

The Workable Modalities of Online Dispute Resolution in Pakistan

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Abstract: *The article is an in-depth study of the online trade and online dispute resolution and instances which keep Pakistan's judiciary's unwillingness in assimilating this entity into its judicial system. It will also highlight the use of electronic-mediation (e-mediation) and electronic-arbitration (e-arbitration) and their relationships with online trade. Additionally, this article examines the preliminary aspects of online dispute resolution (ODR), the international trends and practices and the current status of legislation in Pakistan. It highlights the implementation of an advanced technological system for redressal of consumer grievances, which has become the latest trend through the world. Certain precedents will also substantiate the purpose of the article and lastly some recommendations about the lessons which can be learnt by Pakistan, from successful experiences related to online trade dispute resolution mechanisms.*

Key Words: Online Dispute Resolution, Globalization, Commercial Transactions, Trends, Trade, Pakistan

Introduction

The Phenomenon of (ODR) online dispute resolution, is acknowledged in different parts of the world as a workable replacement for conflict resolution, arising in this digital age. Developing into an effective mechanism of resolving disputes alongside the internet, ODR is actively involved in online transactions, as new types of transactions are now made possible by consumers through increased connectivity. Trading Online has also become a reality in Pakistan and is gaining momentum after every passing day, having legislation which is of state level, dealing with disputes arising in online trade, in an inexorable reality. Countries in European Union and North America, especially the United States of America have been involved in creating online dispute resolution mechanisms since several decades back, and now they are running these systems efficiently because they have proper legislation and also, they have ratified international law principles. As far as Pakistan is concerned, the entity of online trade is a novel concept; therefore, ODR is a system which is not backed by substantial legislation. Several international vendors, such as Alibaba and Amazon have been diligently doing business, and their presence can be felt in Pakistan also, these vendors are using ODR mechanisms to make their trading activity efficient and independent from the conventional redressal systems of procedural and civil laws, also from the burdensome court's structure and complexed procedures of recovery.

There is no denial that participation in the marketplace boosts the economy of a country and gives a positive recognition to it also. Through this online trade, new markets which can be called as electronic markets are available globally, and consumers are transacting from different parts of the world. It is believed that for developing countries like Pakistan, it would be advantageous to get involved in trading in the global marketplace and substantiate its interest in economic boost by introducing ODR mechanism in the realm of online trading and Business transactions. This article intends to evaluate various socio-economic, political, and infrastructural challenges, encountered by Pakistan in terms of formulating a legislative infrastructure, related to ODR and also analyze that whether the Pakistan legislative bodies can learn from and consider the international advancement of online dispute settlement mechanisms, like a steppingstone for the enhancement of ODR in Pakistan.

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International Instruments and Lack Luster Policies in Pakistan to Deal with Disputes Through ODR and ADR

The international scenario in terms of alternative dispute resolution has been recognized internationally, e.g., the United Nations conventions on international settlement agreements resulting from Mediation, adopted in Dec-2018 by the United Nations, followed by its opening for signatures on Aug-2019. Several countries were invited to become part of the Singapore Convention on Mediation including Pakistan, but it was not present at the time when countries like Saudi Arabia, China, Malaysia, Iran and Turkey signed the same. (Hashmi-2020) The dispute is inevitable when there is a contractual agreement, and one must know how to handle it for several reasons. Ratification of international instruments and conventions is also inevitable for having a backup in the above-stated scenarios after all, but in Pakistan's case, it is keeping itself deprived of major methods and mechanisms of dispute resolutions through its oblivion and ignorance, which can be devastating.

Pakistan has been losing contemporaneously in several international disputes due to its weak structure and no procedural strength in the process of arbitration. Pakistan's lacklustre laws and policies related to contractual agreements with international firms and having a weaker bargaining power in economic projects make it surrender rights of selecting procedural and substantive laws for contracts, and when a dispute arises, the arbitration assistance is taken from foreign legal firms. The reason behind contemporaneous defeat is mainly, due to the fact that Pakistan's domestic laws do not accommodate the international arbitral proportions, which are practised by several legal systems around the world.

Digital Economy and Regulatory Framework for Consumer Protection.

Pakistan is, undoubtedly, in a difficult situation and manifestly ready to derive the benefits of the digital economy; however, the online trade participants are not comfortable as there is no regulatory framework available for consumers' protection. Being ineffectual, antiquated, and unsatisfactory, the existing mechanism makes consumers afraid of trusting the Pakistani digital market. (Iqbal 2018) stated that 'This has been flagged by the first-ever E-Commerce Policy Framework released by the Federal Ministry of Commerce by saying that as the success of an e-commerce model depends on consumer confidence, consumer protection is one of the core issues confronting its growth. In terms of efficiency and effectiveness, the legal framework for consumer protection has to be improved proportionately to the increase in the size of the e-commerce market'.

In reference to the above an electronic commerce (e-commerce) structure was introduced in 2019 and it is made public recently, however, the execution of this framework, that is part of digital Pakistan policy, seems a formidable thing to achieve. Moreover, the framework has a purpose of achieving, and that is to overhaul the whole conventional system of trade. One positive aspect in this regard is that this framework recognizes that the progress in the digital consumer sector is indispensable because the Pakistani consumer protection laws lack specific provisions for tackling the grievances of e-consumers. Pakistan's first consumer protection law came in 1995 and after eighteenth amendment provinces enacted theirs respectively in 2003, 2005 and 2014. The consumer protection legislation is still waiting to be enforced all over the country. Some of the enormous concerns, other than policy enforcement is, aspect of redress when there is a grievance about online shopping and trading and security of e-transactions.

Characterization of the Administrative and Legislative Boundaries of Electronic Transactions and ODR

It is relevant to mention here that when it comes to the internet, it does not know any legislative or administrative limits and therefore consumers usually face a lot of problems, few of them are no centralized control mechanism (Virginia-2006). Sustainability of the e-commerce revolution i.e safe and reliable internet and effective online dispute resolution mechanisms. All these concerns of an e-consumer must be addressed to make things workable and minimizing the element of instigation of legal action or litigation, where laws of different jurisdictions can clash. It is observed that the harmonious dispute settlement paradigms have been assimilated into regional and international instruments, and the experiment has been a success. Nonetheless, the attempts of assimilating legislative standards have been largely based on protecting consumers from unfair loss of funds through the use of internal arrangements. Many Muslim countries have tried to explore the feasibility (Umer-2015) of ODR in some specialized industries such as the Islamic industry and e-commerce sector. The results were also encouraging; however, due to the regulatory framework for stringent management of complaint system clogged the justice system through online resources. Additionally, for a proper administration of the

judicial system, an effective online dispute resolution mechanism has the potential of systematizing the resolution processes relating to online disputes, this is, as per some experts is a prospective risk to the legal profession and would change the way solicitors and legal experts do their dealings. (Rose-2017)

Since the inception of ODR in the 1990s, several projects were introduced on a trial basis to examine the proficiency of ODR in the dispute resolution of both offline and online disputes. By the year 2005, 115 ODR sites were dealing with different types of disputes, from family matters to transactional ones. Out of all these sites, eBay and SquareTrade ODR were the most successful projects in the development of this entity. It also helped to build trust in the e-consumers to shop online with trust and confidence and the processes adopted by SquareTrade involved multi-tiered apparatuses in enhancing accessibility, neutrality and confidentiality. By 2010 SquareTrade, which was taken over by eBay, 60 million disputed were resolved as per reports.

International Trends and Practices in Online Dispute Resolution Legislation

ODR mechanisms are structured to be international or global from the beginning as the issues of jurisdictions to resolve becoming hurdles; therefore, it was initiated. Interestingly, ODR systems can be directly developed through software, and that is why they are, considered to be, providing fair and fast redressal against any concerned grievance at the place of occurrence. Across the world, national and international governments and agencies have done an extensive research to subside the challenges pertaining to cross border remedy. Quite recently, it is concluded that ODR is the future of cross-border transactional issues. The working group of UNCITRAL, the UN agency which works to harmonize laws globally, brought up a regulation according to which all European Union would be implementing ODR for resolving cross-border cases dealing with consumers and e-commerce by 2015. Initiatives like the above pave the way for any new idea submerges in the current setup easily. Resultantly, the entrepreneurs involved with e-commerce will considering ODR as an effective and enterprising form of online dispute resolution and will also start to incorporate it in their enterprises more, so it will help them to build trust among users for stimulating the capacity of online transactions.

Numerous countries have their set of rules of dealing with e-transactions based on their cultural outlook because it is observed that the development of trust and confidence in an entity is mainly culture oriented. Nevertheless, the tremendous outcome of technological advancement and its inclusion in dispute resolution mechanisms have transformed the practices of conducting business and gathering resources globally. It is relevant to mention here that instead of shuffling up (Nuri 2019) diagnosis, negotiation, mediation, ombuds and arbitration, now many disputants especially online disputants choose a continuous development from communication to evaluation within few hours. Inclinations like these always help to build an infinite display of online avenues, customized to disputant's needs and demands. For example, a profitless e-commerce resolution process may be completed online and motorized by negotiation, which is computer-assisted.

Pakistan has developed a lot to the extent of technology; however, the societal inclination needs to be amended to make things work accordingly. There can be found many critics of ODR because after all this advancement certain strata of society are not comfortable with technology, like often in technology-assisted mediated communications, power disparities are maintained which help online disputants to avert emotive exchanges. The instances ancillary to this become impediments in resolving online disputes in societies like Pakistan. Not to forget that there are many success stories, and Pakistan's legal system tends to get guidance from it if ODR seems an uphill task.

Learning from the Global Successful Experiences of Electronic up Gradation in Trade

It is evident that a persistent challenge for Pakistan's e-marketplace is faced with a continuous obstacle i-e lack of awareness and mediums, which can redress the grievances of e-consumers. Additionally, the demand for resolution of e-disputes is gaining strength day by day, demands such as commercial disputes involving parties from different jurisdictions. Moreover, globalization calls for the improvement and modernization of ODR services in different sectors of Pakistan. The consumers and enterprises are to a larger extent fearful in terms of the current face of laws related to ODR; that is almost next to nothing in effectiveness; also anxiety about the binding effect of online settlement outcomes is prevalent. Now for Pakistan, it is helpful to consider the setups and learn from some success stories in this regard moreover Pakistan needs to ensure effective legal action in e-commerce issues, especially in instances whereby it is difficult to initiate any legal action or enforcement of judicial decisions. As an example, the United Arab Emirates (UAE) is considered as a frontrunner as it kept a decent speed with the e-commerce revolution in the Middle East (Virginia 2006). In relation to this, Dubai International City (DIC),

Dubai International Arbitration Center (DIAC) and Abu Dhabi Arbitration Center are those milestones which have paved the way for the implementation of a commendable e-transactions legislation. Having established all the above-stated centers can provide a lot of facilitation to international transacting parties; however, if UAE would have adopted the UNCITRAL e-commerce Model, the above centers could have been more effective. But in the case of Pakistan, there has not to be established any center or facilitation setup. It is a known fact that the internet is challenging because the application of the existing law to the digital world is not always possible because the cyberspace has no boundaries. (Futos-2004). Consumers, particularly e-consumers, are looking to governments to ensure that the rules in cyberspace are corresponding to, and as probable as, those in the world (Georgios-2002).

As far as Asia is concerned, it is undeniable that it has become a new frontier of ODR and considered as the most fertile ground for the enlargement of the same. States like Korea, India, and Malaysia. China, Singapore, and the Philippines have emerged as strong players and providers in the realm of ODR and have also outnumbered many western countries also. (Rule-2005). Additionally, these countries are extending their efforts to liaison with globally recognized online dispute resolution systems, e.g. GTA (global Trustmark alliance) created in 2001 in the USA. Another movement has started with reference to formulating standards and guidelines pertaining to ODR by ABA e-commerce task force, consumers international and ICC (International Chamber of Commerce) (Rule-2005) It is relevant to mention here that initially, these Asian states started gradually; however they learnt from North America and Europe, as it became apparent that conditions in Asia were rapidly changing and there existed a lot of enthusiasm to be about this change., with the above-stated movement, it is evident that some best practices have been progressed due to this and extensive documentation is being made, which reflect the best concerns of political and cultural concerns of Asia.

Another successful precedent for deliberation can be the Singapore Mediation Center (SMC), a subsidiary of the Singapore Academy of Law. It developed the Disputemanager.com, which provides facilities which substantiate the idea of dispute resolution through its services of e-settlement, online mediation, and neutral evaluation are one of the few milestones which have been achieved by SMC. Well, with the help of these services, many online consumer and transactional issues are successfully resolved. The caseload was initially modest in DisputeManager.com, but other Asia countries scurried to establish parallel services, and it was an important legitimizing episode in the development of ODR in Asia. As ODR develops in Asia, there are many websites which have cropped up on a monthly basis roughly. Some more promising ODR centers have been established in the Philippines, Philippine Online Dispute Resolution service started in 2004, and it was established for becoming a web-based multi-door court setup. An arena which would offer several services such as. Just like Singapore, Malaysia has emerged as the latest and the most ambitious private ODR providers in Asia because in 2004 a system named ODR-world was established and since its inception, it has become an essential go-to place when there are matters pertaining to e-commerce and e-disputes. An interesting aspect of it is that ODR-world provides an option to the disputing parties through which the aggrieved party can be satisfied for a negligible sum or for non-monetary transactions (Rule-2005). As far as China is concerned, e-commerce has grown four times the total global e-commerce since 2007. Additionally, because of its ODR initiatives which began in 2004, an entity like the Beijing Deofar Consulting Ltd, launched the (ChinaODR), the first full-service ODR provider and provided facilities online such as mediation, arbitration, notarization and lawyer witness services all across China.

Hence, if developed in Pakistan, it can be considered as a steppingstone for strengthening the legal inevitability and enhance the level of certainty which with aid in developing ODR automatically and will also validate the efforts to bring about a sweeping change in the existing legal framework. Presumably, after the establishment of ODR sites and providers in Pakistan can be a useful application to enforce e-commerce laws and enforcement of cyber laws against foreign individuals. Justice is paramount, and it should be available for all, and if we consider Asian setup or cultural proximity of Asian countries, it is clear that ODR has a long road to tread through, people are still very conservative, and there is a presumption that justice can only be served through the courts; therefore ODR is a patient game in words of Ms Nagarajan (the founder of ODR in Malaysia)

From E-Commerce to the Courts, Practicable Modalities of ODR

As far as the authenticity of courts is considered, it is repeatedly believed that it is very unlikely to consider courts as the primary entity to resolve the majority of the online disputes, especially ones dealing with e-commerce and e-transactions. Merely because these are slow and expensive as a practice and often it took ages to the litigants to get redressal of their grievances. Well to substantiate

the practicality of ODR in resolving online commercial disputes, cyber-courts can be another effective tool. Cyber-courts can be structured if State governments exercise their control on the enforceability of laws and resolution of disputes. Governments of the United States of America, some European states and Australia have exerted a profound control on cyber commercial issues and matters are successfully dealt with. Additionally, cyber-courts can be helpful in building public confidence and help to bring a quick redressal to transactional issues. However, firstly to adopt their model in Pakistan, certain matters are required to be resolved. It is known that courts generally seek ways to provide access to justice and dispense with issues for all, which can be challenging depending upon the budgets and expenditures. ODR often provides accessible justice through reduced costs with efficient manner but whether it can be applicable to all jurisdictions or not, is the concern. If ODR is provided through courts, then it can bring a lot of conveniences, satisfaction and beneficial for contracting parties living in different parts of the world.

The second advantage is the cost-effectiveness as faster dispute resolution is synonymous with less time consumption and fewer travel expenses and fewer administrative paper waddling with fewer delays. (Rule-2019). The third aspect is the accessibility for pursuing redress without looking for an attorney to resolve the issue. All these aspects can help to radically expand the access to justice and improve the efficiency in the dispute resolution discipline.

A significant aspect of the cyber-courts is their constitution and its expert judges, expert to the extent of commercial law and practice. Other than its expert judges the element of reliability in different sectors and fields is another facet; both these aspects have made a great impact on international e-commerce and for the parties involved in the e-transactions. Like if we consider the example of Australia, the establishment of e-Court systems, under which procedures like e-courtroom and e-filing are adopted, have significantly proved to be successful. Now for Pakistan other than internet accessibility in remote areas and illiteracy are some of the basic hurdles in the proliferation of the concept of e-courts. Other challenges lie for the judges and lawyers to be brought on an understanding when it comes to e-courts moreover lack of collaboration with highly technical enterprises and companies for the employment of varied online structures and skilled people.

The question is a complexed one in this scenario, education, accessible internet, awareness, and collaboration with corporate enterprises is all that takes to develop the entity of e-courts in Pakistan. Unquestionably, the legal insecurity is a major concern of online consumers and enterprises in Pakistan. Therefore, a lack of lustre legal structure fails to bring any change in this era of technology and easy access to justice through online mediums. Development of legal structure and efficient laws are the need of the hour, and any change is expected to bring a revolution of the online justice system into Pakistan's legal system.

Workability of Online Dispute Resolution Mechanisms in Pakistan

It is apparent in Pakistan's setup that certain ODR providers, consider a handful of existing laws, which deal with their business and address the issues of consumers. This situation is not satisfactory because dispensation of justice must not be limited to a particular class or users of online mediums; however, for the following reasons, the situation in Pakistan is not encouraging. Legal uncertainty had been a major issue between parties involved in the business, and there is no proper structure which provides redressal of transactional issues electronically. Another aspect is uncertainty, between consumers and businesses, relying on ODR service providers is not an easy thing to do, and most of the businesses which are conducted online face trouble in lieu of that. Lastly, ineffective and non-existent consumer protection laws in Pakistan. At this point, it is arguable that whether Pakistan approach to deal with it is for real or whether the current ineffective ODR law can cope up with the issues raised?

As enunciated by Justice (R) [Khalil ur Rehman Khan in 2018](#), that if government tends to make an electronic commerce initiative successful, then a proper legal system is indispensable, because the offences related to computers and technological resources can only be dealt with when the system is backed by a stout legal mechanism. He further added that in today's age, it is more important to promulgate laws and regulations for the prevention of illegal access to data and personal or business-related information. Hence this is what the reluctance is all about, no legal framework no awareness in terms of protection and redress and much more. The online consumers are not sure whether to rely on the online mechanisms or not; therefore, another pivotal task is to build trust along with awareness in every level of our society. Interestingly, in Pakistan, the internet users alone are more than 8.5 million, and the number is huge worldwide. Also, there is a massive increase in the economic investments such as (Zia -ul Islam 2019) the e-commerce is expectedly reaching \$ 200 billion and business-to-business

e-commerce is projected to reach over \$ 3 trillion by the end of 2020. In different spheres, cyberspace performs several parts from facilitating economic and social activities to addressing issues related to buying and selling. Unlawful activities are also part and parcel of this phenomenon, technology can be used and identified as a value-neutral tool used by criminals and consumers at the same time, and hence the element of culpability associated with online transactions is one of the biggest hurdles today. Pakistan has developed a strong mechanism in terms of cybercrimes, and different institutions are working for further development in the sector, but online dispute resolution has not achieved any mark till date.

Lastly, another significant challenge for Pakistan in order to adopt the mechanisms discussed above is whether the judicial system, consumers, business enterprises, partaking strong cultural affiliations and identity, will ever try to adhere to a set of rules and regulations or not? Keeping in mind that the impact of making changes in a system, as a whole, also varies from party to party. Hence, it is recommended that a fair-minded equilibrium between the factors involved in transactions and the demands of the parties will have to be sustained and understood to enhance ODR in Pakistan. It is relevantly put (Hashmi 2020) that Pakistan's repetitive losses in international arbitration cases are due to its lacklustre policies for formatting contractual agreements with international firms it engages with for economic projects. What else does Pakistan need to learn from? Ignoring the above considerations, its own failure to cope with the increasing demand of consumers has made our economy and our judicial system suffer excessively. It is about time that Pakistan's policymakers must formulate international standards and bring the revolution i-e ODR in the mainstream.

It is also recommended that the judiciary in Pakistan must contribute to the development of the modalities of ODR in Pakistan. Massive awareness drive, educating the masses and all pillars of a state and the extensions of the dispensation of justice discussed above is indispensable. Bar councils and Bar Associations can also arrange for online workshops for lawyers and people involved in this system. A positive aspect in this regard is that due to the technological advancements globally, not having a legal framework and a want of laws related to e-commerce, do not pose a threat to the proliferation business or contacts between international enterprises. Internet, computer programming and IT infrastructure around the world are essentially harmonious, and this is what Pakistan need to work on in order to indulge into the realm of technological advancement and in providing redressal to online consumers. Hence it is evident that e-commerce has progressed tremendously, and it is capable of managing matter and issues, dealing with global e-commerce with security and a great measure of satisfaction for consumers all over the world.

Conclusion

As for Pakistan is it requires to take advantage of the global economy and trade and to become commercially and operationally a feasible entity than gauging of the fast-growing mechanism and legal frameworks adopted all over the world is crucial. Pakistan's government and enterprises need to work collectively and try to tap the countless opportunities which the entity of e-commerce holds. Additionally, the consumers and international traders must be given confidence and must be provided with necessary steps for addressing their grievances.

It is a unanimous observation in different sectors that traditional courts in Pakistan fail to provide an effective structure that redresses the grievances of e-consumers and in addressing the issues related to the international marketplace. Also, experts believe that an ODR procedural system is indispensable for development in the e-transactional sector and for attracting consumers from all over the world. Moreover, the legal standards ought to ensure precision and concealment, because if not concealed the disputes can further aggravate between parties and also the establishment of cyber courts can be formed for the consumers, in this way they are not pulled to more affluent or ineffective dispute resolution mechanisms. Enforceability of decision can be challenging at times, so for these laws need to be introduced which make mandatory clauses related to ODR and giving it a legitimized process all over Pakistan.

It is obvious that the world is easily approachable, majorly due to technological advancement and speediest internet networks and connections. Adding to this speed, the phenomenon of globalization emerged as a gamechanger because of which the world is not only integrated, but it is also termed as a global village. With the help of these technical implements, the integration process has given rise to the discipline of e-commerce, a virtual space where buyers and sellers exchange goods and services. In advanced countries, e-commerce has almost replaced the traditional markets by offering not only online goods and services but resolution mechanisms in case of a dispute. For instance, Alibaba and Amazon

are connecting buyers and sellers by providing them with space at their platforms. This has also facilitated the consumers to seek the products of their choice at the most competitive rates and even without physically visiting the markets. Unfortunately, although this market is booming in different parts of the world while it has not yet realized its full potential in Pakistan, therefore, it's about time that the legislatures and policymakers with the aid of enterprises and traders in Pakistan, a legal framework dealing with e-commerce and concerns of e-consumers can be surfaced as soon as possible.

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