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The Need for an Online Dispute Resolution Mechanism

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(The editorial is based on the article “The need for an online dispute resolution mechanism” which appeared in Livemint on 6th March 2019. In this article, we will discuss the need for Online Dispute mechanism in India and issues related to it.)

The Fourth Industrial Revolution – driven by rapid technological change and digitalization – has already had a profound impact on global trade, economic growth, and social progress. E-commerce has generated trillions of dollars in economic activity in recent years and continues to accelerate due to the ability of data to move across the borders. It underpins new business models, boosting global GDP by 10% in the last decade alone.

Recently, the government of India announced policy initiatives designed for large e-commerce platforms. Still, there is a long way to go when it comes to online dispute mechanism.

What is ODR?

Online Dispute Resolution (ODR) has been defined to mean utilizing information technology to carry out alternative dispute resolution. ODR is a means of dispute settlement whether through conciliation or arbitration, which implies the use of online technologies to facilitate the resolution of disputes between parties. The information management and communication tools in ODR may apply to all or part of the proceedings, and also have an impact on the methods by which the disputes are being solved.

ODR in India

- United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985 and the UNCITRAL Conciliation Rules in 1980.
- The General Assembly of the United Nations has recommended the use of the said Model Law and Rules 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.

- India has also incorporated these uniform principles of alternative dispute resolution in the Arbitration and Conciliation Act, 1996 that was amended in the year 2015. The Arbitration Act provides for alternative dispute resolution mechanisms like arbitration, conciliations etc for national and international stakeholders.
- Measures have been taken by the Ministry of Law and Justice to introduce Online Dispute Resolution through mediation, arbitration, and conciliation.

Need

- Disputes resolution is a tricky affair for all stakeholders including courts, government, companies, individuals, international organizations, etc.
- This is more so where the conflict of law is involved as different countries may have different laws for dispute resolution.
- To reduce the hardships of such disputes, countries should adopt a model code of conduct that was incorporated in their respective domestic laws.
- Indian judicial system is already burdened with piles of cases, things will become much worse with the issues of increasing e-commerce disputes.
- For limiting the role of national courts and to give primacy to the will of the parties in establishing the procedure for the settlement of their disputes.
- Securing procedural fairness by means of a limited number of provisions from which the parties could not agree to depart.
- Putting in place rules which advance arbitration, even if the parties have not reached agreement on all relevant procedural matters.
- In spite of the drawbacks linked with online arbitration, it remains one of the most significant methods of resolving Business to Business (B2B) and Business to Consumer (B2C) disputes in the current era.

Challenges

- Arbitration proceedings have not been widely practiced in India. To add to it, a still spreading technology of access to internet connectivity in the remote areas impedes a quick and welcoming approach towards online arbitration/ODR proceedings in the Indian milieu.
- Infrastructural and institutional limitations curtail the rapid growth of ODR in almost all developing countries including India.
- Online arbitration is not found to be a suitable option for criminal matters and matrimonial disputes. Also, the education barrier and lack of access to technology is another main drawback behind the implementation of online arbitration in India.
- The ODR mechanism has not been able to inculcate trust and confidence amongst people for obvious constraints of technology, awareness and apprehensive, sceptical approach of people. The trust and confidence in such an online methodology can be

developed only with time and built on experience.

- Limited by lack of physical existence and face-to-face interaction between the parties to the dispute. Also, the mechanism is also deemed to be limited to resolve disputes of online business and transaction.
- The uneven distribution of technology, internet and e-commerce opportunities in the developing countries impedes the acceptance and recognition of ODR mechanism.
- Lack of training to lawyers impedes quick and healthy acceptance of the phenomenal dispute resolution mechanism and thus, there is a need to spread awareness through seminars, training, and campaigns to make lawyers and people legally conscious of the possible measures of dispute resolution.

Way Forward

- Measures should be taken to face the upcoming challenges. If measures towards the same are not taken, then ODR proceedings in India may only be limited to theories redundant and unused.
- There is a crying need to develop an appropriate complaint handling mechanism to address disputes that arise on e-commerce platforms.
- Any such system we build should be capable of functioning online and operating at a scale that enables it to deal with the high volume of disputes they will doubtless need to process. Ideally, they should be capable of processing some portion of the disputes using automated decision-making algorithms that leverage the digital nature of the platform and the underlying e-commerce transactions.
- If we can build a system that addresses these needs of the platform economy, there is no reason why some or all of these processes cannot, in time, be applied to traditional disputes as well.
- We could consider embedding digital artefacts into the e-commerce workflow that will allow online dispute resolution frameworks to conclusively establish whether or not contractual obligations have been effectively performed—along with the lines of principles that have been successfully experimented with in the context of blockchain-based smart contracts.