

ONLINE DISPUTE RESOLUTION PROCESS IN CONTEMPORARY ERA

- Gayathri. K¹

ABSTRACT

“It’s not that we use technology, we live technology”

- *Godre Reggio*

In recent years, cyberspace is being used by people around all over the world. The IT Act, 2000 (Information Technology Act) was introduced to regulate the virtual world without causing any damage and violating the rights of others. The concept of Online Dispute Resolution in cyberspace is a broad topic with the composition of all electronic devices which can be used to capture, produce, store, transmit and display information for the purpose of dispute resolution amongst individuals. The first case of online dispute resolution was likely reported in 1990 since this year has been considered as the evolution of the internet worldwide. Since then it was considered that less number of people were benefited from having access to cyberspace, but in 2001 the usage of cyberspaces was developed and many people all around the world able to use cyberspaces, so online dispute resolution also increased. Online Dispute Resolution via information technology includes is not limited to email and other electronic communications between and among the parties, the arbitrator or arbitrators (the “tribunal”), and the administering body to present their respective cases in an electronic format, rather than a paper format; it is much more than that which helps the parties of the dispute to save time and costs and to ensure that the dispute is managed and conducted efficiently.

In online dispute resolution, the matter relating to disclosure is a debatable topic to focus on in the research area. There are still a lot of problems that arise with the matter relating to non-disclosure, so the author intends to research the rights and liabilities of non-disclosure. The

¹ Student at Tamil Nadu National Law University

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author is also interested in the usage of Artificial Intelligence software in online dispute resolution, and whether the usage of AI can help advance the process of online dispute resolution proceedings in the future post the pandemic for a positive impact.

Keywords: Online dispute resolution, Artificial Intelligence, Cyberspace, Communication technology.

1. INTRODUCTION

In recent developments of Information and communication technology, cyberspace, and transactions by cyberspace such as e-commerce, e-contracts were where most of the disputes arose. The Online Dispute Resolution is most likely to be used in the E-commerce transaction, wherein in such a case of receiving damage produced via an online store the buyer is from one country and the seller is in another country in the question of which jurisdiction should be followed? And what are the procedures to be followed in such a case? are the frequently asked questions in E-commerce transactions. Online Dispute Resolution is the most viable platform to solve the dispute arising by the E-commerce transaction not only e-commerce disputes but also the family disputes and other matters that have been dealt with by Online Dispute Resolution.² During the COVID- 19 pandemic which was a totally unexpected situation of the world, the necessity of delivery of justice was satisfied by the use of Information and communication technology. Similarly, Online Dispute Resolution is a platform where information and communication technology is being used to resolve disputes.

The Online Dispute Resolution process involves arbitration, mediation and negotiation using information and communication technology (such as electronic document filing and sharing, hearings of the parties via video conferencing). Online Dispute Resolution method provides multiple benefits to resolve the dispute such as cost-effectiveness, manages time for the parties of the dispute still it has some drawbacks such as cyber security issues and distress of non-disclosure etc...³ Online dispute resolution is helpful in reducing the burden of the court by resolving the dispute in the private and in the court proceeding the decree by the court is the final

² Jeffrey M. Aresty, the Internet and ADR: Educating Lawyers about Online Dispute Resolution, American Bar Association (January/ February 2006).

³ Justice(Retd.) AK Sikri, Designing the future of Dispute Resolution: The ODR policy plan for India (October 2021).

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say even the parties are not likely of the judgement but in the dispute resolution mechanism provides the opportunities of having negotiation between the parties before reaching the solution.⁴

2. UNDERSTANDING ONLINE DISPUTE RESOLUTION

2.2 Origin of Online Dispute Resolution

It was important to note down the origin of Online Dispute Resolution to understand how the Online Dispute Resolution is adopted in India and the process of Online Dispute Resolution. The internet was introduced in 1969, for the first few years since the internet was introduced it was used by less number of people for the academic and the military purposes. So relatively the existence the Online Dispute Resolution is not traceable, but then in 1992 the internet service provider has been started all over the world and many people had access to the cyber spaces, the commercial transaction also happened in cyberspace by 1990's, so the dispute arose via online transaction were dealt by the Online Dispute Resolution which is was considered the origin of Online Dispute Resolution.⁵

The first case of Online Dispute Resolution is likely to be reported in the 1990s as it was the time period when people started to have access to cyberspace. Only fewer number people around the world have access to information and communication technology and benefit from the Online Dispute Resolution mechanism.⁶ During 1990's the Online Dispute Resolution mechanism was having a struggle relating to the jurisdiction as where the dispute can be resolved if the parties were from the different region. But in 21st century the concept of Online Dispute Resolution mechanism is evolved because increase in the usage of cyberspace all over world.⁷

2.3 Process of Online Dispute Resolution

The Online Dispute resolution mechanism is considered as an efficient, effective and convenient for the parties to the dispute. The usage of Information and communication technology allows

⁴ Deepika Kinhal, et at., ODR: The future of Dispute Resolution in India (28 Jul 2020).

⁵ Ethan Katsh, ODR: A look at History.

⁶ Bhuvanesh Puri Goswami, ODR in India: Its Origin, Benefits and Challenges, Volume IX, Issue 3 (Jan. – Mar., 2021) PP 01-10.

⁷ *Supra* 2.

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the dispute resolution mechanism to be accomplished more rapidly and cheaper also easier to access for the parties. The online dispute resolution starts with the agreement between the parties in the dispute. The agreement should be more clear in aspects such as electronic document management (such as format for example, PDF, Docs, JPG etc., the fonts of the written submission, naming of the file, mode of submissions), videoconferencing software and the alternate solution in case of any technical break down as it would be difficult to adopt last minutes changes during ongoing proceedings, the usage of technology can change frequently based on the convenience of the parties. The online dispute resolution mechanism is more different process than the arbitration process using mere pen and paper, as it involves the parties of the dispute to negotiate with each other without moving the place to have a face to face conversation, submit the document via the mode of internet, the storage of information is also made easy by the storage devices such as CD, DVD etc., with the help of the information and communication software.⁸

2.4 Procedure of Online Dispute Resolution by Indian legislatures

The arbitration, mediation and negotiation is been governed by the Arbitration and Conciliation Act, 1996 which proposed certain changes through amendment on 2019 with the changes on the regulatory authority, that is arbitrators. They removed the qualifications for the arbitrator and amended as act in 2020, namely the Arbitration and Conciliation Act, 2020. The Online Dispute Resolution process is the supported by various legislation, for example, Arbitration and conciliation Act, 1996, Code of Civil Procedure 1908(Section 89 empowers the court to refer the case dealt by the arbitration, mediation, negotiation and also by the Lok adalat), Family courts Act 1984 (K. Srinivas Rao v D.A.Deepa, in this case the supreme court allows mediation process in the matrimonial disputes), the Companies Act 2013(the act allows the NCLAT to follow mediation process) , consumer protection act, 2019 (E-commerce disputes), the Indian Evidence Act, 1872 (Section 65-A and Section 65-B recognizes the electronic evidence and condition for the admission of electronic evidence and also provides directions to regulate electronic documents in the virtual hearings), The IT Act, 2000 (Information Technology Act) was

⁸ Gabriella Kaufmann- Kohler, Thomas Schulz, the use of information technology in arbitration, Jusletter, (5th December 2005).

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introduced to regulate the virtual world without causing any damages and violating the rights of others.⁹

3. ARTIFICIAL INTELLIGENCE AND ONLINE DISPUTE RESOLUTION

The study of artificial intelligence was used by involving the study of automated human intelligence, this process involves allowing to build the computer to perform the task using intelligence. The artificial intelligence in the online dispute resolution may involve using the software to work on the case based system, or rule based system or machine learning.

(i) The case based system was introduced in 1993, this was kind of a game theory, provides the support of assisting the negotiation by analysis of previous cases and generate the solution for the current case.

(ii) The rule based system is something that it does not stimulate the negotiation proceedings rather than acting upon the rules given to the system. The rule based system was introduced in 1989.

(iii) The machine learning is the first system that provides support to the negotiation process which analysis the process of approach to the dispute.

Although the above provided method it very useful and convenient for the dispute resolution process and reaching the BATNA (Begin At The Negotiated Agreement). It is still questionable that whether it can be use in the process of Online Dispute Resolution.¹⁰

Artificial Intelligence are considered as great system because sometimes it can the problem which was not able to solve by the human being in the faster, better and efficient. The artificial intelligence is most frequently identified by the Turing test, which is basically by letting the human to have a communication with artificial intelligence program for certain time period. During the period of time if the person does not feel like he/ she talking to a machine then that program passed the test. So can these type of artificial intelligence program are allowed to be

⁹ *Supra* 2.

¹⁰ John Zeleznikow, Using Artificial Intelligence to provide intelligent dispute resolution support, (13th April 2021)

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involved in the Online Dispute Resolution, to answer these question we should look into how the artificial intelligence most likely should be used in the dispute resolution process.¹¹

3.1 Argument support tool - The artificial intelligence program can be used in arbitration, negotiation, and mediation proceedings as an argument tool. Since these proceedings are mostly like obtaining the parties of the dispute's position rather than satisfying their interest. Even though support tool is useful for the dispute resolution mechanism it should be used carefully by not giving the weakness of the parties.

3.2 Translation tool - This tool is the most useful for international disputes when the parties of the disputes have a language barrier in the dispute resolution mechanism. It will help to overcome the language barriers in the negotiations.

3.3 Automatically summarizing tool- This tool can be helpful for the management of cases, where the tool is used to summarize the proceedings and saves them in the electronic format. So that the parties to the disputes know what step should be taken next. This also helps in searching for the relevant precedents for the case.

3.4 Computerized legal argument - The important aspect of this tool is to assist and support the lawyer by drafting arguments. This tool can also administer and supervise the arguments to keep track to end the proceeding quickly without delay.

By the above benefits of the artificial intelligence software, it can be seen as a digital butler who can read e-mails, read books and news or make reservations, etc., there are certain pros and cons notable in the usage of Artificial Intelligence in the Online dispute resolution

- This system can have direct interaction without the human interventions
- This system can have social interactions with the other parties without language barriers.
- This system can be very helpful in having records on the matter of the cases and hearings.
- This system takes initiative to achieve the goals.

Taking note of all the above aspects the author, in the article says, that artificial intelligence software can be very useful in the online dispute resolution mechanism but this software still

¹¹ Arno R. Lodder, The Role of artificial intelligence in online dispute resolution,

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hasn't left the research laboratories. Online dispute resolution can be benefited from the usage of artificial intelligence software by acting as a 'digital butler'.¹²

4. CHALLENGES FACED IN THE ONLINE DISPUTE RESOLUTION

Though the Online dispute resolution mechanism is easy to use there are certain concerns relating to the challenges faced in the adaptation of the online dispute resolution process. Online dispute resolution is an efficient and effective mechanism to resolve the dispute between the parties who are willing to settle in private with the support of lawyers, the government, and the judiciary. The challenges faced in online dispute resolution are characterized as structural challenges, behavioral challenges, and operational challenges;

4.1 Structural challenges - this includes the parties of the disputes facing issues related to having the access to digital literacy and access to technology. Dispute resolution in cyberspace requires the usage of information and communication technology, literacy in cyberspace plays a prominent role here in online dispute resolution. There are some places in India where they don't have access to cyberspace, this might bring the issues not benefiting by the online dispute resolution process.

4.2. Behavioral challenges- behavioral challenges include a lack of awareness toward online dispute resolution and a lack of trust in the process of online dispute resolution. The awareness towards online dispute resolution is very less which leads the parties towards the litigation process as they think the litigation process is more viable than the online dispute resolution.

4.3 Operational challenges- Compared to all other challenges this is the notable challenge in the cyberspace because this issue is related to privacy and confidentiality concerns¹³ also include the interception of emails, getting infected (such as viruses, macro viruses, password sniffers, Trojan horses, worms etc..)

These are the operational challenges faced in the online dispute mechanism, these are the majors for the dispute resolution which is at the stack. During the dispute resolution procedure, the

¹² *Idia.*

¹³ *Supra 2.*

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documents relating to confidentially matter are more important of the dispute. The distress of interception of emails, and getting infected documents are the most important concerns.

Confidentiality is considered as the essential element in traditional dispute resolution, which is why the parties of the dispute prefer traditional dispute resolution over online dispute resolution proceedings. Also, the confidentiality of the dispute is considered as one of the main issues in the course of due process of the dispute resolution by the information and communication technology, where in some cases the documents may be copied and transmitted, even though in some cases the video conferencing can be recorded without the notice. But these issues cannot be raised in the traditional method of arbitration.

In countries like Spain and New Zealand, their legislation of Arbitration Act itself guarantees the confidentiality of any information provided during the course of dispute resolution, but it falls back without clear information on the scope of the duty left on whom. Since the position of confidentiality is hanging in between here, the legal requirement to maintain confidentiality arises only the parties of the disputes agree in most countries. Whereas in India, the Arbitration and conciliation Act, 1996 says the arbitral tribunal has the right to disclose confidential information so that the other party of the dispute can make an argument or provide an explanation. But in the scenario where the parties of the dispute particularly ask the tribunal not to disclose confidential information to the other party, they cannot do so.

In the case of *Dolling baker v Merrett*, the court held that the nature of arbitration creates the implied duty to protect the confidential information of the arbitral process. In most institutions, the arbitration rules on protecting confidential matters fall upon the arbitral tribunal.

5. PROTECTION AGAINST INTRUSION INTO DATA STORAGE

In the online dispute resolution proceedings, the data storage for the reference of the case is the most important aspect in the case, even though there is development in the hacking strategies, the security measures are also had a great change in protecting the data. On the contrary of having smooth and secure dispute resolution, three important aspects are important following,

5.1 Authentication - the essence of this process is to identify the parties of the dispute himself/herself to the system. The most common method adopted here is to log in via user id and

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password but to have a more secure environment biometric authentication is been used in determining the parties.

5.2 Authorization - the main point of providing authorization is for the person who undergoes the authentication, he/ she will have the right to access the proceedings. This process correlates with the authentication and provides specific privileges to the party of the dispute.

5.3 Accounting - this is the process of monitoring and tracking the operations of the system to avoid the unnecessary intervention of third parties without access to the computer system. This may include an attempt at the unauthorized intervention of the source, intrusion by hacking or cheating the legitimate users' password. This type of suspicious activity should be reported and should be taken appropriate action accordingly.¹⁴

6. CONCLUSION

The article mainly focuses on three aspects relating to the Online Dispute Resolution process in cyberspace, firstly identifying the usage of Artificial intelligence in the online dispute resolution mechanism has evolved. Though the artificial intelligence software can be used very efficiently in the field of online dispute mechanisms, to overcome the language barrier, to act as an assistant to have a track the case hearings and records, for social interactions, and to achieve goals, still this technology hasn't left the research laboratories. Online dispute resolution can be benefited from the usage of artificial intelligence software by acting as a 'digital butler'. This technology hasn't left the laboratories.

Secondly, the matter relating to the protection against intrusion into data, there are three important aspects in order to protect the data storage from intrusion are authentication, authorization, and accounting. The parties of the dispute undergo the authentication process to identify themselves, then the person who authenticates themselves has the right to access the data. Accounting is the process of monitoring and tracking.

Lastly, In the future post-pandemic situation, the usage of artificial intelligence can be utilized in online dispute resolution proceedings, in the report of justice AK Sikri 'Designing the future of Dispute Resolution: The ODR policy plan for India', has mentioned that the due the lack of

¹⁴ *Supra* 7.

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digital literacy and availability of the technology usage of the Artificial intelligence may not be efficiently used at present. But in the future, the utilization of Artificial intelligence will play a very vital role in the online dispute resolution mechanism.

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