



**Global Online Dispute Resolution “Smart Dispute Resolution” –
Opportunities & Challenges**

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ABSTRACT:

Phenomenal growth in E-commerce transactions and emergence of Platform economy offer consumers a wide choice, speed, convenience, comfort, savings in their E-commerce transactions. However, given the faceless, invisible and global nature of E-commerce transactions, it has also led to huge increase in consumer complaints about deception, frauds, supply of sub-standard or unsafe products. Unfortunately, if these complaints are not resolved at the E-platform level, their resolution at international level raise serious impediments including cross-border jurisdictional issues thereby denying the consumers the legitimate access to justice.

Online Dispute Resolution (ODR) refers to the use of Alternative Dispute Resolution (ADR) mechanisms using the internet technology. Global ODR offers cost-effective, speedy and simple Dispute Resolution ecosystem for handling E-commerce consumer disputes. Currently ODR initiatives are seen operating successfully in some countries and even at regional levels. The Authors of this Paper are actively associated with UNCTAD for pursuing its mission of introducing Global ODR for E-commerce complaints.

This paper will highlight the opportunities and the advantages of implementing Online Dispute Resolution and successful models of ODRs operating in different parts of the world. The Paper will also identify the challenges in making ODR a Global ODR for universal consumer protection and the steps being taken by OECD, UNCTAD and other global bodies. The Paper based on international research, participation at global meetings as also secondary data collected from law journals, articles and websites practising ODR, will also recommend steps required to be taken by UNCTAD for introduction of Global ODR by overcoming major hurdle of cross-border issue.

This Paper will serve as useful study material not only for international students and academia but also for Government agencies currently engaged in efforts of introducing Global ODR for Consumer Dispute Resolution.

(Keywords: Global ODR, Dispute Resolution, E-commerce complaints)

Executive Summary

The Global Online Dispute Resolution (GODR) mechanism is an innovative and efficient approach to resolving disputes arising from online transactions and interactions. With the proliferation of e-commerce and the increasing interconnectedness of the global economy, presence of an effective and accessible system for resolving on-line disputes acquires paramount importance and priority. This Paper examines the key features, benefits, challenges, and recommendations for the establishment and implementation of a Global ODR Mechanism.

1. Introduction

Advent of the internet and the rise of on-line transactions have revolutionized the way consumers and businesses engage in commercial activities. The on-line transactions are very unique and peculiar in the sense that these transactions are totally faceless. Consumers transacting online can neither see the sellers nor can they see, touch or feel the product they want to buy. Notwithstanding such strange scenario, the online transactions do offer lot many advantages, ease and convenience to consumers. At a click of a button an order can be placed just sitting at home and in a next few hours the product gets delivered at home. Great deal of convenience and saving of time too. Simply wonderful. Truly a consumer's delight. However, these same online transactions also bring a fair share of challenges, particularly when things go wrong. Sometimes, the delayed delivery defeats the purpose for which the product is ordered. Even a timely delivery with a defective product lands the consumer in a soup. At times the product delivered does not match with the product shown online or is not what was ordered. Problems get further aggravated when consumer notices such things after a couple of days. Some reputed on-line platforms do have good refund, replacement policies but that's not true with all companies operating on-line. In such cases, consumer is simply at loss to find out where to complain and whom to complain. If you visit their App or website, you will not find the details about where to file a complaint. If at all you find the email address, yet you will not get a reply, let alone a satisfactory reply. And if the seller on the online platform is from different country then there are legal and jurisdictional cross-border issues too.

Let's take a typical case of a consumer having a complaint against an online platform from which he had purchased a costly mobile phone. In less than a month the consumer finds that the mobile phone doesn't simply work. He wants to return the same and get refund. After a lot of efforts he manages to get contact details of the platform on which he had placed the order for mobile. He files a

complaint with the platform. The platform promptly replies informing that the Platform is not responsible for the product that was purchased on their platform and passes the buck to the Seller on the platform. The Complainant pursues the complaint with the Seller but he dodges his responsibility too by stating that he is only a seller, he has neither manufactured that product nor has he delivered it to him and as such he cannot be held responsible for an allegedly defective product. On further enquiry, the seller informs the complainant that the manufacturer of the mobile phone is from yet another country and that the Complainant may contact him. Now in such circumstances where does the consumer go? Even if he goes to local court, the issue of different cross-border jurisdiction of the manufacturer will bar such complaint.

Such complaints are not too uncommon in on-line transactions. In 2020 the EU ODR platform had 17,461 formal claims of which 50 % involved cross-border trade¹. One of the major challenges faced by consumers shopping online in E-commerce era is cross-border dispute resolution in consumer complaints. One of the characteristics of many on-line platforms is their natural cross-border dimension. Even though their national laws apply within jurisdiction, the digital online platforms have a global reach as they transcend countries' borders. Online platforms, sellers and even the manufacturer of products do not necessarily have a physical presence in a country to serve consumers there. And it is precisely this nature of e-commerce online transactions that pose a serious challenge in resolving cross-border consumer disputes.

Efficient, simple, fast, inexpensive and transparent E-Commerce Dispute Resolution is a pre-requisite for promoting trust and confidence in E-Commerce transactions. There has been phenomenal growth the world over in E-commerce transactions and at the same time several countries, including India, have also reported significant growth in complaints in the E-Commerce sector too.

1.1 Research Problem:

As cases are clogging our judicial system, ODR will prevent the cases from clogging but the mood question is how do we unmask the potential of ODR is the major question that comes into dispute.

The problem that arises here is to what extent the method of getting a solution by this kind of ODR is useful. The ODR process has been efficient for its simplicity, speed, convenience mostly least expensive when compared with traditional ADR and litigation.

¹ <https://www.apec.org/publications/2023/01/study-on-best-practices-in-using-odr>

As a result, the aim of this paper is to assess the efficacy of ODR, and any discussion of ODR must begin with an evaluation of its parent system, ADR. This section of the study also dives into the achievements, successful model of ODR processes in India and few part of the, This paper presents the main ODR including the definition of the term, process, its advantages and methods of ODR, mainstreaming ODR in India and few Regional Organizations like ASEAN, APEC and OECD.

1.2 Scope

The scope of this paper is to analyse the effectiveness of Global ODR mechanism and why it is needed for online transaction / e-commerce transaction. The ODR process has been efficient for its simplicity, speed, convenience mostly least expensive when compared with traditional ADR and litigation. But on the other hand, the process has been criticized as lacking face to face interaction, language barrier, having security and confidentiality issues etc.

This paper focuses on how Global ODR, its beneficial features in in E-Commerce disputes, and how It lessens the burden on Justice delivery system parties. This will led to the creation of Global ODR, and recommendations for developing an effective and efficient global ODR mechanism.

1.3 Objectives-

To understand the mechanism of Global ODR.

To discuss about process of ODR, the Benefits of ODR and how ODR increased its access to justice in different parts of the world.

To suggest recommendations on how to build a proper Global ODR mechanism.

1.4 Limitations-

This paper focuses on why Global ODR is considered as an essential need of the hour.

This research is limited to Global ODR on consumer disputes arising from E-commerce transactions.

1.5 Research Methodology

This research paper will use primary research methods i.e. international guidelines (adopted) for Global ODR and disputes arising from e-commerce transactions. The researchers will also use secondary data, existing Articles, and literature on the topic of Online Dispute Resolution as a Dispute Resolution Method in E-commerce consumer disputes.

The researchers will briefly study (the brief) features of ADR & ODR, the process of ODR, and ways of dealing with E-commerce transactions.

The researchers will identify successful ODR models from India and a few regional Organizations like ASEAN, APEC and OECD. The research will also bring out Global ODR-enabling provisions from UNGCP, UNCITRAL Technical Notes and UN General Assembly Resolution.

2. ADR / ODR for Dispute Resolution:

Dispute resolution through regular courts is often plagued with complicated procedures, technicalities of law, judicial delays caused by frequent adjournments, long litigation journey with appeals after appeal and consequent ever-rising and unaffordable litigation cost. To overcome these difficulties many countries have adopted what is called as “Alternative Dispute Resolution (ADR)” mechanism. This mechanism provides dispute resolution not through traditional courts but through independent neutrals such as Arbitrators, Mediators and Conciliators. Such Arbitration, Mediation and Conciliation are duly recognised modes of dispute resolution with proper legal framework in several countries and hence have legal sanctity.

Over a period of time with advent of technology, this Alternative Dispute Resolution (ADR) mechanism has got transformed into Online Disputes Resolution (ODR) mechanism. Emergence of internet technology, growth of E-commerce and Digital markets has enabled and also necessitated the need of ODR. The COVID-19 pandemic, which disrupted and paralysed the physical movement of the people in market place all over the world in 2020, also created an urgent and pressing need for on-line connectivity of the people including online buying, And this need was promptly met by technology coming out in a big way with several on-line platforms. In fact, during last three years we see huge growth of online platforms everywhere in the world.

2.1 Definition

Online dispute resolution (ODR) is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In

this respect it is often seen as being the online equivalent of alternative dispute resolution (ADR).²

3. **Global scenario of local/national /regional ODRs initiatives:**

3.1 India Initiatives in ODR-

A) National Consumer Helpline

NCH has been set up by the Government of India way back in March 2005. Since August 2016 the Integrated Grievance Redressal and Monitoring System (INGRAM) (www.consumerhelpline.gov.in) portal of the Department of Consumer Affairs of the Government of India has been set up, where consumers can register their grievances through this online portal for dispute resolution. It works as the Alternate Dispute Resolution mechanism at the pre-litigation level. An aggrieved consumer can register his/her grievance on the portal by either calling on Toll-free numbers or by registering themselves one time on the portal and by uploading necessary documents, if any. All efforts are made to get grievances resolved speedily within 60 days by pursuing them with the concerned Company/ Authority. If the grievance is not resolved then the consumer has a choice to approach the appropriate legal adjudicating authority or court.

The entire mechanism of advice, guidance and dispute resolution is online. The Government of India has encouraged private companies to become Convergence Partners and the complaints against them are directly referred to them for resolution of disputes.

Share of E-commerce complaints received by NCH in India among all complaints has been on rise. This ever-rising percentage of complaints against E-Com entities underscores the need for speedy, efficient, simple and affordable E-com dispute resolution³.

² Arthur M. Monty Ahalt, What You Should Know About Online Dispute Resolution

³ Source- Department of Consumer Affairs- Government of India.

Year	E-commerce Grievances Registered	Grievance Belongs to Convergence	Redressed by convergence companies	Unresolved by Convergence Companies
2018-2019	103364	59551	57578	1973
2019-2020	154122	81114	78846	2268
2020-2021	205393	126834	107779	19055
2021-2022	240866	162467	142636	19831
2022-2023	400097	313228	278191	35037

B) Central Consumer Protection Authority

CCPA has been created under the Consumer Protection Act, 2019 (CPA, 2019) which is empowered to handle complaints of consumers as a class in respect of violation of consumer rights, unfair trade practices and false and misleading advertisements. The CCPA handles these complaints online which enables both parties from any corner of India to be present for online hearings.

C) MahaRERA on-line Conciliation:

Real Estate (Regulation & Development) Act, 2016 provides under section 32 (g) of the Act a unique provision where lawmakers have provided non-governmental, private initiative through Conciliation in a dispute resolution within the statutory framework. This provision was invoked and implemented by Mumbai Grahak Panchayat (MGP), a leading voluntary consumer association in India by proposing an alternative dispute resolution (ADR) through Conciliation under the framework of state RERA Authority in Maharashtra known as MahaRERA. A unique composition where the Conciliation bench comprises of a Conciliator from MGP as a Consumer representative and another Conciliator from the developers association. This combination of Conciliators representing the interests of both home-buyer consumers and property developers has produced very impressive results with a dispute resolution rate reaching 75%. After COVID pandemic, this entire ADR Conciliation mechanism in MahaRERA has been very efficiently functioning as Online Dispute Resolution mechanism (ODR). A few other states in India have also replicated this ADR/ODR model in real estate sector.

3.2 Some Government-run ODR Platforms -

- i) **Brazil Consumidor:** Consumers use this ODR platform to resolve disputes against companies registered with “Consumidor”. This platform is integrated with State and Municipal Consumer Rights Protection Bodies. ODR services under this platform are provided for free.
- ii) **European Union:** All online traders are mandated to provide a link to the ODR platform on their website. The Complainant may resolve the dispute directly on the platform or submit the Complaint to an ODR service provider listed on the ODR platform. Both parties are provided 30 days to agree on the ODR service provider to handle their case. If the parties cannot decide upon the ODR service provider the consumer is advised to adopt other modes of dispute resolution.
- iii) **Mexico Concilianet:** Concilianet provides a free ODR platform for Consumer dispute resolution. If a consumer files a complaint regarding a product or service, the manufacturers / the service providers are mandated to appear for conciliation failing which a fine is imposed.
- iv) **South Korea E-commerce Mediation Centre (ECMC):** The ECMC offers dispute resolution through face-to-face, online written and phone calls. The Mediation proceeding under ECMC is regulated by Framework Act on E-commerce.
- v) **United Kingdom Financial Ombudsman:** If the business fails to resolve the dispute between Financial Businesses and Consumers, the consumer can file a Complaint before U.K. Financial Ombudsman. The Consumer has the option to decline the outcome of the process if he is not satisfied. However, if the Consumer accepts the outcome then it is legally binding on the businesses.

3.3 Private ODR Platforms:

- i) **Australia:** Australian disputes centre is a non-profit platform that caters to commercial entities and other individuals. The Centre offers efficient dispute resolution through mediation, arbitration and conciliation.

- ii) **Canada:** The Platform encourages consumers to settle disputes with merchants on their own through negotiations. If no settlement is reached within 20 days from the start of a negotiation then the Mediator is automatically appointed to intervene in the dispute resolution process⁴.

4. Regional Frameworks for ODR:

4.1 Association of South East Asian Nations (ASEAN): (10 Member States)

ASEAN Guidelines on National ODR System:

The establishment of ODR systems are distinctly Government led and/or administered by other parties tasked with negotiation, mediation or otherwise assisting consumers on B2C disputes.

- Open for processing complaints or claims that arise from both offline and online transactions between businesses and consumers.
- Sufficient human and financial resources should be allocated for setting up and managing the ODR systems.
- ASEAN Member States (AMS) to actively engage with the wider consumer protection community through relevant international groupings. To deepen technical understandings about ODR systems.⁵

4.2 Asia Pacific Economic Co-operation (APEC) (21 Member States) :

- Even in the most advanced economies commercial disputes cost too much, take too long and are excessively confrontational. Before Covid-19 pandemic according to APEC Report 2020, it took an average of 440 days to resolve a simple contract dispute involving MSME in a domestic APEC Court at a cost of 37% of the value of the claim.
- According to the APEC Business Advisory Council Survey of small businesses, many abandon cross-border trade due to a lack of effective dispute resolution. 58% of Respondents listed it as a ‘major’ or ‘severe’ problem. In emerging economies that number rose to 74%.
- APEC ODR collaborative framework and its model procedural rules launched in May 2022 provide quick and affordable dispute resolution and enforcement across borders, languages and legal jurisdictions to assist APEC businesses, particularly MSME’s, in cross-border trade.

⁴ <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>

⁵ <https://asean.org/wp-content/uploads/2022/04/ASEAN-ODR-Guidelines-FINAL.pdf>

- APEC has also considered ODR standard including ODR standards collaboratively developed by National Centre for Technology and Dispute Resolution (NCTDR) and the International Council for Online Dispute Resolution (ICODR) issued in May 2022. APEC ODR framework states that modern technologies such as Artificial Intelligence should be incorporated into the design of ODR platforms wherever possible.
- ODR must keep costs below the economic value under dispute.
- ODR platform should be auditable and audit made available to users.
- ODR providers should ensure that neutrals have the skills to mediate a dispute and manage the technology.
- ODR systems should be created in a secure manner to maintain cyber security and data protection protocols.
- The ODR administrators should adopt a code of Ethics for its neutrals.

Several APEC Economies have implemented Domestic ODR Platforms allowing businesses to agree to use ODR in advance.

APEC ODR Success Stories

Chile: In Chile in 2020 the Santiago Chamber of Commerce launched B2C Platform “Resolucion En Linea” local businesses sign up voluntarily to offer ODR to their customers. So far:

- 169 companies subscribe to the platform (62% of them are MSME’s)
- Over 400 cases resolved with average claim value USD 150
- Dispute settlement rate 66% with almost all disputes resolved during the Algorithm Assisted Negotiation Stage(99%)
- 50% of settlements were reached in less than 48 hours.

Quebec: In Quebec, the Office of Consumer Protection provides free ODR to Consumers and Merchants through its ODR system “Parle Consommation”. Businesses sign up voluntarily to offer ODR to their customers. The Platformer launched in 2016 and the results:

- Over 120 participating merchants
- Over 5550 cases processed
- Disputes settled within 25 business days
- A dispute settlement rate of more than 70%

- An average settlement value of over \$2000.
- User satisfaction rate 90%
- Uses AI to provide an effective translation service.
- The process is approximately 12 times cheaper and faster than a traditional court process.

Mexico: Mexico’s Federal Consumer Protection Agency (PROFECO) launched public ODR platform :Concilianet” in 2008.

- Participating Mexican Businesses are listed on Profeco Website.
- Before Concilianet, it took 120 days for consumer disputes to be resolved. The number dropped to 24 days with Concilianet.
- In 2021, 10341 claims were handled through Concilianet with over 90% of claims successfully resolved.

ODR E-Justice is an essential Component of economic growth. It can help expand markets across borders. The APEC ODR Collaborative Framework brings effective Dispute Resolution Remedies to millions of Small Businesses and consumers who do not have any recourse. If APEC ODR Collaborative Framework is successful it can build ODR that is corner stone for the next Global ODR Justice System⁶.

4.3 Organisation For Economic Co-operation and Development (OECD) – (38 Member States)

OECD, which is on the forefront in the field of Consumer Protection in E-commerce, has made very valuable recommendations for dispute resolution through ODR and has a comprehensive framework for ODR.

Dispute Resolution and Redress – Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress as appropriate, without incurring unnecessary, costs or burdens these should include out of court mechanisms such internal complaints handling and Alternative Dispute Resolution (ADR). Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress⁷.

⁶ <https://www.apec.org/publications/2023/01/study-on-best-practices-in-using-odr>

⁷ <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf>

Alternative Dispute Resolution (ADR) - Consumers should have access to ADR Mechanisms, including Online Dispute Resolution (ODR) Systems to facilitate the resolution of claims over E-commerce transactions with special attention to low value or Cross-border transactions. Although such mechanisms may be financially supported in a variety of ways, they should be designed to provide dispute resolution on an objective, impartial and consistent basis with individual outcomes independent of influence by those providing or other support.

Redress: Businesses should provide redress to consumers for the harm that they suffer as a consequence of goods or services which for eg. are defective, damage their devices, do not meet advertised quality criteria or where there have been delivery problems. Governments and stakeholders should consider how to provide redress to consumers in appropriate circumstances involving non-monetary transactions.

Governments and Stakeholders should work towards ensuring that Consumer Protection Enforcement Authorities and other relevant bodies such as Consumer Organisations and Self-Regulatory Organisations that handle Consumer Complaints, have the ability to take action and obtain or facilitate redress for consumers, including monetary redress.

With three major Regional organisations such as ASEAN, APEC & OECD being ODR-ready, moving towards Global ODR should not be as difficult as is being made out.

5. Key Features of Global ODR Mechanism:

The Global ODR Mechanism encompasses several essential features:

a. Online Accessibility: The mechanism should be easily accessible to parties regardless of their geographical location. It should be available 24/7 and accessible through various digital platforms.

b. Neutrality and Impartiality: The ODR platform should ensure neutrality and impartiality in its decision-making processes, assuring parties of a fair resolution.

c. Multilingual Support: Given the global nature of online transactions, multilingual support is vital for effective communication and understanding among parties.

d. Technological Infrastructure: The mechanism should incorporate advanced technological tools, such as artificial intelligence, machine learning and data analytics, to facilitate efficient case management and dispute resolution.

e. Expertise: The Global ODR Mechanism should have a pool of qualified and experienced mediators (neutrals) with expertise in online disputes handling.

6. Benefits of Global ODR Mechanism:

The implementation of a Global ODR mechanism offers several significant advantages:

a. Cost and Time Saving: ODR processes generally prove more cost-effective and time-efficient compared to traditional dispute resolution methods, such as court litigation or even arbitration.

b. Accessibility and Convenience: Parties can access the ODR platform remotely, eliminating the need for physical attendance. This convenience promotes wider access to justice, especially for individuals and small businesses.

c. Simple and Informal Process: Hearings in ODR mechanism are simple, informal, non-technical in nature.

d. Creative and out-of-box solutions: ODR Process being informal and flexible neutrals can provide or facilitate creative and out of box solutions.

e. Global Reach: The mechanism transcends geographical boundaries, enabling parties from different jurisdictions to resolve disputes efficiently, reducing cross-border complexities.

f. Appropriate Neutrals: Depending on nature of disputes expert in a particular field can be appointed as a “Neutral”.

g. Preserving Relationships: ODR emphasizes collaborative problem-solving, fostering an environment that preserves relationships and encourages future cooperation between parties.

h. No Appeals: Since ODR settlements are arrived at with mutual consent of the parties, there are little chances of appeal and appeal against appeal. It thus shortens the litigation journey.

i. Settlements are binding and enforceable: Settlements arrived through ODR are recognised by local laws and hence they are binding and enforceable.

j. Greater degree of compliance: The mutual settlement facilitated by the mediator (neutral) ensures a greater degree of compliance of the settlement.

k. Enhances Trust in E-com business: Prompt, efficient and cost-effective dispute resolution helps in building trust in E-com business.

l. Win-win situation for disputing parties: Since ADR/ODR settlements are arrived at by mutual consent, out of free will of disputing parties It ends up in win-win situation for them without creating any bitterness.

7. Challenges and Considerations:

While the Global ODR mechanism holds immense potential, several challenges need to be addressed for its successful implementation:

- a. Legal Framework: Developing a legal framework that supports and recognizes ODR processes across jurisdictions is crucial to ensure the enforceability of decisions.
- b. Cross-border jurisdiction: Harmonization of national E-com laws and accepting applicability of laws of that country where the E-com transaction takes place will substantially resolve the cross-border jurisdictional issues.
- c. Privacy and Data Protection: Effective measures must be implemented to safeguard the privacy and confidentiality of parties involved in the dispute.
- d. Technological Infrastructure: The mechanism relies heavily on advanced technological infrastructure. Ensuring the stability, security, and compatibility of the platform are essential considerations.
- e. Cultural and Language Barriers: The ODR platform should account for cultural differences and language barriers to facilitate effective communication and understanding among parties.
- f. Funding: Access to justice being a right of consumers, it will be Member States' duty to provide free or inexpensive/affordable ODR mechanism at national and global level.

8. Towards Global On-line Dispute Resolution:

8.1 UN Guidelines for Consumer Protection (UNGCP), 2015:

It will be interesting to see how United Nations has laid down Guidelines for Consumer Protection which enable and encourage setting up Global ODR to

address the cross-border jurisdictional challenges that may surface in such process. The **UN Guidelines for Consumer Protection (UNGCP)** underwent major revision in 2015. These UN Guidelines address therein the challenges arising from internet-based digital market economy.

UN Guidelines on Electronic Commerce under UNGCP, 2015 -

Clause 63: *“Member States should work towards enhancing Consumer Confidence in E-commerce by the continued development of transparent and effective Consumer Protection policies”*.

Clause 64: *“Member States should, where appropriate, review existing consumer protection policies to accommodate the special features of E-commerce and ensure that Consumers and Businesses are aware of their rights and obligations in the digital market place”*.

Clause 65: *“Members States may wish to study guidelines of Consumer Protection of OECD in a context of E-Commerce”*.

Guidelines on International Co-operation under UNGCP, 2015 –

Clause 79.a: *“Member States should develop mechanisms for exchange of Information in the field of Consumer Protection.*

Clause 82: *“Member States should improve their ability to co-operate in combating fraudulent deceptive cross border commercial practises”*.

Clause 90: *“Member States may wish to consider relevant International guidelines and standards on protecting Consumers from fraudulent and deceptive cross border commercial practises in considering the legal authority to provide to their consumer protection enforcement agencies”*.

Guidelines on International Institutional Machinery under UNGCP, 2015

Clause 97.g: *“To make appropriate reports and recommendations on the Consumer Protection policies of Member States including application and implementation of these guidelines”*.

All above-mentioned UN Guidelines for Consumer Protection do indicate the intent of the United Nations to encourage member states to have consumer protection policies to accommodate special features of E-

commerce and improve their ability to co-operate in combating fraudulent deceptive cross-border commercial practises⁸.

8.2 United Nations Commission on International Trade Law (UNCITRAL)

United Nations Commission on International Trade Law (UNCITRAL) has already initiated UNCITRAL-Model Law on E-Commerce in 1996. UN General Assembly has, accordingly, vide its resolution at its 18th Plenary meeting on 16th December 1996, recommended that all member states give due consideration to the said Model Law in view of desirability of uniformity of the law of arbitral procedures and specific needs of international commercial arbitration practice. Similarly, UN General Assembly has also recommended use of UNCITRAL Conciliation Rules, 1980 in cases where a dispute arises in the context of international commercial relations and the parties seek an amicable settlement of that dispute by recourse to conciliation.

As a result of these recommendations made by UN General Assembly in 1996 emerged New York Convention on International Arbitration in 1958 and Singapore Convention on Mediation in 2019. Both these Conventions relate to commercial B2B disputes. Since 1996 lot of efforts are made at the UN level to harmonise E-Commerce transactions cutting across the National frontiers⁹.

E-commerce Dispute Resolution will necessarily have to be in the form of Online Dispute Resolution “ODR” within the framework of United Nations Guidelines for Consumer Protection (UNGCP) in order to ensure the Global or Universal applicability of the Online Dispute Resolution mechanism. The UNGCP provides an enabling framework. UNCTAD being mandated to oversee the implementation of UNGCP provisions, it will be appropriate that the creation of the ODR mechanism at the Global level is undertaken by UNCTAD only. Leading E-commerce platforms such as Amazon, e-bay, PayPal, Alibaba do have their own Internal Dispute Resolution Mechanism. It may also be true that a large number of complaints of consumers do get resolved on these platforms. However, where the consumer disputes are not settled by these online platforms the question remains as to how such disputes would be resolved? And the answer for this is Global ODR for E-commerce B2C complaints.

⁸ https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf

⁹ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

8.3 The UN General Assembly's resolution:

The UN General Assembly in its resolution dated 13th December 2016 has observed as follows:

That the sharp increase in Online Cross Border transactions has realised a need for mechanisms for resolving disputes that arise from such transactions and also that one such mechanism is Online Dispute Resolution (ODR).

That ODR can assist the parties in resolving the disputes in a simple, fast, flexible and secure manner, without the need for physical presence at a meeting or hearing

That ODR represents significant opportunities for access to dispute resolution by buyers and sellers concluding cross-border transactions both in developed and developing countries.

In the same Resolution, the UN General Assembly has taken note of technical notes on ODR prepared by UNCITRAL and further noted *that the Technical notes are expected to contribute significantly to the development of systems to enable the settlement of disputes arising from cross border low-value sales or service contracts concluded using electronic communication and has therefore recommended in the said Resolution that all States and other Stakeholders use the technical notes in designing and implementing ODR systems for cross border commercial transactions¹⁰.*

Online Dispute Resolution mechanism visualised by UN General Assembly:

Purpose:

- To foster the development of ODR and to assist ODR administrators, ODR platforms, neutrals and the parties to ODR proceedings.
- To use the ODR systems in disputes arising from cross-border low-value sales or service contracts concluded using electronic communications.

Principles:

- Fairness, transparency, due process and accountability.

¹⁰ Source: Resolution adopted by the General Assembly on 13th December 2016 on the report of Sixth Committee (A/71/507)

- ODR may assist in addressing a situation arising out of cross-border e-commerce transactions namely the fact that traditional judicial mechanisms for legal recourse may not offer an adequate solution for cross-border e-commerce disputes.
- ODR ought to be simple, fast and efficient and that it should not impose costs, delays and burdens that are disproportionate to the economic value of a stake.

Stages of ODR proceedings:

- ODR proceedings may consist of stages, including negotiation, facilitated settlement and final stage.
- Claimant submits a notice through ODR platform to ODR administrator. The ODR administrator informs the Respondent of the claim and the claimant of the Respondent.
- The First stage of proceeding – a technology-enabled negotiation - in which the claimant and the Respondent negotiate directly with one another through ODR platform.
- If this negotiation process fails (i.e. does not result in settlement of a claim) the process moves to a second “facilitated settlement” stage. In that stage, the ODR administrator appoints a neutral (Mediator or Conciliator) who communicates with the parties in an attempt to reach a settlement.
- If facilitates settlement stage fails, a third and the final proceedings may commence in which case the ODR administrator or neutral may inform the parties of the nature of subsequent stage.

Scope of ODR Process:

- An ODR process will be useful for disputes arising out of cross-border, low-value, e-commerce transactions. An ODR process may apply to disputes arising out of both a “Business to Business” (B to B) as well as “Business to Consumer” (B to C).
- An ODR process may apply to disputes arising out of both sales and service contracts.

- Appointment, powers and functions of Neutrals: To enhance efficiency and reduce costs, it is preferable that the ODR administrator appoints a neutral only when a neutral is required for a dispute resolution process.
- It is desirable that neutrals have the relevant professional experience as well as dispute resolution skills to enable them to deal with the disputes in question.
- ODR neutrals need not be qualified lawyers.
- Only one neutral for the dispute may be appointed for reasons of cost efficiency.

Powers of the Neutral:

- The neutral will conduct the ODR proceedings in such a manner as he considers appropriate. The neutral will provide a fair and efficient process for resolving disputes.
- The Neutral shall avoid unnecessary delay or expenses in conduct of proceedings.
- The neutral will provide a simple, time and cost-effective alternative to traditional approaches to dispute resolution.

Language:

- Technology tools available in ODR can offer a great deal of flexibility regarding the language used for the proceedings.
- The neutral may decide the language mutually acceptable to the parties and if required may use of technology tools for the same.

8.4 Smart Dispute Resolution:

Technology advances have changed the way legal services are delivered. The changes do not include only the way courts have been organised but also the introduction of innovative dispute resolution mechanisms. Alternative dispute resolution provides businesses with a fast and economical way to resolve disputes and this is especially effective for international disputes. Smart contracts are contracts which are written in code and run when programmed conditions are met. Thus, the happening of pre-specified events will trigger their execution. They are automated and unchangeable. They can be either drafted contracts or

standard-form contracts and in both cases they are easily and quickly adopted. A Smart Contract is a computer protocol intended to digitally facilitate, verify or enforce the negotiation or performance of a contract allowing the performance of credible, trackable and irreversible transactions without third-party involvement. Smart Contracts are blockchain contracts which are self-enforced and self-executed. The concept of self-execution highly relates to an alternative system of justice rather than the traditional court system.

9. Recommendations:

To establish and implement a successful Global ODR mechanism, the following recommendations are proposed:

a. International Collaboration: Stakeholders, including governments, intergovernmental organizations, private sector entities, NGOs and voluntary consumer associations should collaborate to develop consistent standards, guidelines, and legal frameworks for ODR processes.

b. Capacity Building: Investment in training and capacity-building programs for mediators (neutrals) specializing in online disputes is crucial to ensure the availability of qualified professionals.

c. Technological Innovation: Continuous research and development in technological tools, such as AI, blockchain, and secure communication platforms, are necessary to enhance the effectiveness and security of the Global ODR mechanism.

d. Public Awareness and Education: Efforts should be made to raise public awareness about the benefits and functionalities of the Global ODR mechanism, promoting its adoption and acceptance.

e. UNCTAD to play important role: In order to establish a mechanism for Global ODR, UNCTAD should persuade the Member States to have appropriate E-commerce Acts or Rules or Regulations enabling settlements and enforcing such settlements in E-commerce Consumer Disputes through “Global Online Dispute Resolution” by Mediation and Conciliation.

10. Conclusion:

OECD recommendations for Consumer Protection in E-commerce with a particular reference to ODR (2016), ASEAN guidelines on ODR (February 2022) and APEC Study on Best Practices in using ODR (January 2023) demonstrate preparedness of several countries in the different parts of the world to handle E-

commerce consumer disputes through ODR mechanism backed by latest technology tools and recently modified National Laws. It is also noticed that most of the challenges facing global ODR such as funding, language barrier and cross-border jurisdiction are being effectively addressed by regional initiatives as seen in the documents of OECD, ASEAN and APEC.

UN Guidelines for Consumer Protection (UNGCP), UN General Assembly's Resolution dated 13.12.2016 and UNCITRAL Technical Notes of 2017 on ODR conclusively establish that UNCTAD is mandated to initiate necessary steps to create Global ODR mechanism for handling the growing volume of E-commerce Complaints.

UNCTAD, with its Intergovernmental Group of Experts (IGE) for Consumer Protection, has a Working Group on E-commerce. This Group is the right platform where the feasibility, architecture and modalities of the Global ODR can be fruitfully discussed and finalised to make Global ODR a reality.

By embracing technology, neutrality and accessibility, Global ODR mechanism has the potential to revolutionise dispute resolution into Smart Dispute Resolution. It can also enhance access to justice and foster global economic cooperation besides creating trust in E-commerce businesses. With careful attention to legal frameworks, technological advancements, and stakeholder collaboration, the Global ODR mechanism can become an indispensable tool in the digital age.
