

I. KEEPING IT ONLINE: DEVELOPING AN ODR MECHANISM FOR INDIA'S E-COMMERCE DISPUTES

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ABSTRACT

While the COVID-19 pandemic disrupted the traditional practices that the courts used to follow, it also paved way for innovative and novel methods of alternate dispute resolution to evolve. One such method of dispute resolution called 'Online Dispute Resolution' has been dealt within this paper. Even though there is a rising number of e-consumers (India is expected to have 500 million online shoppers by 2030), India does not have any ODR regulation and the shortcomings in the current mediation framework have us lagging behind in terms of motivating litigants to initiate ODR-led complaints. Uncertainty regarding *inter alia* the enforcement of awards, low demand for mediation, and the lack of trained mediators are a few issues that plague the mediation framework and make it an unpopular choice among litigants. Considering the fact that mediation can be suitable for the adjudication of many B2C and B2B disputes, the time is just right to make amends in order to make space for a solid ODR framework. In this paper, we aim to draw inspiration from such contemporary jurisdictions so that e-consumers have an efficacious ODR platform that is not merely a digital layer on top of existing dispute resolution methods. Thus, in a structured manner, we provide how in our opinion an ideal ODR mechanism should function both in B2C and B2B disputes.

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I. INTRODUCTION: UNDERSTANDING THE WOES OF THE INDIAN CONSUMER

Consider Chitra to be a typical Indian e-commerce customer. A few years ago, Chitra like many of us, tempted by an offer on an e-commerce website ordered a Dell laptop at a discounted price of INR 27,000. However, the delivered laptop was nowhere close to the original Dell laptop leading to multiple call redirections from customer care. Each time she called customer care she was allotted a different executive who would then provide a complaint number and ask her to wait while they would get back to her. She also visited the registered office of the e-commerce website but did not find any grievance officer. After one and a half months of continual, she lost all hopes and decided to live with the duped laptop rather than subject herself to the tardiness and vicissitudes of the court proceeding.¹ Many e-consumers in India strive hard to agitate their concerns but the absence of an effective Online Dispute Resolution (“ODR”) mechanism makes this task cumbersome and hence they fail to pursue remedies.² Therefore, the plight of many such consumers makes it evident that there is a crying need for an ODR platform.

The desperate need also stems from the fact that India in the past two years has seen a surge in online shopping and as a result, e-consumer disputes have also seen a sequential rise. According to the data published by the Ministry of Consumer Affairs for April 2020 to February 2021, a total of

¹ Navya PK, ‘Cheated While Shopping Online? Here’s What You Can Do’ (*Citizen Matters*, 9 January 2009) <<https://citizenmatters.in/ecommerce-online-shopping-consumer-protection-law-5526>> accessed 26 April 2022.

² Rahul Matthan, ‘The need for an online dispute resolution mechanism’ (*Livemint*, 5 March 2019) <<https://www.livemint.com/opinion/columns/opinion-the-need-for-an-online-dispute-resolution-mechanism-1551808916274.html>> accessed 26 April 2022.

1,88,262 complaints relating to e-commerce were lodged.³ Furthermore, according to data published by the Department of Consumer Affairs (“DCA”), Ministry of Consumer Affairs, it has been observed that in the last four years e-commerce disputes constituted 22% of the entire corpus of consumer complaints.⁴ India is also expected to have 500 million online shoppers by 2030.⁵

Despite having a multitude of online shoppers, India does not have any ODR regulations. Further, the shortcomings in the current mediation framework have us lagging in terms of motivating litigants to initiate ODR-led complaints. Uncertainty regarding *inter alia* the enforcement of awards, low demand for mediation, and the lack of trained mediators are a few issues which plague the mediation framework and make it an unpopular choice among litigants. Considering the fact that mediation can be suitable for adjudication of many business-to-consumer (“B2C”) and business-to-business (“B2B”) disputes, the time is right to make amends in order to make space for a sound ODR framework.

In this paper, we aim to draw inspiration from such contemporary jurisdictions so that e-consumers have an efficacious ODR platform that is not merely a digital layer on top of existing dispute resolution methods. Thus, in

³ Zia Haq, ‘As shopping goes online, e-commerce disputes rise to unprecedented levels’ (*Hindustan Times*, 22 March 2021) <<https://www.hindustantimes.com/business/e-commerce-disputes-on-the-rise-shows-data-101616366508503.html>> accessed 26 April 2022.

⁴ Samyak Pandey, ‘Over 22% of consumer complaints in India in last 4 years are linked to e-commerce sector’ (*The Print*, 15 March 2021) <<https://theprint.in/india/over-22-of-consumer-complaints-in-india-in-last-4-years-are-linked-to-e-commerce-sector/622383/>> accessed 26 April 2022.

⁵ AMMP Community, ‘Modern Marketeers Guide to Connected Consumer Journeys’ (*The AMMP Community*, July 2022) <https://bestmediainfo.in/maile/mma_groupm_modern_marketers_guide_to_connected_consumers_journeys.pdf> accessed 26 April 2022.

a structured manner, we provide, how in our opinion, an ideal ODR mechanism should function both in B2C and B2B disputes.

II. DEVELOPING INDIA'S ROBUST ODR FRAMEWORK

A. Establishing An ODR Platform

Before we delve into the discussion of how the ODR mechanism functions, it is of utmost importance to define this term. According to the United Nations Commission on International Trade Law, the ODR Working Group defines ODR as “[...] a mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology”.⁶

An ODR platform is the foremost and primary step in any online dispute resolution; it is through this platform that a consumer files a complaint and the proceedings are initiated. Organisation for Economic Co-operation and Development (“**OECD**”) published a report in the year 1999 wherein it encouraged businesses, government and consumer representatives to work together for the betterment of consumer dispute redressal through the innovative use of technology in Alternative Dispute Resolution (“**ADR**”).⁷ Post these, various steps⁸ were taken to include electronic media and e-dispute

⁶ The United Nations Commission on International Trade Law, ‘UNCITRAL Technical Notes on Online Dispute Resolution’ (2017) (hereinafter “**UNICTRAL Technical Notes**”).

⁷ Organization for Economic Co-operation and Development, ‘The Guidelines for Consumer Protection in the Context of Electronic Commerce’ (1999).

⁸ European ‘Directive on Electronic Commerce’ (98/0325 (COD)).

settlement in the existing system.⁹ However, the major regulatory framework came in the year 2013¹⁰ which is of particular relevance to India as well.

According to Article 5¹¹ of Regulation (EU) No 524/2013, the European Commission has established an ODR platform and the commission is itself responsible for the maintenance, data security, privacy and accessibility of this platform. The ODR platform, a neutral third party, serves a multifarious purpose. It starts with providing an electronic complaint form, then informing the respondent about the complaint that has been filed, and goes on to offer a case management tool that is free of cost so that the parties can initiate the ODR proceeding. Additionally, the Regulation also mandates all the traders in the EU to provide an easily accessible link to this ODR platform.¹²

The Brazilian Government also realized the potential use of Information and Communications Technology (“ICT”) in resolving B2C disputes and therefore created a subsidized website *Consumidor.gov* in the year 2014, where consumers can file a complaint against the company that then responds within a reasonable span of 10 days. After this the consumer reviews this response on a scale of 1 to 5 within 20 days, showing their satisfaction or dissatisfaction. This entire process is free of cost.¹³ This

⁹ Marc Andre Wilikens, A Vahrenwald and Philip Reginald Morris, ‘Out-Of-Court Dispute Settlement Systems for E-Commerce. Report On an Exploratory Study’ (JRC Publications Repository, 2022) <<https://publications.jrc.ec.europa.eu/repository/handle/JRC20538>> accessed 4 July 2022.

¹⁰ Regulation (EU) No 524/2013 of the European Parliament and of the Council (2013) on online dispute resolution for consumer disputes and Amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (hereinafter “**Regulation on Consumer ODR**”).

¹¹ *ibid.*

¹² *ibid.*

¹³ ‘Brazil Government’s Official B2C Dispute Resolution Portal’ <<https://www.consumidor.gov.br/pages/principal/?1649915253885>> accessed 26 April 2022.

platform seemed effective as in the year 2018, 500,000 complaints were solved online with an 80% success rate thus reducing the burden on the judiciary. However, the only drawback that exists is the lack of consumer awareness as this website is not a ‘shaming’ platform and the disputes are resolved between the parties without making the complaint public. Therefore, the website only received 800,000 complaints between the years 2016 to 2018. On the contrary *ReclameAquit*,¹⁴ a website that posts complaints publicly and then resolves them had more public engagement as this platform created a ‘public shaming effect’ that exerted pressure on companies to change their behaviour.¹⁵

B. Choosing An ODR Mechanism

1. Automated Settlement System

Any ODR proceeding consists of various processes and options from which a complainant/complainant may choose. The UNCITRAL Technical Notes on Online Dispute Resolution provides various stages and options which can be used for effective dispute resolution.¹⁶

The first stage as envisaged in this technical note is negotiation which is conducted through this ODR platform. The process generally commences after the respondent receives a response and if a response is not received within a reasonable period, then the negotiation process commences. In cases where

¹⁴ 'Reclame AQUÍ' (2022) <<https://www.reclameaqui.com.br/empresa/reclameaqui/>> accessed 4 July 2022.

¹⁵ MJ Schmidt-Kessen, Rafaela Nogueira and Marta Cantero, ‘Success or Failure? - Effectiveness of Consumer ODR Platforms in Brazil and in the EU’ (2019) Copenhagen Business School, Law Research Paper Series No. 19-17, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3374964> accessed 4 May 2022.

¹⁶ UNICTRAL Technical Notes.

negotiation does not settle, then the process moves to the next stage.¹⁷ The second stage is the facilitated settlement wherein a neutral third party is appointed who then assists the parties to settle. This neutral is appointed by the ODR administrator who then notifies the party about the appointment. The neutral attempts to achieve a settlement by communication between parties and if any settlement is not reached at this stage, then the process moves to the last stage.¹⁸ Once the neutral has failed in achieving an amicable solution then the neutral intimates the parties about how the final stage would occur and what process would be involved.¹⁹

2. *Online Mediation*

The other way in which this process can be done is through online mediation which appears to be the most effective model for small claim disputes as particularly in these cases, the dispute is not a matter of conflicting rights but customer services. While no regulation clearly provides for adopting only this method as the most effective, but a study conducted by the Centre for Information Technology and Dispute Resolution at the University of Massachusetts in 1999 demonstrated the effectiveness of online mediation through the case of eBay.²⁰ Online mediation is much like offline mediation, the only difference being that the entire process takes place in virtual space with the help of encrypted emails, secure chat rooms and maintaining confidentiality. The process starts with the filing of a dispute on the website,

¹⁷ UNICTRAL Technical Notes, Section VII.

¹⁸ UNICTRAL Technical Notes, Section VIII.

¹⁹ UNICTRAL Technical Notes, Section IX.

²⁰ Ethan Katsh, Janet Rifkin and Alan Gaitenby, 'E-Commerce, E-Disputes and E-Dispute Resolution: In the Shadow of "eBay Law"' (2000) 15(3) Ohio State J Dispute Resolution <<https://www.umass.edu/cyber/katsh.pdf>> accessed 26 April 2022.

and then a mediator is either appointed by the website or chosen by parties wherein they are informed by the governing rules. The mediator then goes on to introduce themselves and the mediation process commences which is mostly done in text-based formats.²¹ Globally, e-commerce entities have been practising this. For example- SquareTrade offers a platform for online mediation wherein people and businesses come on their site and settle a dispute.²²

India too has embarked on this journey as the National Law School of India University (“NLSIU”) Bangalore in the year 2016 established its Online Consumer Mediation Centre under the aegis of the Ministry of Consumer Affairs, wherein they aim to resolve the consumer dispute through their web portal which is speedy and affordable.²³

3. Crowdsourced Online Dispute Resolution

This kind of trial is a form of crowd justice and has a non-binding nature thus helping in settling small claim disputes effectively and timely.²⁴ Currently, there exist various Crowdsourced ODR services providers who

²¹ K J Hopt and F Steffek (eds), *Mediation: Principles and Regulation in Comparative Perspective* (OUP, Oxford 2013) <<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199653485.001.0001/acprof-9780199653485> accessed> 26 April 2022.

²² 'Effective Dispute Resolution' (*Squaretrade.com*, 2022) <https://www.squaretrade.com/merchant/pop/fees_effective_odr.html> accessed 4 May 2022.

²³ 'NLSIU Online Consumer Mediation Centre' (*National Law School of India University* 2016) <<https://www.nls.ac.in/centres/online-consumer-mediation-centre/>> accessed 26 April 2022.

²⁴ Richard A. Posner, 'The Summary Jury Trial and Other Methods of Alternative Dispute Resolution: Some Cautionary Observations', (1986) 53 U Chicago L Rev <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2880&context=journal_articles> accessed 26 April 2022.

resolve the dispute through online opinion polls, online mock juries or decisions by private parties. An example of online opinion poll are platforms such as iCourthouse (www.icourthouse.com), SideTaker (www.sidetaker.com), AllRise (www.allrise.com), People's Court Raw, Truveli (www.truveli.org). On all these websites, the complainants post their queries and the internet users provide feedback on the same. This process usually is neither binding nor is a form of dispute resolution. However, it becomes useful in the current scenario for it acts as a deterrent to the complainant from proceeding with the case in instances where she receives negative feedback on her query.²⁵ Thus, it helps in reducing the number of complaints being filed and minimizing the burden on the judiciary.

4. Blind Bidding

This process has been popularized by the ODR platform 'Cybersettle' which helps resolve the monetary dispute between both B2B and B2C consumers. The contending parties submit their offers and demands that they expect from each other without disclosing what the other party has submitted. If the amount of both parties falls within the same range, then they make the payment and end the dispute else the website prompts them to submit another offer.²⁶

5. Conciliation

Conciliation, as defined, is the process of persuading parties to reach an agreement and appears to be effective in settling consumer disputes.

²⁵ APC, 'Crowdsourced Online Dispute Resolution' (APC, 21 July 2011) <<https://www.apc.org/fr/node/12693>> accessed 26 April 2022.

²⁶ Cybersettle <<http://www.cybersettle.com/>> accessed 26 April 2022.

Mexico's ODR mechanism relies on the process of conciliation. The Federal Consumer Prosecutor's Office ("**PROFECO**") of Mexico created a website, Concilianet²⁷ where consumers can file a complaint either against manufacturers or service providers who have agreed to resolve their disputes via this website. The consumers who register on this website provide all the necessary documents which are then analyzed by PROFECO. After analyzing the documents online, conciliation is organized between the parties and a conciliator is appointed. The manufacturer or the service provider is mandated to appear if a complaint is filed on this website failing which they will have to pay a fine.

C. Enforcement Of ODR Awards

In the current mediation framework, there exists a lack of certainty regarding the enforceability of mediation settlement agreements. To start with, they don't fall within the ambit of Section 74 of the Arbitration and Conciliation Act, 1996 (A&C Act, 1996) and therefore are not capable of being enforced under that legislation.²⁸ At this juncture, it is pertinent to note that conciliation differs from mediation in the sense that while the former is covered within the A&C Act, 1996, proceedings under the latter are deemed to be a Lok Adalat, thereby making settlements as enforceable as decrees.²⁹ While the court-referred mediation process still has recognition under Legal Services Authorities Act, 1987³⁰, there is no recognition for private mediation

²⁷ 'Concilianet' (Concilianet) <<https://concilianet.profeco.gob.mx/Concilianet/inicio.jsp>> accessed 26 April 2022.

²⁸ *Angle Infrastructure Pvt Ltd v Ashok Manchanda & Ors*, 2016(2) Arb LR 394 (Delhi).

²⁹ *Afcons Infrastructure and Ors v Cherian Verkey Construction and Ors*, 2010 (8) SCC 34, para 19.

³⁰ The Legal Services Authorities Act, 1987 (Act 39 of 1987), s 21.

initiated outside the four walls of the courtroom.³¹ To effectively promote ODR as an alternative to traditional litigation, it is paramount to ensure that the awards have legal recognition and sanctity, otherwise, there would be no incentive for conflicting parties to engage in the same.

In India, there already exists a platform called SAMA which functions as an ODR platform helping persons seek resolutions to their disputes. It utilizes the correct mix of legal processes used in ADR mechanisms and ICT as it functions as an 'Online Lok Adalat'.³² The online portal provides a concise procedure to reach an agreement on the platform. First, the parties sign up on the platform and explain their dispute after which a qualified conciliator is appointed. Second, parties make their respective offers and counter-offers and discuss settlement terms. Once the parties come to an agreement, the final settlement agreement is drafted by the qualified conciliator. Once signed, it has the legal sanctity of an arbitral award and can be enforced akin to a court decree. The portal provides detailed rules and procedures which are to be followed.³³ Other platforms such as eBay and PayPal also provide their own ODR platforms which act as a mediation platform for customers.³⁴

Promotion and recognition of such platforms will surely go a long way in establishing ODR as an effective resolution method, especially in the

³¹ *Shri Ravi Aggarwal v. Shri Anil Jagota*, (2009) SCC Online Del 1475.

³² 'SAMA: Online LokAdalat' (*SAMA*) <<https://www.sama.live/lokadalat.php>> accessed 26 April 2022.

³³ 'SAMA Rules and Procedure' (*SAMA*, 2021) <https://www.sama.live/rules_and_procedures-2021.php#_Toc62347161> accessed 26 April 2022.

³⁴ PayPal, 'Resolving a dispute with your seller' <<https://www.paypal.com/in/webapps/mpp/buyer-dispute-resolution>> accessed 26 April 2022.

backdrop of the government's flagship initiatives such as 'Digital India', which aim to improve the use of ICT in public services ecosystem.³⁵

III. ODR FRAMEWORK IN B2B: USE OF GENETIC ALGORITHM

A vast amount of research has been done on methods of resolving consumer disputes through ODR but there exists little or no data on how a dispute between traders shall be redressed via the ODR platform. However, a method called Genetic Algorithm ("GA") has been proposed to resolve B2B disputes.³⁶ A GA as defined is an Artificial Intelligence ("AI") tool used for a settlement-oriented system that helps in dealing with negotiation support.³⁷ How this GA functions is similar to the functioning of dispute settlement mechanisms in B2C and appears to be more effective in B2B disputes. Why this model seems to be more effective in B2B disputes is because of threefold reasons: Firstly, both the parties herein come up with an economically efficient solution. Secondly, this not only resolves the dispute but also builds confidence between the parties.³⁸ Thirdly, in B2B disputes, the number of disputed goods is higher and therefore this process becomes more effective as can be seen from the case of SmartSettle wherein the process of GA was proved cost-efficient in B2B disputes.³⁹

³⁵ 'About Digital India' (*Government of India*) <<https://www.digitalindia.gov.in/>> accessed 26 April 2022.

³⁶ Colin Rule, *Online Dispute Resolution for Businesses. B2B, E-Commerce, Consumer, Employment, Insurance, and Other Commercial Conflicts* (San Francisco: Jossey Bass 2002).

³⁷ D. Ilter and A. Dikbas, 'A Review of the Artificial Intelligence applications in Construction Dispute Resolution' (26th International Conference on Managing IT in Construction, Istanbul 2009) 41-50.

³⁸ Ethan Katsh, 'Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace' (2007) 27(2) *Intl Rev L Computers and Technology*, 97-107.

³⁹ Cortés P, 'Online Dispute Resolution For Consumers In The European Union' (*Econstor.eu*, 2010) <<https://www.econstor.eu/bitstream/10419/181972/1/391038.pdf>> accessed 4 May 2022.

The phases of GA include⁴⁰: First, gathering information wherein each party fills a questionnaire so that they know the each other's position. Second, each party then proposes their solutions with a different variant. Third, then these solutions are rated on a scale of 0 to 10. Fourth, based on the assessment, the GA then chooses the best. Fifth, both the parties express their opinion on the option selected and then either they can succeed or fail in resolving the dispute or continue with the negotiations. Illustrating the same: if Grocer, a retail store needs a quintal of rice and approaches Z, a dealer who delivers a substandard product. Then using this GA process, Grocer and Z would first fill out a questionnaire, then provide their solutions, out of which the best solution would be picked by the GA, thus making the entire process cost-efficient and less time-consuming.

The application of this B2B dispute resolution can be seen in the framework of the Asia-Pacific Economic Cooperation (“APEC”) wherein any business of one economy can file an online consumer dispute against any other business in another economy. The only prerequisite is that both these businesses have consented to ODR being a dispute redressal mechanism.⁴¹

IV. PRINCIPLE FRAMEWORK FOR ODR PLATFORMS

ODR functions as an interplay of detail-oriented legal processes inspired by ADR legislations such as the A&C Act as well as a strong ICT infrastructure powered by artificial intelligence/machine learning (“AI/ML”)

⁴⁰ Nikola Simkova and Zdenek Smutny, ‘Conceptual design of online dispute resolution in B2B relationships’ (24th Interdisciplinary Information Management Talks, Podebrady, 2016) 303-310.

⁴¹ APEC, ‘APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes’ In: Second Economic Committee Meeting (2019).

to facilitate timely justice done in a transparent manner. It must be ensured that both these tools – ADR rules and ICT infrastructure – operate within a robust principal framework. Thus, this section, taking inspiration from the UNCITRAL Technical Notes on ODR⁴², attempts to provide for a robust principal framework within which the ADR processes and ICT infrastructure must operate:

A. Legal Principles

- **Principles of natural justice:** It must be ensured that ODR platforms provide fair and equal opportunity of hearing to the parties as well as eliminate the possibility of incidents of malfeasance by either the parties or the neutral.
- **Timely justice:** The unique selling proposition (“**USP**”) of ODR is the time-bound resolution of disputes, therefore measures must be taken to ensure the same.
- **Accessibility:** In order to make the whole process more inclusive, ODR platforms should strive to provide user-friendly portals so that people from all regions and backgrounds can utilize the services.
- **Accountability:** The conduct of ODR platforms and their use of the ICT infrastructure in the resolution process must be regulated by either external regulators or internal accountability frameworks to ensure accountability.

⁴² UNICTRAL Technical Notes.

B. ICT Principles

- **Open source:** The use of open-source software which can be freely available and widely distributed without any hindrances must be advocated for. This will have an impact on two levels – one, to aid the collective growth of the ODR ecosystem and two, greater adaptability to new features and expansion to wider territories and regions. At the nascent stage that ODR is in our country in the present, open-source software will facilitate customizing, modifying and distributing the technology in an autonomous manner.⁴³ Credible precedence can be found in the e-Courts project which has effectively utilized Free and Open-Source Software (“FOSS”) in enabling courts across various jurisdictions with the necessary tools to function in an online manner.⁴⁴
- **Privacy and security:** Resolving disputes using digital infrastructure raises obvious concerns regarding the privacy of sensitive information and evidence involved. Therefore, a sound infrastructure which ensures the security of private information becomes relevant.
- **Actionability:** ODR platforms will be required to be dynamic in nature thereby having the ability to continuously adapt to technological advancements and function within the legal ecosystem with the skill to critically analyze and act upon the metadata being made available to them.

⁴³ ‘Designing The Future of Dispute Resolution: The ODR Policy Plan For India’ (*Niti.gov.in*, 2021) <<https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>> accessed 4 May 2022.

⁴⁴ Goswami Y, ‘Innovations Phase II Of The Ecourts Project’ (*Ecourts.gov.in*, 2019) <https://ecourts.gov.in/ecourts_home/static/manuals/FINAL%20INNOVATIONS%20IN%20PHASE%20II.pdf> accessed 4 May 2022.

V. CONCLUDING REMARKS: BRINGING CHANGES IN THE STATUS QUO

Online redressal mechanisms not only provide timely and transparent justice to the parties but also alleviate the overall E-Commerce experience for consumers as well as businesses. In order to substantively and effectively inculcate a robust ODR mechanism in India, we suggest a few changes in the current legislative framework.

First, the Consumer Protection (E-Commerce) Rules, 2020 under the Consumer Protection Act, 2019 were notified recently with the intention to protect consumer interest in the e-commerce ecosystem. They apply to every good and service brought or sold over digital/electronic networks and thus have a wide scope and applicability. The increased responsibility the rules place on the e-commerce platform to ensure consumer protection is noteworthy. Still, concerns loom about whether they apply to B2B disputes as well.⁴⁵ The rules introduce the term “user” to define ‘any person (individual and/or company) who accesses/avails any compute resource of an e-commerce entity’.⁴⁶ While the Consumer Protection Act, 2019 calls for full disclosure to consumers about the sellers, details of goods and services sold and payment mechanisms available on the platform,⁴⁷ the term “user” opens up a new avenue for ambiguity as there is room for confusion as to whether the scope

⁴⁵ Legacy Law Offices, ‘E-Commerce Rules, 2020, A Boon or a Bane?’ (*Mondaq.com*, 4 November 2021) <<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/1128900/e-commerce-rules-2020-a-boon-or-a-bane>> accessed 26 April 2022.

⁴⁶ Consumer Protection (E-Commerce) Rules, 2020, s. 3(1).

⁴⁷ The Consumer Protection Act, 2019 (Act 35 of 2019), ss 5, 7.

of the rules applies to B2B transactions as well.⁴⁸ At this juncture, we propose that the rules be amended to explicitly include a provision for the establishment and use of an ODR platform as the first means of dispute resolution. Further, clarity must be given on the applicability of the rules to B2B disputes.

Second, the development of a robust ODR platform presents two requirements in terms of logistical support – technological capacity and trained professionals. It must be noted that internet users only account for about 45% of the total population in the country.⁴⁹ Limited internet penetration acts as a hindrance to ODR adoption across India, and therefore must be dealt with both by the government and private entities in partnership with each other. Furthermore, ODR requires trained professionals to act as neutrals since they act as the limited human intervention source in the process. For this purpose, the government must step forward and create a cadre of well-trained ODR professionals. The formation of a Mediation Council of India, along the lines of the Arbitration Council of India, will go a long way in aiding this process – as was recommended by MCPC in their draft mediation legislation.⁵⁰

Third is the need to improve the digital infrastructure. Some prerequisites to resolving disputes online are access to computers, internet

⁴⁸ Trilegal, 'Consumer Protection (E-Commerce) Rules, 2020' (*Mondaq.com*, 2022) <<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/980140/consumer-protection-e-commerce-rules-2020>> accessed 4 May 2022.

⁴⁹ Tanushree Basuroy, 'Internet Penetration Rate in India 2007-21' (*Statista.com*, 15 March 2022) <<https://www.statista.com/statistics/792074/india-internet-penetration-rate/>> accessed 26 April 2022.

⁵⁰ Ajmer Singh, 'Supreme Court forms committee to draft mediation law, will send to Government' (*The Economics Times*, 19 January 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-forms-committee-to-draft-mediation-law-will-send-to-government/articleshow/73394043.cms?from=mdr>> accessed 26 April 2022.

connection and technical know-how. Hopes can be placed on the work done by the government under the National Digital Communication Policy, 2018 under which the resolve to provide universal broadband connectivity is undertaken.⁵¹ Moreover, in order to improve digital literacy, the efforts made by the government under the Pradhan Mantri Gramin Digital Saksharta Abhiyaan to improve internet penetration in rural India are projected to bridge the digital gap.⁵²

The future of justice delivery and dispute resolution lies in employing advanced technology for timely, transparent and reliable justice.⁵³ For this purpose, developing an effective ODR mechanism will require not only legal principles but also a strong ICT infrastructure. India already has the foundational structure for it in terms of e-commerce rules and a few private initiatives, but what is now required is a clear multi-pronged strategy to truly inculcate ODR mechanisms for dispute resolution in India.

⁵¹ Department of Telecommunication, 'National Digital Communication Policy 2018' (2018) <<https://dot.gov.in/sites/default/files/EnglishPolicy-NDCP.pdf>> accessed 26 April 2022.

⁵² PMGDISHA, 'Objective' (*Ministry of Electronics and Information Technology, Government of India*) <<https://www.pmgdisha.in/about-pmgdisha/>> accessed 26 April 2022.

⁵³ Richard Susskind, 'The Future of Courts' (2020) 6 (5) *The Practice* <<https://thepractice.law.harvard.edu/article/the-future-of-courts/>> accessed 26 April 2022.