



GLOBAL ODR SYSTEM FOR CROSS-BORDER e-COMMERCE DISPUTES

– A Concept Paper by Jupitice

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Background

In the landscape of global commerce, the traditional mechanisms for resolving disputes have primarily relied on public and private sector institutions. Public sector bodies, such as courts and administrative agencies, along with private entities like mediation and arbitration centres, have historically handled a wide array of disputes. However, the rapid surge in e-commerce activities, accounting for 5% to 12% of the retail business worldwide, has propelled this sector into becoming one of the fastest-growing domains for dispute resolution.

The unique characteristics of e-commerce, characterized by a multitude of small-scale transactions and high volume, have led to a proliferation of disputes. These conflicts, while individually small in scale, collectively present a formidable challenge to traditional dispute resolution mechanisms. Public institutions, already burdened with numerous complex issues, find themselves inundated with these comparatively smaller yet numerous disputes, hampering their efficacy in addressing other crucial matters. Additionally, legal practitioners often perceive these cases as financially unviable due to their size, preferring to allocate their time and resources to more substantial cases.

Recognizing this escalating challenge, the United Nations (UN) took a proactive step in 2016 by establishing a dedicated working group. Tasked with identifying viable solutions for efficiently and transparently resolving disputes arising from e-commerce, the working group delved into the intricate dynamics of online commerce. Considering the digital nature of e-commerce, the group advocated for leveraging the same online medium to resolve disputes arising within this sphere.

Following extensive research, analysis, and consultation, the working group presented their findings in the form of technical notes. These notes, adopted by the UN General Assembly in a landmark meeting, embody model procedural rules tailored specifically for the resolution of e-commerce disputes through online channels. The adoption of these technical notes represents a pivotal step towards redefining dispute resolution paradigms in the rapidly evolving landscape of digital commerce.

02

What is Global ODR?

Global Online Dispute Resolution (ODR) stands as a pivotal mechanism designed to address disputes arising within the expansive realm of e-commerce, employing technology, particularly Information and Communication Technology (ICT), to facilitate resolution at a global scale. At its core, Global ODR envisions a unified system overseen by a single entity responsible for its ownership, operation, and management.



Key attributes of a Global ODR system encompass its capacity to handle dispute resolution not only at an international or regional level but also within domestic spheres. The true essence of Global ODR transcends borders and jurisdictions, encapsulating all forms of transactions—whether conducted domestically or across international borders—within a singular, inclusive platform.

A fundamental tenet of Global ODR involves the integration of technology and structured frameworks to foster efficient and impartial dispute resolution. By harnessing ICT and other pertinent technologies, this system endeavors to streamline and expedite the resolution process while ensuring accessibility and fairness to all parties involved.

The efficacy of a Global ODR system lies in its ability to harmonize disparate legal systems and cultural nuances prevalent across diverse jurisdictions. By providing a centralized and standardized platform, it aims to bridge gaps, promote consistency, and establish a coherent framework for dispute resolution in the global e-commerce landscape.

In essence, a robust Global ODR framework aims to create an all-encompassing, technologically-driven ecosystem capable of efficiently addressing disputes originating from varied transactional contexts, thereby fostering trust, stability, and confidence in the global e-commerce arena.

03

India's Role



The evolution of Online Dispute Resolution (ODR) systems within the dynamic landscape of e-commerce presents a multi-tiered approach to effectively manage and resolve disputes that transcend geographical boundaries. This approach envisions three primary models for ODR implementation:

1



Global Level ODR

One nation assumes a leadership role, spearheading and orchestrating an ODR system that operates on a global scale. This model serves as a centralized mechanism aimed at resolving disputes stemming from cross-border e-commerce transactions.

2



Regional Level ODR

Within specific regional clusters, a collaborative entity comprised of participating countries takes charge of an ODR framework tailored to the nuances and needs of that particular region. This approach aims to address disputes within a defined geographical area, fostering regional cooperation and resolution mechanisms.

3



Domestic ODR

On an individual country level, the establishment and management of an ODR system cater to resolving disputes arising within that nation's e-commerce domain.

The governance structure of a Global ODR System offers two fundamental paradigms: Government-led and Private entity-led models. Each approach brings its unique set of advantages and drawbacks. However, in the context of dispute resolution—a cornerstone of justice delivery, particularly crucial in safeguarding consumer rights—a balance between transparency, compliance with legal standards, and consumer trust becomes paramount.

Given the fundamental role consumers play in shaping the socio-economic fabric of nations, instilling confidence in the ODR system becomes pivotal. Transparency and adherence to legal protocols form the bedrock of this trust. Consequently, recommendations from institutions like NITI Aayog, notably advocating for a government-led ODR system, underscore the imperative of transparency and alignment with legal frameworks.

The emphasis on a government-led ODR system stems from its inherent potential to inspire trust and confidence among consumers. This model prioritizes transparency, compliance, and accountability, thereby fostering a conducive environment for fair and impartial dispute resolution. The NITI Aayog's endorsement of this approach within India's ODR policy plan reflects a strategic vision aimed at ensuring a robust and consumer-centric ODR ecosystem.

In summary, the deployment of a Global ODR System in the space of e-commerce necessitates a delicate balance between technological advancements, legal compliance, and consumer trust. A government-led approach emerges as a promising avenue to cultivate transparency, adherence to legal standards, and instill confidence in consumers, thereby fortifying the foundation of a just and equitable e-commerce landscape.

04

Designing the Structure of a Global ODR System for e-Commerce

The establishment of a robust Global Online Dispute Resolution (ODR) System entails a structured framework encompassing critical components and operational methodologies recommended by the United Nations. The UN suggests three primary methods for the administration of a Global ODR System:



Provider-Led Method

In this approach, disputants initiate contact directly with the ODR service provider. The provider assumes the primary role in guiding the resolution process, offering services tailored to the specific dispute.



Platform-Led Method

Disputants' initial interaction occurs through the entity managing the platform. This platform-centric approach serves as the entry point for individuals engaged in e-commerce transactions, facilitating access to the ODR mechanisms.



Integrated Entity Method

Under this method, a singular entity assumes a dual role by operating the platform and concurrently providing ODR services. This integrated approach streamlines the process by offering both the platform infrastructure and dispute resolution services within a unified framework.



Central to the architecture of a Global ODR System are two critical components

ODR Platform: This entity assumes ownership, operation, and management of the ODR System. The platform is responsible for engaging and enlisting Dispute Resolution Bodies or ODR Service Providers. It serves as the foundational infrastructure facilitating the resolution process.

ODR Service Provider: These entities play a pivotal role in the ODR ecosystem. They consist of individual ADR (Alternative Dispute Resolution) professionals empaneled by the ODR Platform. ODR Service Providers have the flexibility to collaborate with the platform entity to deliver dispute resolution services.

The ODR Platform serves as the hub, orchestrating the infrastructure, protocols, and functionalities necessary for effective dispute resolution. Meanwhile, ODR Service Providers contribute their expertise and experience in managing disputes, working in tandem with the platform to ensure the efficient delivery of ODR services.

In essence, a well-structured Global ODR System embodies a harmonized collaboration between the ODR Platform and ODR Service Providers. This collaborative synergy forms the cornerstone of an effective and accessible mechanism for resolving e-commerce disputes on a global scale.

05

Comparing Approaches for Global ODR System in e-Commerce Disputes

In the case of a Platform-Led Global ODR System, it emerges as a viable option due to its ability to centralize dispute resolution professionals globally onto a single platform. This centralized approach ensures a harmonized and holistic experience for disputants. Contrastingly, relying on multiple ODR Service Provider platforms could lead to confusion for disputants due to disparate designs, workflows, and procedural complexities, burdening consumers with the need to navigate various platforms. From the disputant's standpoint, a singular platform simplifies the ODR process.

However, the involvement of numerous ODR Service Providers may result in scattered and asymmetric data, potentially raising data protection concerns. Architectural considerations in ODR design are crucial to ensure consumer ease while prioritizing data protection. Hence, a government-run platform-led approach may offer superior data security and architectural coherence, enhancing consumer trust.

Moreover, a Global ODR System plays a pivotal role in the evolving global justice paradigm by eliminating jurisdictional barriers inherent in traditional court systems. Decisions or settlements achieved through this system carry legal enforceability akin to court decrees, underlining its significance in establishing a credible and enforceable framework for resolving e-commerce disputes on a global scale.



In summary, while each method possesses its merits and drawbacks, the Platform-Led approach, particularly if overseen by a government entity, holds promise in centralizing the ODR process, simplifying consumer experiences, ensuring data security, and solidifying the role of a Global ODR System in shaping a more accessible and enforceable global justice framework for e-commerce.

06

Operation of the Global ODR System

The functioning of the Global Online Dispute Resolution (ODR) System pivots around several core components that collectively streamline the resolution process. These components include:



Nations Involved



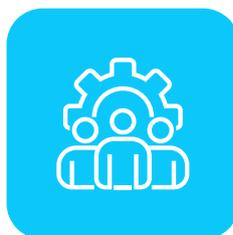
Case Managers



Dispute Resolution Bodies



Dispute Resolution Procedures



Dispute Resolution Professionals

Operational Framework

In the envisioned model, India assumes a central role in spearheading and managing the Global ODR System. Acting as the orchestrator, India's primary responsibility is to inclusively involve every nation by signing Memorandums of Understanding (MoUs) with each country, ensuring their participation in the global ODR framework. Acknowledging the variations in consumer laws and policies across nations, India aims to harmonize these diverse legal landscapes within the framework of the Model Consumer Protection Laws.

Each nation participating in the Global ODR System retains its autonomy over its consumer laws and policies. However, countries adhering to the Model Consumer Protection Laws would promote awareness and encourage their respective Dispute Resolution Bodies to join the Global ODR System. These bodies would need to meet essential criteria, comply with minimum requirements, and obtain national-level accreditations, all in accordance with local laws and regulations.

India's pivotal role encompasses providing a state-of-the-art cloud-based ODR platform tailored for the system. Additionally, India establishes an administrative secretariat responsible for overseeing and managing the day-to-day operations and maintenance of the Global ODR System. This administrative body serves as the central liaison for interactions with participating nations and their respective Dispute Resolution Bodies. The platform itself boasts capabilities to delineate the various roles of stakeholders involved in the dispute resolution process, ensuring a structured and efficient operational framework.

The collaborative efforts of participating nations, facilitated by India's leadership and the technological prowess of the ODR platform, aim to create a standardized and accessible mechanism for dispute resolution, transcending geographical boundaries and fostering trust and confidence in the global e-commerce arena.





07

Global ODR System Framework and Alignment with ONDC in e-Commerce

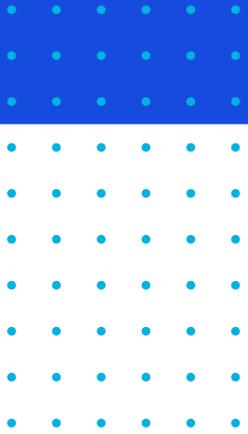
The evolving landscape of digital commerce, epitomized by initiatives like the Open Network for Digital Commerce (ONDC), underscores the significance of robust dispute resolution mechanisms in ensuring consumer trust and fostering a fair marketplace. However, within the ONDC framework, there's been a cautious stance regarding assuming responsibility for transactions and associated disputes. Presently, there's a noticeable absence of a prominent place designated for dispute resolution within the ONDC mechanism.

The prevalent notion within ONDC revolves around entrusting the appointment of ODR service providers to consumers' discretion, seemingly adopting a democratic approach. Nonetheless, this service provider-led mechanism presents inherent drawbacks. Foremost among these challenges is the absence of recourse for consumers in case of disputes arising between them and the chosen ODR service provider regarding the services rendered.

In contrast, a platform-led approach, as envisaged in the Global ODR System, offers a structured and cohesive framework for managing dispute resolution bodies or ODR service providers. Under this paradigm, these bodies operate within the guidelines, protocols, and code of conduct established by the platform entity responsible for managing the dispute resolution infrastructure. This centralized control ensures adherence to quality procedures, fostering trust and reliability in the resolution process.

The alignment of ONDC with the principles inherent in a platform-led Global ODR System holds the potential to streamline dispute resolution within the digital commerce ecosystem. By adopting a framework that centralizes control, sets protocols, and ensures adherence to quality standards, ONDC can fortify its foundation by offering consumers a reliable and efficient mechanism for addressing disputes, thereby bolstering confidence and integrity within the e-commerce landscape.

08



Conclusion

In conclusion, this juncture presents a golden opportunity for India—a Vishwaguru—to take forward the Global ODR System. The imperative of the digital era demands a system that caters to resolving consumer disputes seamlessly and with convenience. India's leadership in establishing and managing the Global ODR System not only meets this pressing need but also aligns with the pursuit of global harmony and amity among consumers. As per Harvard's report, loyalty in the e-commerce realm is not merely earned through freebies but through the adept resolution of disputes, fostering trust, and bolstering consumer confidence.

India's role in steering the Global ODR System represents a pivotal step towards shaping a fair, accessible, and dependable e-commerce landscape, solidifying its position as a leader in the global digital arena.



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