

Online Dispute Resolution Mechanisms in India- A Reality A Case Study of the Online Consumer Mediation Centre, Bangalore

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Abstract

The paper seeks to discuss the role played by Universities, such as in encouraging application as well as the development of online modes of dispute resolution through Mediation, in addition to the already existing court referred and court annexed mediations that are prevalent in today's world. The paper includes doctrinal as well as empirical mode of research and seeks to ensure a case study based approach in analyzing the Online Consumer Mediation Centre (OCMC) started by the National Law School of India University, Bangalore. The author has tried to strike a comparative analysis between the OCMC and various other global institutions involved in encouraging the use of online dispute settlement tools. By analyzing the pros and cons of the OCMC, the paper also delves into the technical and legislative challenges in implementing such a mechanism of dispute resolution. The final part of the paper analyses the ways in which educational institutions in India have implemented online mediation services to speed up the justice delivery system in India along with suggestions and recommendations which may help in improving the present system.

Keywords:

1. Introduction

Under the Indian legislation, Alternative Dispute Resolution Mechanisms are recognized under section 89 of the Civil Procedure Code (Amendment) Act, 1999. In addition, the Arbitration and Conciliation Act, 1996 provides a descriptive overview of legal recourse available under this domain for arbitration, mediation or conciliation of disputes arising out of contractual relationships or otherwise. Mediation has also been proposed under the Consumer Protection (Amendment) Bill 2015 as a means of dispute settlement in consumer disputes.

In a recent decision by the Supreme Court of India, it was held that all consumer disputes including such disputes wherein a trader/manufacturer/supplier/service provider is keen to maintain his goodwill, professional reputation and credibility or product popularity can be referred to Alternate Dispute Resolution.

In the course of this paper, the author has described the requirement of online mediation in B2C transactions and explained a few initiatives taken up in the field of online mediation.

The Digital India scheme proposed by the Union government has witnessed various innovative schemes in order to ease the legal justice system of the country. It has been observed that the Online Dispute Resolution (“ODR”) mechanisms are now being referred to as the ‘fourth party’ since it is seen as an independent input to the management of the dispute. Hence, the first and second parties refer to the disputants, the neutral mediator being the third party and the technology being referred to as the fourth party.

The Online Consumer Mediation Centre, Bangalore, an innovative online dispute resolution model, established in December 2016, with the assistance of the Ministry of Consumer Affairs, Government of India, and funded by the Centre's Department of Consumer Affairs, however, unfortunately took a slow start. As per

the recent reports, there have been 84 complaints registered on the portal, out of which, merely 14 have been resolved.

The government of India, in furtherance to their Digital India initiative is working on a mechanism, which will make use of the online mechanism and assist in speedy resolution of the disputes over administrative decisions. Under this scheme, the law ministry shall intervene, and provide online legal opinion for the resolution of the disputes. However, this model seeks to tap the pre litigation phase.

2. Different models of Online Mediation are:

1. Web enabled Mediation

This includes the use of emails, chat rooms, social media and websites as the fourth party as discussed above. In this, typically the party approaches one of the abovementioned for a, and fills out a form elaborating on the details of the issue. A neutral third party is then appointed for the matter who looks into the case and approaches the e-commerce company (other disputant) to see whether they would be willing to indulge in this mediation process. In case the answer to the above is in affirmative, the other disputant may fill out a separate form or chose o respond to the issues mentioned through online media such as email or any other mode deemed fit. In case the problem persists, the mediator may enumerate issues, determine interests and provide for certain probable solutions. Web Mediate is an ODR project managed by The Conflict Information Consortium, University of Colorado, USA, that adopts the assistance of professional arbitrators and mediators apart from the novel techniques of Online Mediation Techniques. In a similar manner, Consumer Online Resource and Empowerment Centre (CORE) in India provides for an online complaint registration and mediation mechanism, wherein the consumers can log into their accounts and file their complaints or seek redressal through the toll free helpline number provided.

2. Crowdjustice

This new form of ODR is an alternative to the small claims court which allows the disputing parties to create video arguments and the public votes on the outcome of the same. *Ujjuj* is an example of such a model of dispute resolution wherein the disputants may upload the video to the *ujjuj* website for the online public to vote on the same. The parties agree to be bound by the final outcome by signing an e-contract. The users registered can select the case that they would like to judge, and cast their vote between a scale of 0%- 100% depending upon the amount of compensation that they feel must be awarded based on the claims put forth by the Claimant. Upon expiration of the case, the average is taken for all the votes which is then multiplied by the amount claimed, and a final award is hence determined.

3. Assisted Negotiation

This is a form of ODR mechanism wherein the parties first try to settle the dispute through online negotiation tool by communicating directly, which is often free of charge. In case, after this preliminary stage, the dispute is not settled, a neutral third party online mediator may be appointed to assist in the amicable settlement procedure. Hence this is a form of a 'mediated negotiation'.

4. Automatic Negotiation

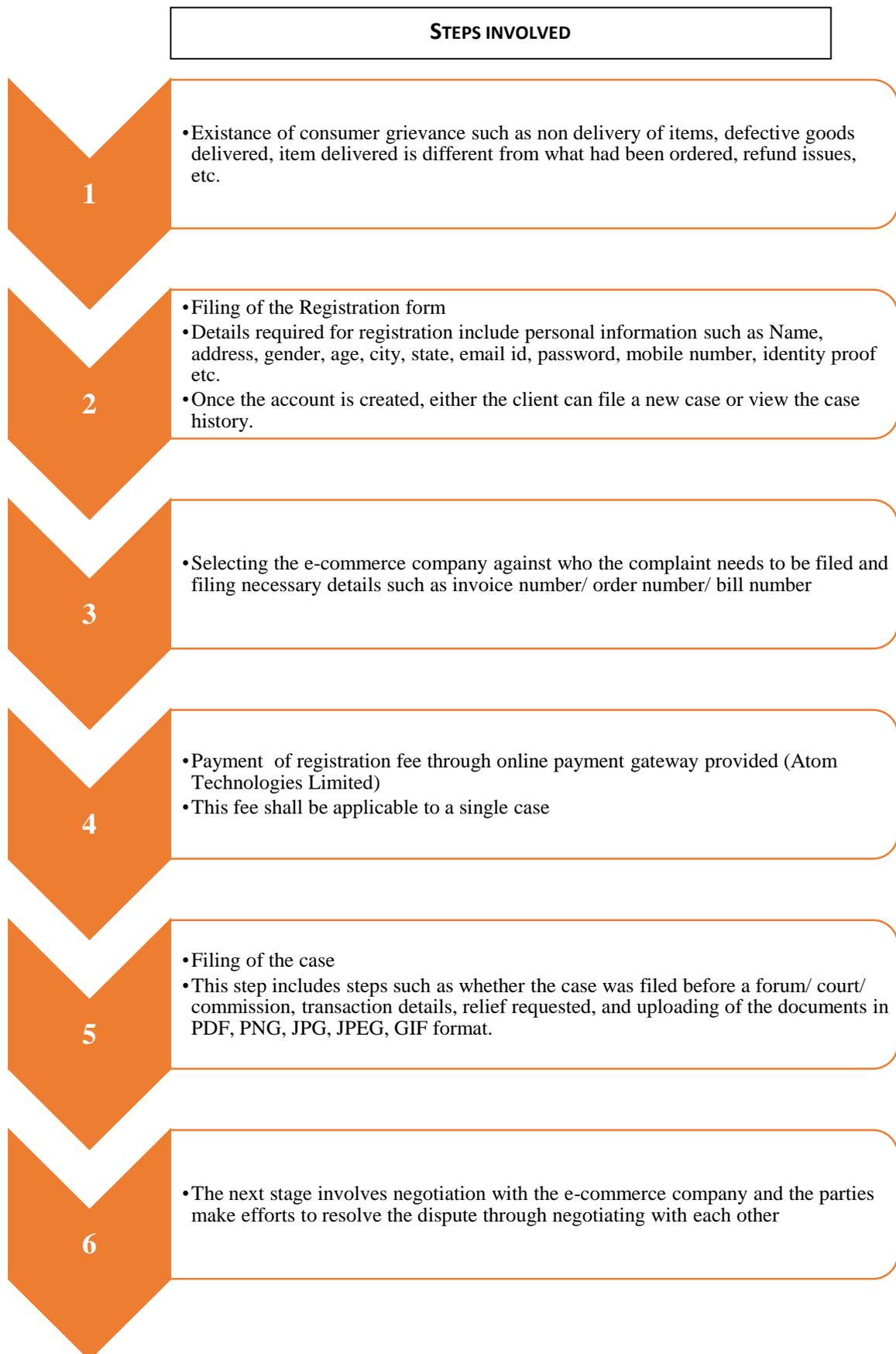
This is an algorithm based negotiation system wherein the aggrieved party first logs into the secured service of the website. The other party then has the option of accepting or rejecting this offer of participating in this mediation process. The parties eventually provide a 'demand' and a 'settlement offer' which are compared by the above mentioned algorithm. This is usually used in cases where the settlement is quantifiable in nature, such as monetary settlements, and also known as 'blind bidding'. Smartsettle is an online negotiation website that provides for the visual blind bidding.

3. Online Consumer Mediation Centre (OCMC), NLSIU Bangalore

The OCMC is an online dispute settlement mechanism which was inaugurated on 24th December 2016 by various esteemed Ministers such as Shri Ram Vilas Paswan, Shri C.R. Chaudhary, Shri Hem Pande, and Hon'ble Justice Shri D.K. Jain, at National Consumers Disputes Redressal Commission (NCDRC) at Vigyan Bhavan, New Delhi. With the assistance of the Ministry of Consumer Affairs, Government of India, and funding by the Centre's Department of Consumer Affairs, the Mediation Centre is performing extremely well and getting positive reviews from the various stakeholders in this domain. The motto of the Mediation Centre is '*Anytime Anywhere Dispute Resolution*'. Its website provides a dedicated service to its clients for a smooth online mediation procedure. The advisory committee assists the Centre in every developmental stage and for the appointment of experts to the panel having technical and professional experience in a diverse range of fields.

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Since this is a pilot programme, the mediation services are restricted to e commerce involving consumer disputes only.



- In case a settlement is not reached through Negotiation, the parties may chose to escalate the matter to Mediation
- OCMC, at this stage will appoint a third party neutral Mediator for the specific dispute. Here the mediator assists in bringing the parties to amicably settle the dispute using specialised communication and techniques.
- This is a time bound process and the parties are given a total of thirty days (from the date when the parties started the negotiation process) to resolve the dispute. This thirty day period can be extended once upto a maximum of 15 days as per the agreement between the parties.
- On reaching a settlement, a Formal settlement agreement can be drawn up to finalize the same between the parties.

4. Role of the Universities across the globe in promoting Online Dispute Resolution Mechanisms

The Universities play an active role in development of Online Dispute Resolution Mechanisms, especially in the form of Mediation clinics, Research clubs, training sessions for mediators and lawyers, etc. This not only helps in academia but also in meeting social needs.

A few noteworthy examples include:

- i. The Programme of Negotiation (a university consortium of Harvard University, Massachusetts Institute and Tufts University)
- ii. The Negotiation and Mediation Program of Gould Negotiation and Mediation Program, University of Stanford
- iii. UTS Dispute Resolution program, University of Sydney

Such initiatives help in generating awareness about this domain along with assisting in ensuring legal justice in the community.

5. Advantages of OCMC:

- This system is extremely user friendly, consumer centric and transparent. It ensures high levels of confidentiality and privacy to the parties.
- The confidentiality is ensured as no third party or the media is involved in such a dispute resolution mechanism.
- Businesses can ensure better customer relations by speedy resolution of grievances
- Consumers can get their remedies in a quick and easy manner
- Easy accessibility, available to the consumers online 24x7x 365 days
- Cost effective- Consumers only need to pay the registration fee of Rs 100; Businesses can reduce resolution overheads
- Neutrality
- Integrity
- High on time efficiency as there are no delays
- Security

6. Technical and Legislative limitations in the implementation of such a system

- Many a time, the consumers have not made an informed choice about the ODR mechanisms, and the lack of standard guidelines or procedures for ODR providers make it difficult for them to ensure that the consumers are entering into this process voluntarily and submit to mediation
- Due to absence of adequate guidelines, often these ODR service providers cannot guarantee neutrality and fairness of the procedure used.
- As compared to the offline mode of Mediation, the cyberspace suffers from the inherent threat of security and breach of online security, hence making the confidentiality aspect questionable.
- Lack of awareness about such online mediation procedure is an added limitation stunting the growth of this innovative mode in the society.

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- No/ Low accessibility of the consumers in having a proper internet connection is an added concern. Inconvenience may also be caused due to the network issues leading to unclear audio or video transmission.
- Many a time, the servers may crash due to technical bugs or document/ information overload on the systems.

7. Suggestions and Recommendations

1. As observed from the above, it is imperative that online and legal awareness and legal literacy is taken up by the government and organizations such as NGOs so that the maximum number of people of this country can take advantage of such an effective means of dispute settlement.

2. It must be ensured that adequate guidelines and procedures are imbibed in the cyber laws of the country to prevent misuse of such a system, which may further lead to a dubious stand on confidentiality and security of such procedures.

3. It is also recommended that Universities must be adequately incentivized to come up with such ventures and schemes which will eventually lead to the development of legal sector, and access to speedy justice in the country.

4. For the success of such a scheme, it must be ensured that a repository of able and competent experts are available who are well versed with the procedures relating to ODR, so that the cases are handled with utmost care and precision.

Artificial intelligence and models following such technology may be used to reduce document overload, to reduce the risk of crashing of the servers.

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