
Online Dispute Resolution as a Solution to E-Commerce Disputes: A Comparative Study of Pakistan and UK

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Abstract

The primary aim of this paper is to analyze the online dispute resolution (ODR) as a solution to E-commerce disputes. E-commerce is growing increasingly all over the world. The gradual development of this industry has also brought the issue of E-commerce disputes. The nature of disputes makes it difficult for parties to resolve it through conventional platforms such as courts and alternative dispute resolution (ADR). Therefore, ODR mechanism presents more viable solution for the E-consumers. However, in Pakistan, the regulatory and technological development of ODR is still very insufficient as the E-commerce is an infant industry but with solid growth rate. Therefore, this paper fills this gap and examines the regulatory and technological framework of ODR via comparative study in Pakistan and UK. For this research work, the comparative research approach has been utilized that is based on documentary analysis. It conducts a comparative study of ODR as solution to E-commerce disputes in Pakistan and UK. This paper analytically studies the parliamentary statutes and regulations in Pakistan, UK and international laws and other existing data and studies relating to ODR as solution to E-commerce disputes. At this moment, it's questionable if Pakistan's attempt to dealing with it is genuine and whether the existing inadequate ODR legislation can address the challenges. This research finds that, in order to safeguard online consumers, Pakistan is in a dire need to establish a legal framework for online dispute resolution. The lack of defined legislative criteria for ODR services causes several challenges, especially when public compliance is required. Furthermore, this research finds that the introduction of a mandatory automated negotiations, online mediation, and e-courts, as first step, might be helpful in this regard as the nature of e-disputes requires quick decision making due to its economic nature in order to avoid further loss. Moreover, this study concludes that the confidence of e-consumer can be increased if they are provided with an effective mechanism for redressal of their grievances.

Key Words: E-commerce; Online Dispute Resolution; Regulatory Framework; Technological Framework.

Introduction:

Presently, the e-commerce business is flourishing. Numerous countries throughout the globe are being affected by the advancement of information and communication technologies, which is pushing changes in corporate and macroeconomic future development and has substantial consequences for the implementation of the notion of globalisation (Kamel & Hussein, 2002). E-commerce is the digital exchange of goods and services between persons who are not physically present. E-commerce is a purchasing strategy that allows customers and vendors to engage virtually in order to do business and purchase items or services which are offered on an internet by employing a variety of payment options. Business to business, Business to customer, customer to customer and customer to business all trades are possible. E-commerce arose after the 2001 as a byproduct of advancement of information and communication technologies that made communication and information exchange easier (Aamir, 2021).

In Europe, the Great Britain has the most developed e-commerce industry. In the United Kingdom, online shopping is more prevalent than in any other big nation. With over \$3.5 million spend week in the UK online retail sector, consumers E-commerce now represents for over 37 percent of the overall retail market in the UK (up from 21percent in 2020). The pandemic of Covid-19 has added to this surge (Coppola, 2022). Pakistan, on the other side, has been on a quest for decades to restructure its industry and develop a cost-effective strategy for achieving broad monetization. The growing IT industry, exponential population growth, and the number of individuals accessing the internet have all aided this aim to some degree. Financial progress has been made feasible by the global expansion of E-commerce. E-commerce has risen tremendously in the last two decades, with annual sales growth rates of 14 percent, equating to \$3 trillion in sales. By 2020, these values are estimated to total \$4.6 billion. In 2016, the value of online purchasing increased by 13 percent to \$1.4 billion. Several researches have confirmed that 19 percent of all online shopping purchases in Pakistan occurred in 2019. According to projections, ninety percent of all online purchases and transactions will be done and handled online by 2040. (Imtiaz & Ali, 2020). Pakistan was placed 117th out of 152 nations in UNCTAD's 2018 B2C E-commerce Index, with an intention to participate in e-commerce assessed at 33.34 percent (UNCTAD, 2018).

E-commerce issues have arisen as a result of the market's progressive expansion. Disputes can be arising in case of physical or offline purchases, the same can be said for online purchases (Heuvel, 2022). Under UK e-consumer protection law, when a company adds material to their webpage, whether personal or business on the internet, a company must properly state the amount, quality, taxability, and any other useful facts for any items on sale. Otherwise, any incorrect information might result in legal complications, and a customer could file a complaint with a consumer protection agency. If a client receives a substandard product or one that differs from the criteria specified, the consumer has the right to sue the company (Leigh & Fowlie, 2014).

This paper contends that e-commerce transactions can occasionally lead to E-disputes. It is critical that E-disputes are equitably settled to ensure that all stakeholders involved feel completely safe participating in e-commerce purchases, since lack of certainty about the legislative structure may deter customers from purchasing goods or services through the Internet and businesses from entering the digital market place.

In the given scenario, this research paper aims to discuss the ODR as a solution to E-commerce disputes. This paper begins with elaborating the idea of E-commerce and how online transactions are done. Furthermore, this research will also analyse how the emergence of E-commerce industry has resulted in E-disputes. Additionally, the nature of disputes makes it difficult for parties to resolve it through conventional platforms such as courts and ADR. Therefore, this research will analyse how ODR has become a very efficient and effective tool in UK for resolution of E-commerce disputes and how Pakistan can learn from the experience of UK while dealing with E-disputes. Moreover, in Pakistan, the regulatory and technological development of ODR is still very insufficient as the E-commerce is an infant industry but with solid growth rate. Therefore, this paper fills this gap and examines the regulatory and technological framework of online dispute resolution via comparative study in Pakistan and UK. Lastly, this paper proposes a way forward for advancement of regulatory and technological framework of online dispute resolution in Pakistan.

Online Dispute Resolution: A Modern Solution of E-Commerce Disputes

ODR arose in the late 1990s as an outgrowth of ADR. It concentrates on the most effective ways to employ data or information technology that can assist parties to a dispute in resolving their differences. Alternatively, ADR refers to the process of resolving disputes outside of a court. It contains a variety of strategies for resolving disagreements without resorting to lawsuit, or, to put it another way, resolving matters outside of the courthouse. In recent times, a large number of individuals and the legal community have acknowledged it as a strategy or methodology for resolving conflicts. On the other side, ODR is a type of resolving disputes that use technology to resolve issues between parties (Ebner & Zeleznikow, 2016). ODR employs the same techniques as other forms of dispute resolution, such as "negotiation, mediation, and arbitration". It is undeniable that ODR is an alternate to ADR, and that ODR is far more effective, inexpensive and quick than ADR. One of the most significant advantages of ODR is that it stimulates the use of new advanced artificial intelligence technology in the legal profession, that will eventually help to lower the workload. Likewise, many agreements include an arbitral award or provision which states that if a disagreement arises, it will be settled through arbitration instead of going to court (Salter, 2017). This research observes that an e-commerce user cannot afford to go to a traditional court since lawsuit is expensive, requires strong evidence which takes time and makes things complicated. Lawsuit may also harm business relationships, while disagreements can be handled quietly and in a shorter amount of time through ODR.

"Guidelines for Consumer Protection in the Context of Electronic Commerce" was released by OECD in 1999. These principles urge corporations, consumers advocate, and authorities to collaborate to ensure that customers have significant access to appropriate and prompt ADR methods and restitution at no expense or hardship. Cross-border and e-commerce activities are given special attention (OECD, 2016). Everyone should have efficient access to justice, according to Article 6 of the European Convention on Human Rights. This is not to

say that litigants to a disagreement cannot opt to settle it in a non-judicial manner if they both agree and there is some sort of legal supervision (ECHR, 1950).

In modern environment, we are progressing with technologies, particularly in artificial intelligence. Mankind always finding ways to make things simpler and more user-friendly. Besides that, the most important goal is to save time and money. The term, ODR is used globally to refer to many types of online dispute resolution using ADR-methods. ODR is a complement to existing ADR procedures predicated on the concept that some disagreements (particularly e-disputes) may also be addressed swiftly and effectively under a digital environment (Cortes, 2010).

Let's take a look at how ODR functions. The majority of ODR proceedings are meant to be a straightforward problem-to-solution approach. Whenever a complaint is filed under the ODR procedure, the system will ask what sort of issue they're having and provides a list of typical issues to choose from. The consumer then chooses the sort of issue they're having from a list. If there isn't an item in the provided list that describes their exact difficulty, they can choose "other" and then describe their situation in their own words. After the complaint has chosen the sort of difficulty they are having, they are presented with a selection of typical remedies to that difficulty, and they are questioned which of these remedies they would prefer. The consumer can choose from a number of suitable options and tailor them to their specific needs. The complaint is then given the chance to present any facts or information they see necessary to support their case for the requested remedy (Farinde, 2020).

The respondent would then be approached and talked about consumer's concern as well as the offered remedies. The response, then, has the option of indicating if any of the recommended solutions are agreeable to them, as well as customizing those ideas into a counter-offer. This technology-assisted negotiating can assist sides in swiftly identifying the problem they are coping with and generating a number of feasible solutions to that issue. It can also assist in avoiding some of the more aggressive techniques that parties may employ in order to gain power over the other party and force them to adopt their preferred option (Mania, 2015).

Originally, ODR was intended to settle disputes that developed online involving individuals who might likely never meet in person. To convince consumers to embrace online transactions, e-commerce platforms in UK like eBay understood that they are in a need to provide a quick and fair mechanism for its users to settle complaints. Online innovations have the power to alter conflict management in many aspects of life in an increasingly connected society, and they are currently doing so. Commercial firms in the UK, such as eBay and PayPal, have introduced peer-to-peer algorithms to automatically settle disputes amongst their consumers. Companies in the United Kingdom deal with a variety of conflicts based on their fundamental function and size. This included, but are not restricted to, conflicts or grievances between both the business and its consumers (B2B or B2C), problems with supply chain members, and disagreements with rivals or other companies (Borisov, 2015).

Regulatory and Technological Framework of ODR in UK and Pakistan

Electronic business participants should have access to efficient and unambiguous consumer protection on scale with conventional types of business. Consumers are gradually turning to online purchasing. Its benefits include the ability to browse for goods and services, price comparisons, user reviews from consumers who have bought the very same products or services, buy, paying for, and have them shipped from the convenience with one's own homes

(Goodwin, 2020). When an agreement has been made, it establishes the sides' rights and obligations. Nevertheless, determining "when and where" an agreement is completed can be challenging with distant transactions. According to one point of view, whenever a customer agrees to buy something or the company agrees to provide it, a contract is established.

In UK there are multiple statutory legislations which regulates e-commerce agreements and provide protection to e-consumer. This includes EU Directive 2000/31/EC, Consumer Protection Regulations of 2000, EU E-Commerce Directive 97/7 and E-Commerce Regulation 2002. Regulation (EU) 524/2013, Online Dispute Resolution Regulation, resulted in the creation of a free online system (accessible in all EU languages) through which market participants and customers in member nations can attempt to resolve disputes related to internet sales or service contracts, as well as connect directly ADR suppliers throughout the EU. All EU merchants that participate in online purchases, service agreements, or virtual stores must provide a link to the ODR system on their homepage. After Brexit, the Consumer Protection (Amendment etc.) Regulations 2018 abolish the Online Dispute Resolution Regulation. Companies and consumers in the United Kingdom will no longer be able to utilise the ODR system as of January 1, 2021. Customers in the United Kingdom can still use ADR firms in other European nations, just not via ODR (Humphrey, 2019).

Pakistan is undeniably in a tough position, but it is clearly prepared to realise the rewards of the digitalization. However, internet commerce players are uneasy since there is no legal structure in place to protect the e-consumers (Mujahid, 2002). The Alternate Dispute Resolution Bill 2016 was enacted in Pakistan, although it does not encompass e-commerce or ODR. Furthermore, because the present process is ineffective, outdated, and unsatisfying, customers are hesitant to trust the Pakistani digital consumer market. This was highlighted in the Federal Ministry of Commerce's first-ever E-Commerce Policy Framework, which said that "since the sustainability of an e-commerce model relies on consumer trust, consumer safety is one of the main concerns challenging its expansion." The legislative framework for consumer rights must be upgraded correspondingly to the growth of the e-commerce business in terms of higher productivity' (Ali, 2019).

Although an e-commerce policy was established in 2019 and made public lately, the implementation of this system, which is part of the digital Pakistan strategy, appears to be a difficult task. Furthermore, the structure has a goal in mind, which is to reform the whole traditional commerce system. One good feature in this respect is that this approach emphasises the importance of advancement in the online consumer sector, since Pakistani consumer protection laws lack particular measures for dealing with e-consumer issues. Pakistan's first consumer rights law was passed in 1995, and provinces passed their own following the 18th amendment in 2010. Consumer protection law has yet to be fully implemented across the country. Aspects of recourse whenever there is a dispute regarding online purchasing and trade, as well as the safety of e-transactions, are some of the major issues, aside from policy enforcement (Qaiser et al., 2020).

Furthermore, this research also examines that in the United Kingdom, ODR procedures are used to resolve disputes originating from both e-commerce and conventional markets. Certainly, there is no one ODR approach that can be used to resolve all sorts of disputes instead, there are unique solutions for different types of conflicts.

Without the involvement of a neutral person, the first automatic negotiation is conducted entirely by an ODR platform. It often entails a "blind-bidding" negotiating procedure to decide viable solutions for disputes when responsibility is not disputed. It happens when one side encourages the other to talk about the funds in question. If the other company agrees, they will begin a blind-bidding procedure in which both sides will make hidden bids that will only be revealed if both meet specific criteria. They can make one or more offers, and if the discrepancy is less than a certain percentage or a certain amount of cash, the settlements will be the middle of the two. Despite its simplicity, this approach effectively pushes the sides to expose their "bottom line" proposals and requirements, sharing the discrepancy when the sums are nearby. With insurance compensation payments and business activity, this strategy has shown to be very effective. It is also useful for attorneys since they may utilise it without disclosing their bottom-line negotiations until an agreement has been reached and, more critically, without relinquishing their ability to go to court if the negotiation fails (Cortes, 2014).

PayPal and eBay both utilise automated negotiation in the United Kingdom, and the data back it up. Every year, eBay resolves 60 million complaints in this manner. The dispute is done through online, with the sides urged to settle their differences through computerized discussion. If they are unable to resolve their disagreement, the issue is decided by an eBay professional. Other systems, like which is used by the Dutch legal aid agency, employ technology to give automatic legal counselling and self-help capabilities to support in the resolution of disputes. Another technique is computerized negotiating platforms, which allow the claimants and respondent to provide the greatest and lower values that they are willing to accept, speeding up the settlement process (Guardian, 2022).

Online mediation is another key ODR approach for resolving E-disputes. Mediators utilise information systems abilities to help parties achieve an acceptable conclusion by rewriting their points and allowing them to communicate effectively. Indeed, some observers claim that aided "negotiation, conciliation, and even facilitation" are all forms of mediation. The simplicity, accessibility, and customer convenience of these procedures when applied online are their main advantages. Presently, eBay and PayPal dispute settlement solutions have taken over the most of ODR services, resolving an astonishing number of issues each year. The issue is settled when the other side files a response and picks the options that he or she prefers, and when both sides consent on the same conclusion (Abedi et al.,2019). This paper studies that if parties are unable to come to an agreement, they are placed in a negotiating atmosphere. The online connection is employed, and the website shapes these exchanges into a productive and courteous dialogue. This is accomplished through the use of development tools that limit text messaging space, stimulate the proposal of agreements, establish timeframes, and even alter the tone of communications.

Another way of ODR is enhanced parties training and direct negotiating decision influencing. Parties get counsel and substantial data from technologies that may impact their choice to sue or settlement. These tools can assist parties in evaluating and prioritizing their choices for a settlement. They can also include data such as typical settlement rates and valuations for similar instances, a comparison of these results with an objective analysis of the anticipated expenses of taking the case to a court judgement, and even a forecast of the exact conclusion of assessing the matter (Cortes, 2010). According to this research, such indicators might forecast the response to the key settlement issue of whether a judicial decision would likely

be so much more, or less, than a counterpart's offering, using data relevant to the court having jurisdiction over the matter.

Finally, in the United Kingdom, e-court proceedings are another approach for resolving online issues. Partial or full actual court processes and hearings, which may resemble traditional court proceedings with the exception that any or all litigants, lawyers, judges, and juries participate using online methods of communication. Such application utilizes mathematical procedures to produce administrative or substantive court rulings, with or without direct human control. Furthermore, a case judgement made using algorithms combines a decision-making procedure to information submitted into the system by the parties and generates a conclusion. The procedure may also include some synchronization and digital evidentiary assessment. The Civil Resolution Tribunal Act was approved in British Columbia in 2012, and the tribunal (CRT) began operations in 2016. The CRT is allowed to settle minor claims matters with a maximum value of Can\$25,000 in a range of legal areas. However, it is now taking claims up to Can\$5,000 in its test phase (Ebner & Greenberg, 2020).

Various websites in Pakistan perform online international commerce. A customer visits an online web site and chooses from a variety of items or products and rates. The consumer, whether a single individual or a business, then confirms approval by placing an order online, consenting to the terms & conditions as well as the service or product description. The merchant delivers the products later on. "Agreements are legally enforceable, and the primary duty of all participants is to fulfil them in good faith," according to contract law. This 'good faith' now encompasses not just the supply of goods or services, but also the desired benefit of the contracting parties. In Pakistan, there is no such thing as 'good faith' in online trading and business. Due to many factors such as growing internet penetration, generation and energy shortages, and high bandwidth needs of the computer, participants in an online purchase cannot readily reach each other and communication over the internet turns unproductive at times. Furthermore, because of the lack of governmental oversight, internet business is less secure. This problem leads to unresolved grievances and a negative influence on the country's economy (Khan et al., 2019).

A Way Forward to Advance Regulatory and Technological Developments in ODR in Pakistan

In contrast to the United Kingdom, Pakistan is currently grappling with how to integrate ODR into its legal system. ODR is being recognized, gradually, in many regions around the world as a viable alternative to resolving conflict in the digital era. ODR is actively associated with online activities, since new sorts of exchanges are being made feasible by increasing connection, and it is growing into a viable tool for settling conflicts alongside the internet. Trading internet is also becoming a reality in Pakistan, and it is gaining traction with each day. Therefore, state-level laws addressing issues stemming from online trade is becoming an inevitable fact.

Furthermore, this research examines that the United Kingdom is a forward-thinking country where ADR and ODR have become an intrinsic element of the legal system. It is believed that establishing ODR mechanisms in the arena of online trade and business transactions would be beneficial for developing nations like Pakistan to get players in international commerce and demonstrate their desire in improved economy. It is clear that a continuing

difficulty for Pakistan's e-marketplace is the lack of knowledge and outlets to address e-consumer concerns. Moreover, the supply for the negotiated settlement of e-disputes, such as commercial litigation concerning participants from different states, is growing day by day. Furthermore, globalisation necessitates the enhancement and upgrading of ODR solutions in Pakistan's various industries.

First, to begin with, Pakistan lacks a legislative framework that governs ODR. As a result, legal ambiguity has been a major concern for parties participating in the e-commerce, and that there is no adequate framework in place that allows for the electronic resolution of commercial difficulties. Another factor is the ambiguity that exists between consumers and businesses. Relying on ODR mechanism is not straightforward, and most online firms suffer difficulties as a result. Furthermore, Pakistan's weak and non-existent consumer protections are a key source of worry for e-dispute settlement. At this moment, it's debatable if Pakistan's attempt to dealing with it is genuine or whether the existing inadequate ODR law can handle the challenges. The lack of defined legal criteria for ODR causes several challenges, especially when public compliance is required (Hattotuwa, 2012). This study, suggests that, in order to safeguard internet customers, Pakistan has to establish a legislative framework for online dispute resolution.

Second, when it comes to the legitimacy of courts, it is widely assumed that courts are unlikely to be the principal forum for resolving the overwhelming digital disputes, particularly those involving e-commerce and e-transactions. Simply because this is a lengthy and expensive method, and it sometimes takes a long time for plaintiffs to receive satisfaction of their concerns (Qaiser et al., 2020). The present research infers that traditional courts are exceedingly costly, slow, and ineffective at resolving e-disputes. As a result, establishing e-courts might be beneficial in this area, as the nature of e-disputes necessitates speedy decision-making in order to minimize further damage.

Finally, this research paper also studies that e-consumers in Pakistan have a language barrier as well as a lack of familiarity with current technologies. The majority of existing ODR services in Pakistan are only available in English, which adds to the challenge of presenting accurate information and preventing misunderstandings. This can be a hurdle for those who do not know the language, as well as those who speak it as a second or third language. As the number of individuals who use computers on a regular basis grows, the notion that ODR benefits those who are technically proficient is losing weight; yet, individuals may have varying degrees of knowledge and abilities. Furthermore, there are no uniform technical norms, i.e., technological advancements vary per nation. As for Pakistan, if it wants to benefit from the global economy and commerce and to become a financially and operationally viable entity, a thorough understanding of the rapidly evolving mechanisms and legal frameworks used throughout the world is essential. Pakistan's government and businesses must work together to take advantage of the various opportunities that e-commerce offers. Furthermore, consumers and foreign traders must be influence of perceived and given the tools they need to resolve their complaints in more convenient manner.

Conclusion and Recommendations

This research paper concludes that Pakistan has been on a quest for years to restructure its economic system and develop a cost-effective strategy for achieving broad commercialization. There are various problems that exist in this country which make it

impossible the incorporation and implementation of online dispute resolution mechanism in Pakistan. Firstly, there are technical problems including the lack of availability of advance technology for consumers and business, the absence of professional ODR service providers, and consumers are not skilled enough to use such technologies to resolve their disputes online. Around the globe, the internet, computer engineering, and IT infrastructures are generally harmonized, and this is what Pakistan has to concentrate on if it wants to participate in technological growth and provide redress to online customers. Secondly, legal framework has been a key concern for parties in dispute, and there is no adequate framework in place that allows for the electronic resolution of transactional difficulties. In order to safeguard digital customers, Pakistan has to establish a legal framework for online dispute resolution. The lack of defined legal criteria for ODR causes several challenges, especially when public enforcement is required. This study suggests that the introduction of e-courts might be beneficial in this regard, as the nature of e-disputes necessitates speedy decision-making owing to the economic nature of the situation in order to minimize additional damage. The confidence of e-consumers can be boosted if they have access to a reliable procedure for resolving their complaints.

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