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ABOUT US

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METHODS AND CHALLENGES OF ONLINE DISPUTE RESOLUTION

AUTHORED BY - AMALA I.M

1. INTRODUCTION

Online Dispute Resolution (ODR) is a method of dispute resolution which is conducted online to solve a dispute (Katsh & Rifkin, 2001). ODR systems can be categorized according to the digital technology used - First generation ODR systems and Second generation systems. The main idea behind the first generation systems is that the human beings remain the central pieces in the planning and decision making processes. Computational tools are evidently used, but they do not have any autonomous role in the course of action. In this kind of ODR systems the main technologies used are instant messaging, chatrooms, video and phone calls, video conference, etc. So, it is a kind of assisted negotiation where it consist of both synchronous and asynchronous types of communication which is assisted by a neutral third party to reach a negotiation through online mode. So, there is both application of technology and human interference in first generation ODR system. The second generation of ODR systems is essentially the effective use of technical tools rather than human intervention. Second generation systems extend its first generation which incorporates new intelligent and autonomous techniques. In order to develop intelligent and efficient techniques to support Online Dispute Resolution, Artificial Intelligence based problem solving techniques is integrated with Online Dispute Resolution ones and it works without any human assistance.

First generation of ODR system involves human intervention alongwith computational tools and techniques to resolve disputes. Second generation ODR is the integration of AI with ODR mechanism without any human assistance.

2. METHODS OF ODR

1. Automated Negotiation

Automated negotiation relates to those methods in which the technology takes over (aspects of) a negotiation. This is a negotiation process designed to determine economic settlements for

claims. Most of the ODR services in this area are so-called 'blind- bidding' services.¹ The blind bidding service may be thought of as a type of auction mechanism where some or all information about the players' bids is hidden.

Parties place secret bids at a maximum of three stages and when the bid amount placed at any of the stages becomes equivalent to the pre-determined range set by the auctioneer, the settlement amount is determined by an algorithm and the Zone of Possible Agreement will be created and negotiation will be concluded.

In blind bidding, there are mainly two types of bidding services that are relevant in the ODR service platforms.²

a. Double Blind Bidding

Double-blind method where two parties can come to terms without disclosing their ultimate position to the other side. The double blind bidding often involves two parties who seek an agreement on a monetary amount. One side submits to the online system the maximum that they would be willing to pay to resolve a claim and the other side submits the minimum they would accept. The offers as made by each party is hidden by the ODR software during the negotiation and no party has the opportunity of knowing the bid of the other party. The parties submit up to three bids. The system tells them when they are within a predetermined range, so they know they are close to a compromise settlement. and if their bids come within a predetermined range or amount then the system itself takes the midpoint of the amounts and that becomes the amount payable.³

Eg. Cybersettle. It provides AI generated negotiations with double blind bidding service.

b. Visual Blind Bidding

The visual blind bidding is often used by multiple parties and with this process, unlike the double blind bidding, what is made confidential is rather what the other party is willing to accept. In this process, the parties in the negotiations exchange their proposals in terms of their demands

¹ What should the ideal ODR system for e-commerce consumers look like? The Hidden World of Consumer ADR: Redress and Behaviour, available at: https://www.law.ox.ac.uk/sites/default/files/migrated/dr_pablo_cortes.pdf (last visited on 5th October, 2023).

² Ibid n:1

³ Kweku AttakoraDwomoh, Online Dispute Resolution, <https://www.linkedin.com/pulse/online-dispute-resolution-kweku-attakora-dwomoh/>

to determine the range of negotiation of which it is not hidden. The system then, based on their exchanges, generates suggestions to each party requesting of the party to accept the suggestion or reject those suggestions. The suggestions as generated by the system to the individual parties are kept confidential of which they aren't disclosed to the other party. The parties continue their exchanges in negotiating while the system still generates the suggestions to the parties anonymously. When each party has accepted one or more of the suggestions within the predetermined range, then through an algorithm in the system, a settlement is declared with a fair outcome based on the suggestions and thereby Zone of Possible Agreement is created.⁴

Eg. Smartsettle

With regard to automated negotiation, for instance, A & B flee away from the crime scene for which both of them are imprisoned for 2 years. Now the options in the deal are if any one confess to the crime he shall be granted immunity for cooperating. Partner will then serve 10 years in jail. If both of them confess, then both will end up spending 5 years in jail. But if neither of them confess, both will spend 2 years in jail.

A & B split up to take a decision to choose either of the deals. Both parties will not be aware what option the other party is going to choose. They have to make their decisions independently. If both choose not to confess, both of them will have to spend 2 years each in jail which is the best possible outcome. But if other chooses to confess because of the immunity, the one who chooses not to confess will have to spend 10 years. So, comparing with that, both of them turning against each other and spending 5 yrs in jail is not bad.

Hence in automated negotiation, it studies the strategic interactions between self- interested economic agents. When competing, both parties choose the course of action that better suits their interest the most no matter what the other party decides to go. Parties will negotiate in their favour. Each situation is considered a game since the persons involved in them make decisions based on how they value and perceive the possible outcomes of the choices, made either by them or the other person.

Parties place secret bids at a maximum of three stages and the bid amount given by both the parties are based on the possible outcomes that best suits their interest. These are secret bids

⁴ Smartsettle Beyond Win-Win, available at: <https://www.smartsettle.com/> (last visited on 4th October, 2023).

hidden from the parties by the ODR software. when the bid amount reaches an amount equivalent to the pre-determined range set by the auctioneer, it helps the parties to decide the settlement amount. The system tells them when they are within a predetermined range, so they know they are close to a compromise settlement. This approach can guide the design of the interaction mechanism itself, and thus force such agents to behave in certain ways.⁵

Example

Insurance claimant settlement Single

Framing

Carlos claimant suffered injuries in an accident covered by an insurance policy. Insurance Co. agrees to pay claimant net settlement of \$50-65K.

Modelling Phase

Parties have different preferences. Obviously, claimant prefers the high end and Insurance Company would prefer to pay lower values.

Solution phase

Help the parties reach an outcome with the pre-established range acceptable to both. Acceptance will be somewhere in between the offer and the asking. Overlapping region is the ZOPA (Zone of Possible Agreement).

What the claimant is willing to accept is confidential. In this process, the parties in the negotiations make visual bids in terms of their demands to determine the range of negotiation of which it is not hidden. The system then, based on their exchanges, generates suggestions to each party requesting of the party to accept the suggestion or reject those suggestions. The suggestions as generated by the system to the individual parties are kept confidential of which they aren't disclosed to the other party. The parties continue their exchanges in negotiating while the system still generates the suggestions to the parties anonymously. When each party has accepted one or more of the suggestions within the predetermined range, it reaches a point where their offers overlap. then through an algorithm in the system, a settlement is declared with a fair outcome based on the suggestions and thereby Zone of Possible Agreement is created.

⁵ What should the ideal ODR system for e-commerce consumers look like? The Hidden World of Consumer ADR: Redress and Behaviour, available at: https://www.law.ox.ac.uk/sites/default/files/migrated/dr_pablo_cortes.pdf (last visited on 5th October, 2023).

So here, based on the visual bids placed by the parties, the system give them certain secret bids as suggestions which they can either accept or reject. If they are accepting, and when the secret bid accepted by both the parties has reached the point where their offers overlap with each other, the algorithm will determine the ZOPA , settlement will be declared through the algorithm in the system.

Heuristic approaches⁶

- (1) Anchoring and Adjustment
- (2) Availability
- (3) Self serving evaluations

Anchoring and Adjustment

To estimate the value of an option, negotiators are likely to start with the value of a known option, the "anchor," and then adjust to compensate for relevant differences in the character of the known and unknown item. In blind bidding, the range of amount which the party is willing to pay and the other party is willing to accept is known. The bidding will take place within this range and the parties reach a settlement. Visual blind bidding, when visual bids are made by the parties which are visible to them, the system itself generates certain secret bids which can be adjusted to these visual bids. When this adjusted bid amount accepted by the parties overlap at a stage, the settlement amount will be found out using the algorithm and negotiation will be concluded.⁷

Availability

When a negotiator's option could have a variety of consequences, each probabalistic, rather than a single certain outcome—for example, if the negotiator enters an agreement to buy the business under consideration, the business might make a large profit or, alternatively, it might go bankrupt—the negotiator will often evaluate the likelihood of the various possible outcomes based on the ease with which the possible outcomes come to mind. So, here the negotiators reach probabilistic judgments based on the available possible results, this method of judgment is known as the "availability" heuristic.⁸

⁶ N. R. Jennings, P. Faratin, A. R. Lomuscio, S. Parsons & M. Wooldridge, "Automated Negotiation: Prospects, Methods and Challenges" ISPRINKER(1992).

⁷ Ibid n.5

⁸ Ibid n.5

Self serving evaluation

having concern for one's own welfare and interests before those of others; self-seeking. judge uncertain options as more likely to produce outcomes that are beneficial to them. Depending on the specific context, the bias could cause negotiators to overestimate either the likely benefits that would result from reaching a negotiated agreement or the likely benefits that would result from rejecting the proposed agreement and pursuing an alternate course of action.

For example, Messick and Sentis (1979) divided subjects into two groups: one group was told to imagine that they had worked seven hours at a task while another person had worked 10 hours. For the other group, the hours were reversed. It was specified that the person who worked seven hours was paid \$25. Subjects were asked how much the subjects who had worked 10 hours should be paid. Seven-hour subjects, on average, thought the 10-hour subject should be paid \$30.29. However, the 10-hour subjects thought they should be paid more \$35.24. The difference between \$30.29 and \$35.24—\$4.95—was cited as evidence of a self-serving bias in perceptions of fairness.⁹

Texas tort case as experiment

Texas Tort Claims Act is a set of state statutes that determine when a city or other governmental entity may be liable for accidents or intentional acts that cause property damage or personal injury.

An injured motorcyclist sued the driver of the automobile that collided with him, requesting \$100,000. Subjects are randomly assigned to the role of plaintiff or defendant and attempt to negotiate a settlement. Before negotiating, subjects are asked to write down their guesses of what the judge awarded. Subjects are told that none of this information will be shown to the other party. The two subjects are then allowed to negotiate for 30 minutes. It was found that the negotiators formed self-serving assessments of the judge's award and that the discrepancy between the plaintiffs' and defendants' assessments was correlated with the parties' ability to reach voluntary settlement through bidding.¹⁰

Blind bidding is where the auctioneer choose not to disclose the details of competing bids. Blind bidding is the process of submitting an offer (a bid) without any knowledge of what the other

⁹ Ibid n.5

¹⁰ Ibid n.5

potential buyers are offering (bidding).

Argument Based approach

Argument as a piece of information that may allow an agent to: (a) justify its negotiation stance; or (b) influence another agent's negotiation stance (Jennings et al., 1998). Thus, in addition to accepting or rejecting a proposal, an agent can offer a critique of it. This can help make negotiations more efficient. The agent, By understanding why its counterpart cannot accept a particular deal, an agent may be in a better position to make an alternative offer that has a higher chance of being acceptable. In a trade union dispute, for example, an agent representing the worker's union might refuse an offer for a modified pension plan made by the organisation's management agent (Sycara, 1985, 1992). As a response, the management agent might offer a different pension plan. If the union agent had been able to explain that the problem with the initial offer was not with its pension plan but rather that it did not include reduced working hours. the management agent was bothered exploring different pension plans. Instead, the management agent would have concentrated on finding an arrangement for workload reduction. Through arguments made on negotiation, the parties can reach a settlement. Another type of information that can be exchanged is a justification of a proposal, stating why an agent made such a proposal or why the counterpart should accept it. This may make it possible to change the other agent's region of acceptability⁷ (Jennings et al., 1998), or the nature of the negotiation space itself. The information or argument which is used by the agent to justify its negotiation.¹¹

For example, an employee negotiating a salary raise might propose a big increase that gets rejected by the manager. After the employee justifies the proposal by denoting her significant achievements during the year, the manager might accept.. For example, the manager might modify the negotiation object such that the negotiation involves not only the salary amount, but also the number of working hours. In this way, the manager might be able to offer reduced working hours instead of a salary increase. There can be different arguments to reach a settlement.¹²

2. Assisted Negotiation

First generation of ODR system involves human intervention along with computational tools and techniques to resolve disputes.

¹¹ Ibid n.5

¹² Ibid n.5

The human facilitator will assist the parties to negotiate using the technology that is available. The digital technologies used in this type of negotiation includes instant messaging, e-mails, chatrooms, video and phone calls, video conference, etc. So, it is a kind of assisted negotiation where it consist of both synchronous and asynchronous types of communication which is assisted by a neutral third party to reach a negotiation through online mode. synchronous communications are scheduled, real-time interactions by phone, video, or in-person. All parties are online at the same time. When a message or request is sent, there's an immediate response. Here, the communication is instantaneous. Asynchronous communication happens on your own time and doesn't need scheduling like that of e-mailing, messaging. It provides flexibility to the parties to respond according to their convenience.¹³

Third party assistance in assisted negotiation includes:

Online conciliation

Conciliation is an informal procedure in which a neutral intermediary / third party, who is the conciliator, assists and facilitates parties to a case in resolving their case through dialogue and communication to reach a settlement. At the option of the parties, the conciliator may also make recommendations for determining certain terms of settlement. (Depending on parties' choice, if the parties has failed to reach a settlement, conciliation maybe preceded or followed by arbitration or mediation).

Online Mediation

Mediation is a process in which the parties to a case, utilise the assistance of a neutral dispute resolution practitioner (the mediator / facilitator), to collaboratively negotiate the outcome. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process. Have the duty to assist the parties in reaching a settlement. The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute.

18. (1) The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, and reach a settlement.

¹³ The process of assisted negotiation: A network analysis, Kathleen L. Valley, Sally Blount White & Dawn Laccobucci, Springer Link, 1992 vol.1, pg 117-135.

Online Arbitration

Arbitration is a process where the parties submit to resolving a case through adjudication and determination by one or more impartial and skilled arbitrators who make a final and binding decision on the dispute.

With respect to legal recognition of ODR services, A&C is governed by A&C Act, 1996 where electronic means of communication is newly recognised under Amendment Act, 2015. Mediation is governed by Mediation Act, 2023 which also includes online mediation as per sec. 32 of the act.

Sec 7 - “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. (3) An arbitration agreement shall be in writing. (4) An arbitration agreement is in writing if it is contained in— (a) a document signed by the parties; (b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] A&C Act, 2015.

Once, the parties mutually agree to enter the negotiation, they should choose the suitable ODR service provider. In some situations, the ODR Provider is chosen for the parties depending on the nature of their dispute (i.e. C2C disputants regarding an E-bay transaction are encouraged to use the E-bay ODR Process; Where the parties have not identified an ODR Provider in a contract, or where it is not clear which ODR Provider should be used, the parties can choose an ODR Provider. Once they choose the suitable ODR service provider, the procedure to initiate their negotiation will be provided on their website. There is no rigid format to be followed for ODR as the rules of the process depend on the ODR Service Provider. Once they start to further proceed for negotiation, party has to communicate it with the ODR service provider. Generally, it includes an asynchronous communication through e-mails or chatrooms.

The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties. (3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):—

S.29B of the Act deals with fast track procedure. Submissions filed by the parties without any

oral hearing; (b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them; (c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues; (d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case. (4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference. (5) If the award is not made within the period specified in sub-section (4), the provisions of subsections (3) to (9) of section 29A shall apply to the proceedings. (6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.

In the absence of fast track procedure, arbitral tribunal to hold oral hearings for the presentation of evidence or for oral argument. As per S.26 the arbitral tribunal may— (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

The mediation proceedings with respect to a particular dispute shall be deemed to have commenced— (a) where there is an existing agreement between the parties to settle the dispute through mediation, the day on which a party issues notice to the other party or parties for mediation and settlement of their disputes; or (b) in other cases— (i) on the day the parties have agreed to appoint a mediator of their choice for mediation and settlement of disputes between them; or (ii) on the day when one of the parties applies to a mediation service provider for settlement of disputes through mediation by appointment of a mediator. The mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute. i.e., the mediator shall assist the parties in an independent and neutral manner in their attempt to reach an amicable settlement of their dispute.

The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other to the extent agreed to by them, assist them in identifying issues, reducing misunderstandings, clarifying priorities, Replacement of mediator. Role of mediator is to explore areas of compromise and generating options in an attempt to resolve the dispute expeditiously, emphasising that it is the responsibility of the parties to take

decision regarding their claims. The parties shall be informed expressly by the mediator that he only facilitates in arriving at a decision to resolve a dispute and that he may not impose any settlement nor give any assurance that the mediation may result in a settlement. , mediation under this Act shall be completed within a period of one hundred and eighty days from the date fixed for the first appearance before the mediator. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants including the mediator and mediation service provider, whether conducted in person or online to ensure confidentiality of the conduct of mediation proceedings.¹⁴

Settlement Agreement and Conciliators Award.

When the Parties reach and sign the settlement agreement, it shall be final and binding on the Parties in the manner of a valid binding contract. The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the Parties. The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitrator under section 30 of the Arbitration and Conciliation Act, 1996.¹⁵

Conclusion, Suspension and Termination.

The conciliation shall be considered completed or concluded:¹⁶

- i) by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
- ii) by the option of the conciliator if, further efforts at conciliation are unlikely to lead to a resolution of the dispute; or
- iii) by a written declaration of a party at any time after a first discussion of the parties with the conciliation.

Upon the conclusion of the conciliation, the conciliator shall promptly send to the CM a notice in writing that the conciliation is terminated and shall indicate the date on which it has concluded, whether or not the conciliation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The conciliator shall inform the parties regarding such a requirement and reinforce the confidentiality terms.

¹⁴ Agami ODR, available at: <https://www.disputeresolution.online/> (last visited on 4th October, 2023).

¹⁵ Ibid n.6

¹⁶ Ibid n.6

Settlement Agreement and Mediators Award.

When the Parties reach and sign the settlement agreement, it shall be final and binding on the Parties in the manner of a valid binding contract. At the request of the Parties, the settlement agreement can be converted into a conciliators award and/or an arbitral award under the relevant provisions of the Arbitration and Conciliation Act, 1996.¹⁷

Conclusion, Suspension and Termination.

The mediation shall be considered completed or concluded:¹⁸

- i) by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
- ii) by the option of the mediator if, further efforts at mediation are unlikely to lead to a resolution of the dispute; or
- iii) by a written declaration of a party at any time after a first discussion of the parties with the mediation.
- iv) Upon the conclusion of the mediation, the mediator shall promptly send to the CM a notice in writing that the mediation is terminated and shall indicate the date on which it has concluded, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall inform the parties regarding such a requirement and reinforce the confidentiality terms.¹⁹

Settlement and Arbitral Awards.

The arbitral award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given, or the award is an arbitral award on agreed and settled terms as per the Mediation Rules or the Conciliation Rules. If, during arbitral proceedings, the parties settle the dispute, in terms of Conciliation Rules, the arbitrator shall terminate the proceedings and, if requested by the parties and not objected to by the arbitrator, record the settlement in the form of an arbitral award on agreed terms. The arbitrator shall deposit the original award, together with record of the arbitration proceedings, authorising it to cause the award to be filed in the Court of competent jurisdiction when required. An arbitral award shall be made in writing and shall be signed by the members of the arbitrator. The arbitral award shall state the date and the place of arbitration. After the arbitral award is made, a signed copy thereof shall be delivered to

¹⁷ Ibid n.6

¹⁸ Ibid n.6

¹⁹ Ibid n.6

each party. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitrator shall be sufficient so long as the reason for any omitted signature is stated. The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.²⁰

Conclusion, Suspension and Termination.

The arbitral proceedings shall stand terminated on making of the final arbitral award or by an order of the arbitrator under sub-rule (2). During the pendency of arbitral proceedings with Sama, no Party shall approach the Court for any interim measures or evidence taking under Section(s) 9 or 27 of the Arbitration and Conciliation Act, 1996. Enforcement- Parties may be required to comply with the execution requirements under the Arbitration and Conciliation Act, 1996 to enforce the arbitral award. The time period for enforcement is 90 days from the date on which the award was passed. Once an enforcement application has been made and an order has been passed, parties are required to inform Sama in relation to the execution application/compliance with the award.²¹

3. THE ROLE OF ODR NEUTRAL

Depending on the nature of the ODR process, the Neutral may:

- Permit the parties with or without counsel to present their positions regarding the dispute;
- Help and direct parties to search for common ground and narrow the scope of the dispute;
- Assess the relative strengths and weaknesses of the parties' positions, explaining the reasons of his or her assessment and estimate, where possible, the likelihood of liability and the verdict range of damages;
- Suggest and help the parties explore the possibility of a settlement.

4. ODR PLATFORMS

Agami

Sign up and tell us a little about your dispute. We'll then invite the other party to join and appoint a qualified conciliator to help you reach an agreement. signed up, you'll be able to make

²⁰ Ibid n.6

²¹ Ibid n.6

settlement offers and counter-offers. We also have a chat room where you can discuss potential settlement terms. Our conciliator would even suggest creative solutions likely to result in an agreement based on how disputes like yours have resolved for other people. Once you come to an agreement, the conciliator will draft the settlement agreement and send it to both parties. The arbitral award so passed as a result of the agreement between the parties are fully binding and enforceable.²²

Smartsettle

iCan Systems Inc. is the maker of Smartsettle, the world's only secure eNegotiation system using patented optimization algorithms to achieve fair and efficient solutions that are truly Beyond Win-Win.²³

Facilitates both assisted and automated negotiation. Smartsettle one resolve financial negotiations easily and quickly online. is the world's most elegant and intelligent negotiation app for two-party formal negotiations that can easily be reduced to a single numerical issue. Five sophisticated algorithms, including Visual Blind Bidding and Reward Early Effort motivate the parties to collaborate and virtually negotiate the settlement offers.²⁴

Cybersettle

Platform that provides financial negotiation and settlement. Have patented double blind process. Ensuring complete confidentiality, neither party sees the other party's offer or demands. Secure, confidential and AI-enriched settlement of monetary negotiations between parties.

Modria

Online Dispute Resolution Centre for American Arbitration Association. Modria platform is advanced software that helps parties reach agreement online.²⁵

Sama

Founded in 2015. Government recognised ODR service platform. Facilitates all methods of assisted negotiation. This initiative is a collaborative effort of industry players and impact sector leaders such as Agami, Ashoka, Omidyar network, Trilegal, Vahura and more who selected

²² Agami ODR, available at: <https://www.disputeresolution.online/> (last visited on 4th October, 2023).

²³ Smartsettle Beyond Win-Win, available at: <https://www.smartsettle.com/> (last visited on 4th October, 2023).

²⁴ Ibid n.2

²⁵ American Arbitration Association, available at: <https://aaa-nynf.modria.com/> (last visited on 4th October, 2023).

ODRways (now Sama), a mediation services platform founded in 2015.²⁶

Webnyay

This is an innovative and technologically advanced service that seeks to resolve B2B, B2C and C2C complaints, conflicts and disputes. It is a one-stop shop for enterprises looking to resolve civil and commercial disputes (including consumer complaints) and grievances from employees, suppliers and distributors.

We work with experienced professionals (which includes former judges, ombudsmen, senior advocates, queen's counsel, lawyers and domain experts) that act as neutrals on the disputes. We use Artificial Intelligence in our legal and automation processes to ensure that disputes are resolved efficiently and inexpensively.

Yessettle

India's First Online Disputes Settlement Platform. This platform enables the user to initiate the process to resolve any dispute with any other party anywhere in the world and the Platform further helps the users with its support in resolving the disputes through online assisted negotiation. YesSettle is a venture of YesSettle Legal Services LLP backed by a team of Legal Experts from different fields in society i.e. Lawyers, Retired Judges, Chartered Accountants, Social Workers, Retired Sr. Government Officials and Retired Sr. Bank Officials et al.²⁷

Square Trade

One of the leading ODR providers for consumer mediation was until recently. SquareTrade first partnered with the world's largest online marketplace, eBay, to handle disputes between buyers and sellers around the world and it operated successfully for a number of years and created a model that furthered the development of ODR. The SquareTrade process started when a buyer or a seller filed a complaint.

These are the various online dispute resolution platforms which provides a virtual space for parties to resolve the resulting online or offline disputes.

²⁶ Sama- Space for resolution, available at: <https://www.sama.live/> (last visited on 4th October, 2023).

²⁷ Yessettle- We made settlement easy, available at: <https://www.yessettle.com/> (last visited on 4th October, 2023).

5. CHALLENGES OF ODR

The concept of Online Dispute Resolution(ODR) in India is at a nascent stage. In order to create an effective implementation framework for Online Dispute Resolution (ODR) in India, the NITI Aayog had constituted a high level committee in June 2020 under the chairmanship of Justice A K Sikri, Retired Judge, Supreme Court of India. 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 ODR framework in India.

- i) 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.
- ii) At the behavioural level, the report recommends adoption of ODR to address disputes involving Government departments and ministries.
- iii) 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 innovations in the ecosystem.

The report also stresses on 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 COVID-19 pandemic has brought a renewed focus on ODR in India, with an aim to resolve Covid-related disputes primarily related to lending, credit, property, commerce, and retail sectors. This is seen as an important part of the economic revival strategy. Acknowledging the importance of online dispute resolution, it has been proposed to provide for online mediation under the Mediation Bill, 2021 which was passed in the Rajya Sabha on August 1, 2023 and passed in the Lok Sabha on August 7, 2023. The Act finally received presidential assent on September 14, 2023 and has come into force on 15 September, 2023. In India efficient working of ODR is at its infant stage. Besides this, there are various common challenges to ODR:²⁸

- ❖ Digital literacy – to resolve disputes online and to use those odr platforms requires a basic level of digital literacy as a prerequisite. In India, digital literacy often varies across age, ethnicity and geography. This digital divide needs to be addressed to ensure that ODR is

²⁸ Zainab Zaya Khan, “Online Dispute Resolution- Opportunities Issues & Challenges” SSRN 3,4 (2020).

adopted by society at large and not remain limited to urban areas.

- ❖ Lack of trust in ODR services – A lot of people in the country do not trust the emerging technology which is a major challenge for the people of India. The people do not have complete trust in the privacy of their information provided during negotiation and the extent of confidentiality that can interfere the services.
- ❖ Confidentiality - The internet being an open, public network, communications per email or communications via a website platform may be less secure than mail, fax or telephone. There is a risk that unauthorised persons could intercept communications transmitted over the internet and hackers may break into computers connected to the Internet from a trusted computer base, i.e. a computer base secure from attacks. Inadequate internet security has been a major deterrent in the growth of e-commerce and may also have a direct bearing on the use of online ADR
- ❖ Limited Range of Disputes: This disadvantage is peculiar to the type of cyber- mediation chosen. For example, fully automated cyber-mediation can only be used to resolve specific types of disputes and, even then, can only handle disputes where the amount of the settlement is the only unresolved issue. In fact, for fully automated cyber-mediation to work properly, it would seem that the parties would need to have undertaken initial discussions, agreed to the basic facts surrounding the dispute and have determined that one of the parties is responsible for damages. The parties would then need to have agreed to limit further discussions to the single issue of an appropriate amount of monetary compensation. This then limits the final stage of negotiations to determining a dollar figure for compensation leaving out the possibility for innovative, interest-oriented, out-of-the-box negotiating that is the hallmark of many successful negotiations.
- ❖ Language barrier - there is an urgent necessity to develop software's that will make a significant progress in the translation of all texts into preferred languages that can be understood by the parties. English language will be the medium of negotiation. The mediation process shall be conducted in English. At the option of the mediator and/or with the mutual consent of all Parties to the mediation process, a translator maybe appointed as an expert to assist in the mediation process. The Parties shall bear equal costs of appointing an expert translator.
- ❖ Asynchronous communication
- ❖ Besides these challenges, ODR has its own advantages as it offers convenience to the parties where the parties can negotiate and resolve the dispute from anywhere in the world. It reduces their cost of travel and gets speedy justice than ADR. Its cost effective

and time saving.

6. CONCLUSION

The exploration of methods of online dispute resolution (ODR) and its associated challenges sheds light on the evolving landscape of conflict resolution in the digital era. The multifaceted nature of ODR, encompassing diverse mechanisms such as negotiation, mediation, and arbitration conducted through online platforms, underscores its potential to provide accessible and efficient solutions to disputes arising in the virtual realm. However, as with any innovative approach, challenges persist, ranging from issues of trust and privacy to the need for standardized procedures and enforcement mechanisms. The significance of ODR lies not only in its ability to streamline resolution processes but also in its capacity to adapt to the dynamic nature of online interactions. The ongoing advancements in technology and the increasing reliance on digital platforms for transactions necessitate continuous refinement and adaptation of ODR methods. As stakeholders navigate the intricacies of ODR implementation, it becomes imperative to address issues related to jurisdiction, cross-border disputes, and the establishment of a robust legal framework. While challenges may pose obstacles, they also present opportunities for collaboration between legal professionals, technology experts, and policymakers to develop comprehensive solutions. The success of ODR hinges on a collective effort to establish a harmonious balance between technological innovation and legal principles. As we navigate the complexities of the digital age, embracing the potential of ODR while mitigating its challenges will undoubtedly contribute to a more accessible, efficient, and equitable system of dispute resolution in the online sphere.

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