooperation conflict resolution style, individuals are assertive

for their needs and empathetic also for the other person's needs/expectations/requirements. When the facilitator (senior/colleague) is involved in resolving the dispute, mostly he mediates between involved persons, but sometimes he uses mediation-arbitration approach (combination of mediation and arbitration) as this approach gives more flexibility to resolve the issue. In mediation-arbitration approach, first, the facilitator uses mediation to resolve the issue, but if it does not work, then the facilitator takes the decision and communicates it to the involved persons [14].

It came into light that most of the companies have legal departments within the organizational system that takes care of the dispute cases arising from customers, suppliers, business partners, and competitors. Legal department referred to the dispute/cases where organization's interests/reputation is involved. In the absence of the legal departments, companies take the professional help from dispute resolution agency or through legal professionals. Sometimes legal department also sought the help of dispute resolution agency in case they realized the need for them.

An executive working at a very senior position in a leading airline company has revealed that they get many customer complaints and disputes related to flight delay and deficiency of services while traveling. These unhappy customers put their complaints in consumer court/forum and take legal course. Attending to such cases (court hearings) takes a lot of time and attention. He agreed that online dispute resolution can help his company by saving lot of their bandwidth (time and effort), and there is faster resolution of the customer's issues.

It has been highlighted that, presently, online dispute resolution agencies are not trending in India like European countries, and these agencies are still evolving.

5. Impact of online dispute resolution

Online dispute resolution has provided a very positive impact to corporate, legal professionals (Lawyers) dealing in dispute resolution, ombudsmen and regulators, and court of law. Corporates have to deal with lot of disputes arising from customers, business partners, vendors, competitors, as well as from other business entities.

Corporates have to deal with disputes arising from various geographical locations and dealing with them involves lot of time, money, and manpower, and many a times, their image is also at stake. ODR enables the corporates to resolve these disputes at a faster speed and helps them with out-of-court settlement. Corporates are thus getting benefitted by avoiding expensive litigation and reputation loss by using ODR.

Legal professionals dealing in dispute resolution are getting benefitted by online dispute resolution techniques as it improves their efficiency in resolving the cases, and this makes their clients happy and satisfied.

Ombudsmen and regulators are loaded with a massive number of inquiries and complaints, and they are under tremendous pressure to provide satisfactory resolution within the timeline. Online dispute resolution has certainly eased out their load by providing quick resolution.

Usage of online dispute resolution has certainly eased the load of courtrooms and judiciary and made them more efficient in terms of resolution of disputes.

Users/disputed parties are getting benefitted with faster resolution with the online mode of dispute resolution; however, this system needs to be further invested and developed and make it more available to the users [15].

6. Advantages of online dispute resolution

The online dispute resolution primarily saves lot of travel time and cost, and also negotiation/discussion can take place at the convenience of the concerned parties. Otherwise, in case of face-to-face discussion/dispute resolution, one party may have the location/environment advantage and may influence the resolution process in his favor to a great extent. Online communication reduces the power difference and discomfort of face-to-face confrontation situation. The online dispute resolution offers similar ground for the disputed parties where both will remain in their comfortable zone. It also offers the communication between the concerned parties in the controlled environment. The online dispute resolution process can take into consideration both synchronous as well as asynchronous communication between the parties where communication can take place real time as well as delayed. In case of asynchronous communication, the party will get time to properly phrase his message or prepare a good presentation of his point of view or situation. Online communication not only enables to control your communication but also helps in monitoring the same. Thus, online communication can also be called as hyperpersonal communication [16].

The advantages of the online dispute resolution can be summarized as follows:

Cost: online dispute resolution is often less expensive as compared to the traditional legal process of litigation.

Efficiency: online dispute resolution can often resolve the dispute in lesser time.

Participation and control: disputants using online dispute resolution mode are equally involved in the process to resolve the dispute and exercise more control on the outcome of the dispute.

Flexibility: parties using online dispute resolution can have more flexibility in terms of timing and availability than the traditional legal process. Online dispute resolution can allow parties in different locations or countries to avoid the costs and inconveniences of travel.

7. Limitations of online dispute resolution

Online dispute resolution has certain limitations as it is based on online communication. It has certain disadvantages over dispute resolution done through face-to-face interaction. First, cues of nonverbal communication are missing in online communication which is established

through email or chat rooms. This makes ODR less effective in comparison to face-to-face dispute resolution. Nonverbal cues like appearance, dressing, gestures, face expressions, eye contact/expressions, and voice pitch/intensity are very critical to communication and help in making a perception about the person. Nonverbal communication accounts to 90% of the communication, while verbal communication is only 10% [17]. In case of messages communicated through email and chat, the message understanding is only dependent on written message [18].

Truthfulness/genuineness of the person is also in question in case of online communication as it is easier to present false information and deceive in case of online communication (email and chat) rather than face-to-face interaction. As per the interpersonal deception theory given by Buller and Burgoon [19], deception is easier in online communication. Deception is a message, which is knowingly communicated by the sender to generate false belief in the mind of the receiver. They further pointed out that the sender may adopt one of the three strategies to deceive the receiver, such as falsification (presenting a fiction), concealment (hiding the truth), and equivocation (avoiding the issue).

Online communication being web-based communication is very much exposed to online security related to privacy and confidentiality issues. Here, the confidentiality of the discussion can be compromised and some important information can be leaked to unwanted persons. In addition, online dispute resolution is based on the involved person's being technology friendly. Even in the present scenario, there are many people who are not so comfortable with the contemporary communication technology, and they have their own reservations in using it for the communication purposes.

8. Conclusion

It can be concluded that the scope of online dispute resolution is very wide and today more and more people are getting oriented toward this mode of dispute resolution. Online dispute resolution agencies are approached for resolving personal as well as professional disputes and the approach used by these agencies to resolution is quite contemporary and well appreciated by the users. Online dispute resolution provides more satisfaction to the disputed parties as it offers solution with a lot of convenience. This process is certainly faster, cost-effective, and more approachable when compared to the traditional legal system.

In the context of India, however, ODR is quite beneficial by looking at the number of disputes that arises but most of the people are not aware with this online dispute resolution process, and they are largely dependent on the legal system and grievance redressal agencies/forums. Also not many companies are providing online dispute resolution facility unlike Western countries where online mode of dispute resolution is quite popular and easily accessible. By looking at the current scenario and future scope, online dispute resolution is quite wide, but this system needs a lot of improvisation to make it more dependable and approachable/accessible. Online dispute resolution is a quasi-legal process, but strengthening of ODR system will reduce the burden on traditional legal system substantially and will help in faster and more efficient resolution of disputes. As per the ministry of consumer affairs, food, and public distribution

of India, there are over 450,000 consumer cases that are pending in 630 consumer courts of the country. Out of the total pending consumer court cases, 40% of these cases are related to the defective products and banking sector, while the remaining 60% are related to insurance, housing deals, financial deals, electricity cases, medical negligence cases, and so on [20, 21].

It may be appropriate for the companies who are facing lot of consumer complaints/disputes to get a tie-up with a dispute resolution agency and suggest/invite consumers to opt for this mode of dispute resolution. This would not only benefit the company by avoiding legal hassles and settling the dispute off-court, but customers will also get benefitted with faster and cost-efficient resolution.

The public perception of ODR shall encourage the use of modern forms and formal legal obstacles should be reduced – offering the opportunity to those who, bearing in mind the limitations of electronic methods, are not afraid to settle disputes by using them (IDABC, 2004) [3].

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