

22 ONLINE DISPUTE RESOLUTION IN ASIA

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Asia is a rich and major continent that has excelled in the utilization of ICTs. Whilst many Asian States merit a mention, this chapter shall focus on China, Japan and India as major ODR players in the Asian continent.

The choice of such three states is not only due to their international standing and weight, but also due to the progressive and accelerated development in the invention and implementation of ICT applications, which certainly impacts the development of ODR schemes.

On such account, the chapter shall be divided into three parts; each part shall be devoted to assess the *status quo* of ODR in one of the three distinguished states, which have three of the highest Internet and mobile phone usage rates in the world.

For example, China has emerged as one of the largest e-commerce giants with more than 457 million Internet users and 277 millions mobile phone Internet users.¹ In Japan, a White Paper entitled “Basic IT Strategy”, released in August 2000 by the Ministry of International Trade and Industry (MITI), has revealed Japan’s ambition to expand its IT infrastructure in support of not only the development of e-commerce, but the eventual implementation of e-Government initiatives.

1 ODR IN CHINA²

The history of the Internet application in China is not very long. The first email sent out by Prof. Tianbai Qian on 20 September 1987 signaled the start of the Internet use in China.³ Since then, China entered the Internet era and made remarkable achievements in the development and application of the modern information technology. Chinese Internet population achieved the highest number in the world within a short period of time. As of June 2011, China has 485 million Internet users.⁴

1 The 27th Statistical Report on Internet Development in China, CNNIC, December 2010, available at <www.cnnic.cn/dtygg/dtgg/201101/P020110119328960192287.pdf>, last accessed 11 March 2011.

2 This part is prepared by Dr. Yun Zhao, Associate Professor, Faculty of Law, University of Hong Kong.

3 Evolution of Internet in China, available at <www.edu.cn/introduction_1378/20060323/t20060323_4285.shtml>, last accessed 11 January 2011.

4 The 28th Statistical Report on Internet Development in China, CNNIC, July 2011, available at <www.cnnic.cn/research/bgxz/tjbg/201107/P020110721502208383670.pdf>, last accessed 23 September 2011.

The rapid development of the Internet in China has brought about substantial changes to the understanding of dispute resolution in our society. While negotiation, mediation, arbitration and litigation have been most popular mechanisms in China, the application of online schemes to facilitate the dispute resolution process has received unprecedented acceptance.

The scope of the term “online dispute resolution (ODR)” can be quite broad. Firstly, while most dispute resolution procedures can be conducted online, it does not exclude offline communications. In most situations, online and offline communications are simultaneously utilized. Secondly, the term is not a simple equivalence to online alternative dispute resolution. It also includes the adoption of online applications in court procedures. Thus, the term can be more complicated than what we expect.

While it is important to note the increasing use of online facilities in dispute resolution in daily life in China, it seems justified to contextualize our discussion of ODR in China to two promising areas, these are: (a) the Asian Domain Name Dispute Resolution Center (ADNDRC), and (b) the Online Dispute Resolution Center at the China International Economic and Trade Arbitration Commission (CIETAC). In the meantime, we should also mention the efforts made by other entities in the promotion of ODR. Furthermore, it would be important to look into the activities of the Hong Kong International Arbitration Center, with regard to ODR.

1.1 ODR and Domain Names Disputes: The ADNDRC

The successful launch of the Uniform Domain Name Dispute Resolution Policy (UDRP) and its Rules implies the new era for domain name disputes. The ADNDRC is one of the four domain name dispute resolution providers approved by the Internet Corporation for the Assigned Names and Numbers (ICANN). The ADNDRC consists of four offices, namely the Beijing office operated by the CIETAC, the Hong Kong office operated by the HKIAC, the Seoul office operated by the Korean Internet Address Dispute Resolution Committee (KIDRC) and the Kuala Lumpur Office operated by the Kuala Lumpur Regional Center for Arbitration (KLRC). A fully web-based online domain name dispute resolution system has been developed, which facilitates the handling of domain name dispute cases. The ADNDRC was further approved on 8 November 2004 to be one of the two registrar transfer dispute resolution (TDRP) providers.

1.2 ODR and the CIETAC Online Dispute Resolution Center

Domain name disputes are one major area for online dispute resolution. In November 2000, the China Internet Network Information Center (CNNI) enacted the Chinese-Lan-

guage Domain Name Dispute Resolution Policy (*Trial Implementation*). The CIETAC was appointed as the first dispute resolution service provider. In December 2000, the CEITAC set up Domain Name Dispute Resolution Center (DNDRC) to deal with domain name disputes. The Center is also appointed to be the sole dispute resolution service provider for keywords managed by the CNNIC, whose resolution is subject to the CNNIC Keyword Dispute Resolution Policy issued on 4 August 2001.

The above initiatives were very successful. In view of the development of e-commerce and disputes arising from online transactions, the CIETAC, while retaining the DNDRC, adopted the title of Online Dispute Resolution Center in July 2005 and used the title for external communications since August 2007.

The Ministry of Information Industry enacted the Internet Domain Name Regulations in 2002 and formally set up the domain name dispute resolution system for both the domain name under .cn and in Chinese characters. The CNNIC published in the same year the CNNIC Domain Name Dispute Resolution Policy (CNDRP) and its Rules (CNDRP Rules). This time two bodies were authorized as dispute resolution service provider, the CEITAC Center and the Hong Kong International Arbitration Center (HKIAC).

The CNDRP is quite similar to the UDRP adopted by the ICANN. Article 8 of the CNDRP lists three conditions to support a complaint: (a) the disputed domain name is identical with or confusingly similar to the name or mark in which the complainant has civil rights and interests; (b) the holder of the disputed domain name has no lawful rights or interests in respect of the domain name or the major part of the domain name; and (c) the holder of the disputed domain name has registered or has used the domain name in bad faith.⁵

The CNDRP further provides examples of “bad faith”, which include (1) the holder of the disputed domain name has registered or acquired the domain name for the purpose of selling, leasing or transferring the domain name in any other form to the complainant who is the owner of civil rights and interests relating to the domain name or to a competitor of this complainant, and obtaining unjustified benefits; (2) the holder of the disputed domain name has, for many times, registered the domain name by using the names or marks in which others have the lawful rights and interests so as to prevent others from using the name or marks in which they have the lawful rights and interests in the form of domain names on the Internet; and (3) the holder of the disputed domain name has registered or acquired the domain name for the purpose of damaging the reputation of the complainant, disrupting the normal business of the complainant, creating confusion with the name or mark of the complainant or misleading the general public.⁶

⁵ CNDRP, Article 8.

⁶ CNDRP, Article 9.

One major deviation from the UDRP is that the domain name dispute resolution service providers shall not accept any dispute over a domain name which has been registered for two or more years.⁷ Another difference lies in the language of the process; the CNDRP Rules provides that “unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.”⁸ This is drastically different from UDRP, which provides the language to be that of the registration agreement.⁹

On a different note and in view of the rapid development of e-commerce, the CIETAC adopted the Online Arbitration Rules in 2009.¹⁰ This has been one major breakthrough in the promotion of ODR and shows the efforts of the CIETAC to increase the speed and ease of its dispute resolution process in the new era of information technology. The Online Arbitration Rules intend to independently, impartially, efficiently and economically resolve, by means of online arbitration, disputes arising from economic and trade transactions of a contractual or non-contractual nature, and shall apply to the resolution of e-commerce disputes and may also be applied to the resolution and other economic and trade disputes upon the agreement of the parties.¹¹ In addition to online arbitration, the Online Arbitration Rules also provides the possibility of online mediation.¹²

1.3 Other Initiatives

The Guangdong Arbitration Commission (“GAC”) established the China Commercial Arbitration website in 2005, and has since then offered online arbitration services to resolve disputes related to e-commerce.¹³ The whole arbitration process can be conducted online.

In the context of consumer transactions, some network transaction platforms have successfully launched their mechanisms to deal with consumer complaints. *Taobao*, the largest platform in China, initiated the consumer protection platform, which aims to resolve consumer complaints over product quality, delivery, after-sale maintenance, fraudulent selling conducts within seven days.¹⁴ We should also note the development of

7 CNDRP, Article 2.

8 CNDRP Rules, Article 8.

9 UDRP Rules, Article 11.

10 China International Economic and Trade Arbitration Commission Online Arbitration Rules, adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on 8 January 2009, effective as from 1 May 2009, available at <www.cietac.org/index.cms>.

11 The CIETAC Online Arbitration Rules, Article 1.

12 The CIETAC Online Arbitration Rules, Article 37.

13 <www.ccarb.org>.

14 support.taobao.com/myservice/rights/right_main.htm>.

eBay's flagship consumer shopping services in China. Through the years, *Taobao* has been able to successfully get e-consumers from eBay. One reason could lie in the payment system.

Whilst *Taobao* uses Alipay as their payment platform, eBay uses PayPal. The former charges little to no sales commission to merchants, while the latter adopts a commission-based revenue model.¹⁵ In spite of this, we may still see some potential for PayPal. As the world's largest online payment platform, PayPal maintains high degree of trust and confidence from the consumers. Such trust partly lies in its internal complaint mechanism for consumers. PayPal may further expand its market shares with strategic plans, such as a deal with the government of Chongqing to lift the cap on foreign exchange settlements for small Chinese businesses.¹⁶

On a different note, some private entities have been able to launch their website for ODR in the past years, such as <www.odr.com.cn>, <www.odrbeijing.com>. However, these efforts proved unsuccessful. Very few disputes were submitted to the above websites for resolution and they closed down afterwards. On the one hand, the consumers are still not so familiar with ODR, and on the other hand, very few rules define the operation and effects of such procedures. Some scholars believe the importance of the government's role in promoting the ODR and suggest that the governmental involvement shall improve the effectiveness and recognition of ODR from the society.¹⁷ As such, the development of ODR in China not only depends on the efforts from private entities, but also relies on Chinese authorities and their determination on the legal reform.

Finally, we should also mention the efforts of the people's courts in China to introduce information technology in the litigation procedures. This is most meaningful to some remote areas, as the combination of online and offline mechanisms can be a cost saving and effective way for the people's court to carry out judicial duties. Nowadays, we can easily confirm that the use of computers, videos and other high-tech products has become more and more popular in the courtrooms in China.

1.4 The HKIACODR Initiative

The HKIAC is an independent non-profit organization in Hong Kong established in 1985 to provide dispute resolution services. In recent years, the HKIAC has pioneered in promoting ODR. Besides the domain name dispute resolution service provider for generic

15 Loretta Chao, *PayPal Finds a Niche in China*, available at <blogs.wsj.com/digits/2010/05/18/paypal-finds-a-niche-in-china>, last accessed 18 January 2011.

16 Kathrin Hille, *Paypal Plans China Expansion*, available at <www.ft.com/cms/s/0/da64c6a6-134a-11e0-a367-00144feabdc0.html#axzz1BM0cNEtQ>, last accessed 18 January 2011.

17 Zhewei Liu, "Government Intervention: The New Approach to Build Online Dispute Resolution in China", *Internet Law Review*, (2009) pp. 138-139. (刘哲玮：国家介入：我国ODR建设的新思路，网络法律评论).

top level domain names (gTLDs), it also provides services for the following country code top level domain names (ccTLDs): .cn (mainland China); .hk (Hong Kong); .pw (Palau); and .ph (Philippines). The Hong Kong Domain Name Registration Company Limited (HKDNR) adopted the Domain Name Dispute Resolution Policy for .hk domain name disputes. It basically follows the UDRP approach. However, one drastic deviation is that all decisions under this Policy will be final and binding.¹⁸

The HKIAC was approved by the CNNIC in April 2005 to help resolve the Internet Keyword Disputes under the CNNIC Internet Keyword Dispute Resolution Policy. Furthermore, DotAsia Organization (DotAsia) appointed in 2007 the HKIAC as the global official dispute resolution provider to handle disputes and challenges arising out of the launch of the .asia domain.

It is also worth noting that the HKIAC has adopted the Electronic Transaction Arbitration Rules since 2002. The Rules aim “to help parties and Arbitrators take maximum advantage of the flexible procedures available in arbitration for the resolution of disputes quickly and economically”.¹⁹

1.5 ODR Outlook in China

In light of the above mentioned, it seems obvious that ODR is no longer a stranger to China. Scholars start to research on ODR, and practitioners start to explore the daily applications of ODR in China.

The CIETAC is at the forefront of the ODR practice in China. Whilst several private entities have taken the initiative to start ODR platforms at the turn of the new century, they were not as successful as expected.

On a different note, whilst some network transaction platforms are able to establish their own internal complaint mechanisms to resolve consumer complaints, such mechanisms primarily aim at dispute avoidance. Thus, they cannot replace appropriate ODR mechanisms which aim at dispute resolution rather than avoidance.

That said, it is submitted that CIETAC is best equipped to lead the way ahead for future ODR applications in China. Nevertheless, private initiatives may also play a complementary role that supplements the role of CIETAC in promoting ODR in China.

18 Hong Kong Domain Name Registration Company Limited Domain Name Dispute Resolution Policy, effective 27 June 2005, Article 4(i).

19 Hong Kong International Arbitration Center, Electronic Transaction Arbitration Rules, adopted to take effect from 1 January 2002, available at <http://hkiac.org/documents/Arbitration/Arbitration%20Rules/en_ETArbRules.pdf>.

2 ODR IN JAPAN²⁰

It is unequivocal that Japan is a world leader in ICTs. Over the past decade, several initiatives and projects have focused on exploring the relationship between ODR and the conduct of B2B and B2C e-commerce transactions.

One of the most successful accomplishments was online application or case filing, such as the online case filing system operated by the Ministry of Justice.

On a different note, there are organizations that provide full dispute resolution services online, such as: the EC network, one of the most popular service providers in Japan, which resolves small claim disputes online via emails. However, ODR is still at its experimental or start-up phase in Japan, most of users or service providers consider ODR as an online consultation tool rather than a reliable forum for dispute resolution, since high-volume disputes remain to be resolved in domestic courts.

There are law firms actively using their websites, chat-room, blogs and/or twitter to answer queries or promote their consulting business, and/or interact with their clients or potential customers.²¹

Table 8 Brief Summary of ODR Organizations in Japan (Representative List)

Organization	Brief Summary
Shirogane Cyber Hall	Founded by a group of lawyers in 2001, use emails to provide online consultation services for e-Commerce, libel or defamation at cyber space. Current status: Ceased any activities.
Dispute Consulting Room for Online Shopping	Started by ECOM. Current status: Ceases operations.
Dispute Supports	This is a dispute resolution supporting organization accepting online case filing accredited by Ministry of Justice, not an ODR service provider.
Law Terrace	Belongs to Legal Aid Centre, accepting email application.
Click Counselor	Provide online consultation to the tenant of real estate.
EC Network	Private run ADR service provider online.

20 ODR in Japan is jointly prepared by Dr. Timothy Sze, China ODR Forum and Mr. Tommy Li, an independent IT expert and project management consultant.

21 E.g. 法律オンライン (Law Online), あきない・えーど (Business Aid), 弁護士ドットコム (lawyer.com), こもんべんごしドットコム (bond lawyers.com), フォーゲル総合法律事務所, 大枝法律事務所 (Oeda Law Firm), 北里敏明法律事務所 (Kitazato Toshiaki Law Firm), 梅原ゆかり弁護士 (Unehara Yukari Law Firm), バーチャル顧問 (Virtual Consultant).

2.1 *Government Backed Initiatives*

Believing that governmental support is necessary for the development of ODR, it should be noted that, from organizational and structural perspectives, there are two main ministries that play important roles in domestic legislation involving online transactions of any kind, namely, the Ministry of Public Management, Home Affairs, Post and Telecommunications (MPHPT), and the Ministry of Economy, Trade and Industry (METI).²²

According to a “research report on the investigation of effective dispute resolution mechanism”,²³ it has been recommended that ODR is an effective and appropriate mechanism to facilitate the resolution of e-commerce disputes that could not be resolved via normal legal process, a standard system shall be adopted in order to provide a transparent, predictable and enforceable resolutions to disputants. Further to this report, an e-commerce dispute consultation room has been established in 2000, the mandate of this initiative is to study the effectiveness of various dispute resolution mechanisms (mediation, conciliation, adjudication and arbitration), and training and education of relevant personnel.

In 2001, the “Guidelines on e-commerce related transactions” were promulgated by METI to regulate the market environment of e-commerce and provide a legal framework for online transactions. The guidelines have been revised and improved in June 2004, in response to required regulation of online auctions, the timing of a contractual relationship, and limitation periods for specific online activities.²⁴

METI has partnered with the Software Information Center (SOFTIC) of Nippon Foundation Corporation in 2005, and proposed many amendments and updates to existing laws and regulations on the jurisdiction and applicable laws to cross-border e-commerce transactions.²⁵

Moreover, METI also commissioned Japan Information Processing Development Corporation to set up a research committee on online transactions and an investigation committee on the legal system of cross-border trades by SOFTIC of Nippon Foundation Corporation. Additionally, there are many other research initiatives by law schools at various universities and NGOs in Japan.

Similarly, the Consumer Agency in its 2011 work plan states that, as to effective resolution of web-based cross-border disputes, the government shall actively communicate and interact with relevant governmental departments, corporations, and NGOs.²⁶ The

22 Prior to the Japanese government’s restructuring of its bureaucracy on 6 January 2001, these two ministries were known respectively as the Ministry of Posts and Telecommunications (MPT), and the Ministry of International Trade and Industry (MITI).

23 See “B2C, C2C Dispute Resolution and Trust Research Report”, by TradeSAFE, published on 30 October 2006.

24 <www.caa.go.jp/adjustments/pdf/110117adjustments_2.pdf>.

25 <www.softic.or.jp>.

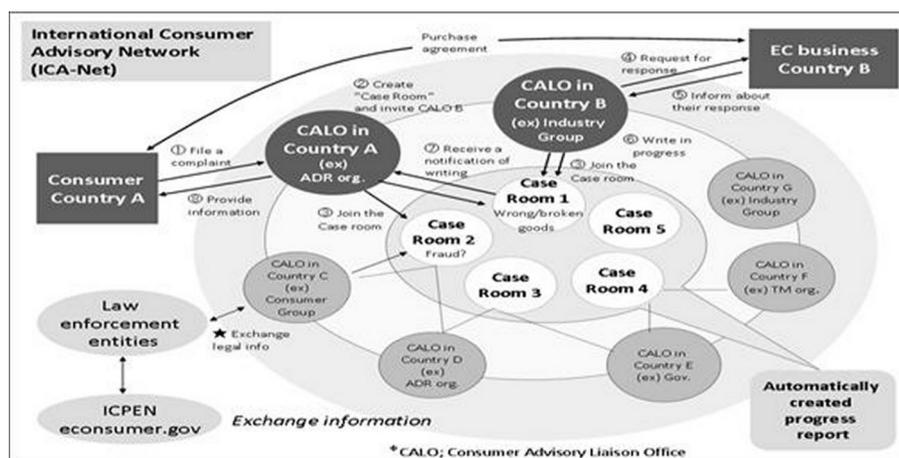
26 <www.fsa.go.jp/singi/singi_trouble/siryu/20050131_sir/03.pdf>.

work plan also provides that Japan shall consider using online platforms more proactively to participate in case investigation and online consultation, and shall resort to Internet networks to facilitate the resolution of cross-border consumer disputes. The Consumer Agency is willing to adapt successful European and American systemstocase filing, claim monitoring, and dispute resolution. The goal of these initiatives is to come up with a reasonable solution to cope the needs for actual operations.²⁷

2.2 International Consumers Advisory Network (ICA-Net)

ICA-Net is a localized approach to handle cross-border disputes led by Consumer Agency, which mainly serves southern and eastern Asia. Originally proposed by GBDe (Global Business Dialogue on Electric Commerce in November 2007 as a two-year pilot and is currently exploring broader implementation.²⁸ This is being accomplished through cooperation amongst member States,²⁹ and amongst complaint handling organizations, enforcement authorities, ADR providers and government agencies.

Figure 19 ICA-Net System Workflow³⁰



27 <www.ecnetwork.jp/public/2007kokusaireport.pdf>.

28 The execution of the pilot project was led by Professor Tsuneo Matsumoto of Hitotsubashi University from December 2008 to March 2010.

29 Japan South Korea, Malaysia, the Philippines, Vietnam, Singapore, and Thailand (The United States, Taiwan, and China also participate as observers).

30 METI presentation, Sep 2010, available at <www.odr-room.com/keio/METImodifyMandai.ppt>.

From the above chart, ICA-Net provides a secure environment for multiple parties to collaborate in the resolution of disputes. Case-related materials can be shared and discussed among national consumer advisory liaisons, members assigned to communicate or handle a complaint, and other concerned stakeholders. Communications can be made in case rooms which are open to all concerned parties, or through private communications with the consumer advisory liaisons.

The following table summarizes METI's current applications of ADR for the resolution of B2B and B2C e-commerce disputes in Japan.³¹

Table 9 METI's Current Applications of ADR for the Resolution of B2B and B2C e-Commerce Disputes in Japan

	ADR in B2C	ADR in B2B
Main organization	Japan Consumer Information Center, Consumption life center NACS in various places, Nationwide consumption life consultant society, EC network etc.	Bar association and law firm, etc. in Japanese commercial firm arbitration society and various places
Means of settlement	Advice and mediation	Mediation and arbitration
Cost	Free	Several hundred thousand yen, depends
Online	Almost by email	Hardly
Cross-border support	Only EC network corresponds (EC network participates in demonstration project ICA-Net in ERIA).	Correspondence of part (Japanese commercial firm arbitration society etc.)
Future tasks	Maintenance of organization that can correspond to border transgression dispute that assumes achievement of ICA-Net. Moreover, the ideal way of the defrayal for the border transgression dispute should examine it.	Maintenance of organization that executes low-cost, simple dispute solution corresponding to ODR.

2.3 ODR Room, ADR-OMS

Over the past few years many universities, research institutions and private sector initiatives seeking effective solutions to prevent, manage or resolve online disputes have paid close attention to the validity of ODR and its applications.

³¹ METI presentation, September 2010.

It is in this context that ODR Room Network plays an important role. ODR Room Network,³² a technology service provider participates in ICA-Net and EC Network pilot projects.³³

ADR-OMS (Alternative Dispute Resolution Online Modeling System) uses a unique modeling system to improve dispute resolution processes and the quality of ADR services. ADR-OMS can keep track of a particular Internet incident, encourage and enhance the disputants to settle, use multi-layer network and engine, to house the whole dispute resolution cycle on one platform. The system can cover the flow of whole dispute life cycle and integrate them into a searchable, accessible database, which enables the party to foresee the potential risk and take preemptive action to prevent disputes.

2.4 ODR Outlook in Japan

It is evident from various governmental, public and private ODR related initiatives that we are on the verge of a new era for ODR in Japan. However, as Japan enters the ODR world, several challenges and uncertainties do exist. For example, the complexity of cultural, politics, laws, standards, and languages, do render an interconnected regional system more effective than a global system to resolve cross-border e-commerce dispute. Japanese experience may be well-positioned to help identify domestic and regional requirements to the development of a global ODR regime.

The complexity of ODR applications and schemes and their adaptation to national contexts render ODR an interdisciplinary field that may involve professionals from a myriad of professions such as psychology, artificial intelligence, medical, and business.

In any event, it is submitted that ODR need not be exclusive to online disputes, as it is equally capable of efficiently resolving high volume offline disputes.³⁴

3 ODR IN INDIA³⁵

Any mention of India brings to mind a variety of strong associations: mysticism, history, culture, the world's largest democracy, the world's second largest population, and a rich patchwork of many languages and religions. Over the last fifteen years India has become

³² <www.odr-room.com>.

³³ <www.isid.co.jp/news/pdf/kasaku-onlinesaiban.pdf>.

³⁴ T. Sze, *Online Dispute Resolution: Its Development, Concepts and Theories*, PhD theses on file at National Library of China, Beijing, 2007, pp.83-86, available online in Chinese at <<http://res4.nlc.gov.cn/home/search.tr?method=showDetail&channelid=3&id=003640158&searchWord=%28+contributor%3D+%27%E5%88%98%E6%B5%B7%E5%B9%B4%2C%E9%9F%A9%E5%BB%B6%E9%BE%99%E6%8C%87%E5%AF%BC%27++%29>>.

³⁵ Prepared by Chittu Nagarajan.

recognized for Yoga, Bollywood, and Cricket – but it has also emerged as the definitive global home for cutting edge information technology.

In the 19th century, the British Raj entered India and began the court system. Disputes in the pre-British Raj were resolved by local elders within a community. Even today these local *panchayats* (councils) exist where people in rural districts go to resolve their issues or disputes. In the present day, the Indian Court system would require more than 320 years to clear all existing backlogged cases. To deal with this, India's judiciary has introduced and is encouraging arbitration, mediation and the *LokAdalats* (People's Court) to assist with the backlog. One of such innovative dispute resolution mechanisms to gain recognition from the United Nations is The Mahatma Gandhi dispute free village scheme which seeks to prevent the occurrence of disputes and to resolve existing disputes at the village level through the participation of the people.

The 21st century is destined to create more disputes. This era belongs to the Internet and Online environment, the ramifications of which are millions of disputes which cannot be disposed by the courts and traditional alternative dispute resolution mechanisms. Technology and continued innovations in resolution processes is essential if we are to be able to respond to these new challenges.

The Internet and the IT revolution has been a boon to India's growth and economy. But while millions of people in India work on the Internet every day, the more significant revolution for hundreds of millions of more people is the mobile phone. India has more than 700 million mobile phone users. People are communicating more and transacting more over their phones, and that is generating disputes. E-governance has also gained momentum in recent years, and is now starting to build a suitable IT infrastructure.

As was previously mentioned, India was never the forerunner in the ODR world. Until 2003, India did not have much representation in the ODR sphere. This is certainly a surprise given India's ICT status and rich dispute resolution culture. However there have been many subtle incursions of ODR into public life over the years. This was inevitable as India was introducing and leveraging technology in many sectors. The e-commerce industry receives and resolves complaints using software tools.

3.1 *India's ODR Readiness and Initiatives*

One of the early adopters of ODR in this sector was eBay India, which started using online negotiation and mediation to resolve their feedback disputes. eBay India was also a pioneer in launching the Community Court (<www.ebaycourt.com>) where trusted community members help resolve disputes amongst sellers and buyers.

On a different note, the legal outsourcing industry has been growing over the last few years and is believed to have huge potential, as the market is still largely untapped. Debt

recovery outsourcing also has its foot print in India. These organizations rely on technology and software to a great extent.

Some States have started receiving police complaints via email. Public grievance portals and receiving complaints via online or mobile means are now available. An SMS based complaint registry also exists where complaints can be registered via mobile phone. Consumer Complaint websites are mushrooming. The ministry of consumer affairs has its Consumer Online Resource Empowerment (CORE) centre which accepts and resolves complaints end-to-end via a sophisticated online process. An interesting introduction of technology for grievance redress is by the Tamil Nadu Electricity Board which generates a unique ten-digit number for its consumers for redress of grievances. Software tied to SMS technology is used to notify complainants on status of complaints. Rural kiosks will also be leveraged.

When ODR came into existence it was meant to be accessed via the Internet, and seeing how the internet was only accessible via computers, one needed to have a computer to use ODR. If that was still the situation today, the scope for ODR in India would touch only a third of the population. However, now the landscape is different because ODR extends into the mobile technology space. Mobile phones can be used to send and receive money, for health services, for learning and education, for market information services, or for agriculture and rural development services. When we speak of ODR we are now also thinking of how the tools of dispute resolution can be made available via the mobile phone. The ubiquitous mobile phone known for its affordability, accessibility, connectivity, flexible functionality, with no special skills or literacy required for operation has the capability of extending ODR to India's one billion-plus population.

Rural markets are growing with increasing purchasing power. The microfinance industry is huge. The question now is how can we adapt ODR to this emerging, constantly changing market. In a rural setting, the mindset is different. ODR designers should take care to address the unique needs of rural users, who are often inclined towards the emotional side rather than a rational or practical one. Biometrics for thumb impressions, signature verification, document scanning and voice recognition are good. However, "digitized" is still a far cry for the villages who may perceive this as alien and therefore suspicious or intimidating to rural people. Sensitivity to these issues is essential for an effective ODR system design.

3.2 *ODR for India: The 10th International Online Dispute Resolution Conference*

Under the above backdrop, for the very first time, the Tenth International Online Dispute Resolution Conference was held in Chennai, India for three days from 7-9 February 2011.

This was a great opportunity to showcase India's ODR path and for India to learn from the rest of the world. The conference brought together many experts, academics and practitioners in ODR, law, technology and conflict resolution from all around the world. While India was introduced to ODR at the meeting, the key people and players in ODR from across the globe were also introduced to India.

Amongst the topics presented at the conference and which are directly relevant to the development and proliferation of ODR in India are: (a) ODR in India, (b) Online Dialogue Opportunities in South Asia, (c) Building Legal Standards in the EU for Extra-Judicial ODR Methods: Guidelines for the Growth of Fair and Effective ODR Systems, (d) ODR and ADR: The Blurring of Traditional Boundaries, (e) ODR and Peacemaking, (f) Privacy and ODR, (g) ODR and Government, (h) ODR and Customer support, (i) Community Policing, Micro-justice and ODR, (j) ODR in the Developing World, (k) ODR and Disabilities, (l) Indian Cyberlaw, Outsourcing, and ODR, (m) Global ODR Schemes for B2B, B2C, and C2C Redress, (n) Consumer Resolution and Protection: the Indian Perspective, (o) ODR: Gathering facts through new edge forensic techniques, and (p) Current Case backlog and Mediation, and e-Governance in India.

The conference was a watershed event in the development of ODR, bringing together dispute resolution leaders and key influencers from India. Expert leaders noted: ODR is the use of information and communication technology to help people resolve their problems not only related to eCommerce but any sector that has an online presence. ODR is not the only tool necessary to create trust in transactions, but without it, online trust is impossible to sustain. At the rate that items or services are being bought and sold over the internet and mobile devices, ODR is becoming vitally important to make readily available to every online consumer.

ODR helps resolve disputes across countries and enables resolution of disputes without anyone meeting face to face. ODR is poised to handle millions more cases than it currently manages. ODR will experience tremendous growth in next couple of years. These are the defining days of this industry.

With the evolution of alternative dispute mechanism (ADR), ODR has shadowed its growth. So in some instances, with the juxtaposition of ADR techniques with ODR, the line seems blurred. In effect, ODR is becoming integral to conflict resolution.

With the sweeping changes brought about by the digital world, the 'O' in ODR may become irrelevant as most dispute resolutions will be online in future. The next generation may call it just dispute resolution.

Online Dispute Resolution in India is in its infancy stage. However, India is moving forward. With the current mobile technology boom in India, it undoubtedly is the next big thing in the ODR space. ODR applications are expanding and the future of ODR is

extremely promising even in States like India where culture, language, and policies remain intertwined and challenging.

If there was one takeaway from the gathering that could be considered a unanimous understanding among the participants, it was that the applications for ODR are expanding every day, and that there is no one right approach that works for all application areas.

3.2.1 ODR and Government

Online dispute resolution (ODR) can be effectively deployed to resolve citizen-related issues. Several talks at the conference revolved around how governments can play a pivotal role in resolving disputes by adopting a multidisciplinary approach and by avoiding bias. For example, backlogs of judicial cases can be quickly cleared through the ODR route. From commercial online dispute resolution, ODR is now at the doorsteps of government. This seems to be the natural evolution for ODR, which is being applied across domains and sectors, at times without conscious knowledge.

In order to reduce the backlogs of the number of cases filed and to control the petitions made by citizens online, it is important for the government to take responsible measures to resolve issues amicably. To do so, the government must take accountability for the action of its citizens and should undertake interdisciplinary research to improve online dialogue skills. It is important for the government to empathize, get a perspective of the problem, and set aside any form of bias while reflecting on the quality of dialogue and resolving disputes.

3.2.2 Inclusive Justice and ODR

Inclusive Justice may be defined as the process of ensuring access to justice at affordable costs in a timely and adequate manner to sections of disadvantaged and low income segments of society

One form of Inclusive Justice is Micro-Justice.

Micro-justice helps consumers establish contact with their opponent and assisting the parties with negotiation and mediation skills. Besides information about formal rights, it informs the citizen systematically about what they can expect as an outcome, and how others solved similar disputes. If the parties do not agree, Micro-justice may also organize a low cost neutral intervention for them. Stabilization of the relationship is made more likely by standard settlement contracts that make the future relationship explicit. Micro-justice dispute resolution consists of a mixture of improvement in communication, facilitation of negotiations, organization of incentives for both parties to cooperate with the process, fact-finding, establishment of norms for distributive justice, decisions on issues that split the parties and, coordination of enforcement.

The increasing indispensability of information and communications technology in the developed and developing world represent significant opportunities for access to justice by buyers and sellers including commercial transactions conducted online. Online dispute resolution is gaining new momentum with consumers taking up more to social media platforms such as mobile phones, internet, radio and other form of communication and thus enabling a new tool for the justice system.

The role of ODR as a justice tool is further amplified for the disabled especially those who are visually impaired. The use of technology has empowered those who are visually challenged to overcome the obstacles, for example by using the technology called Screen-Reader. This helps the consumer to navigate across a website with as much ease as a person with vision. Government should take some measures and draw guidelines which would make it easier for these consumers to operate the interface. Accessibility must be integrated into ODR which is cheap and readily available.

3.2.3 ODR and Consumer Protection

It is worth noting that with the proliferation of e-commerce activities, ICPEN has established a mechanism in the USA that will help protect consumers worldwide, which could be beneficial to India.

The goal of this initiative is generating and sharing information and intelligence on consumer protection issues. Owing to the increase in cross-border transactions, trade is globalized and hence the happenings in a particular country eventually affect other countries. Under ICPEN there is a program called econsumer.gov, which is a portal developed for consumers to register complaints. econsumer.gov then takes action on the complaint and imposes appropriate penalties against companies who are violating the laws. India is currently ranked at the 6th position with respect to the number of consumer complaints on econsumer.gov.

The website customergov.in registers complaints from citizens of all nationalities (and has a mechanism to resolve them even across borders through a collaborative approach). Although India is not part of this initiative, to which 29 states have subscribed, the complaints originating from India have ranked India amongst the top ten with respect to the number of complaints filed.

3.2.4 ODR, Business, Policy and the Judiciary

With respect to the business arena, Ernst & Young presented, during the conference, their analysis to address disputes in India and submitted that in the past two years, because of

technological intervention, the time for resolving disputes has been reduced by as much as one-tenth in some cases.

Increasingly people are using online communities to make decisions with regard to e-shopping and e-retail. To that effect, eBay India's innovating ODR platform "the Community Court" remains useful, as such kinds of community decisions allow members of the community to ascertain if actions taken by other members are permissible or not.

On the policy front, the Information Technology Secretary to the Tamil Nadu Government, P.W.C. Davidar stated, during the conference, that the Indian Information Technology Act of 2000 recommends that online disputes falling under the purview of the Act should be adjudicated by the IT Secretary of the respective states. Having adjudicated the first ever case in India within the purview of the IT Act, Davidar explained the learning curve he had to go through as there was no precedent to apply.

Similarly, Justice Mohan Mehta, a High Court Judge and a strong advocate of Mediation in India propagated the need for effective alternative dispute resolution mechanism to address the backlog of 24 million cases in Indian courts that would take 320 years to be resolved. Emphasising that the settlement of disputes using law and other modes are aimed at social harmony, Justice Mehta stated, during the conference, that other methods should be explored to resolve disputes. His mediation centre, which takes up cases filed in the Delhi High Court, has been launched as a joint effort of the Delhi government and Delhi High Court. As many as 35,000 cases have been resolved using the mediation centres established by Justice Mehta. Stating that ODR is yet to make a beginning in mediation, he said that there is a need to define areas in which ODR can be applied. One of the main aims should be to build trust and create mechanisms of enforcement if ODR is used.

3.3 *India's ODR Outlook: The Future*

Online Dispute Resolution is clearly moving into the mainstream, both around the world and in India. Whilst ODR programs remain a work in progress, certain initiatives such as the Tamil Nadu government and Delhi government project demonstrate that the value of dispute resolution is already understood, but that the ways that technology can assist are not yet comprehended. As technology continues to permeate global society, it is very likely that those benefits will soon be well understood, removing the final barrier to ODR's adoption.

ZHAO YUN, TIMOTHY SZE, TOMMY LI AND CHITTU NAGARAJAN

Given the promising future of ODR in India, it remains challenging, to the trajectory of ODR, to distinguish ADR and ODR, which coexist in the same dispute resolution continuum. By and large, it is clear that ODR has a great future in India, and that the coming years will bring exciting innovations as India fully realizes its potential.