

ONLINE DISPUTE RESOLUTION (ODR) MECHANISM: PROSPECTS IN BANGLADESH

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ABSTRACT

Online Dispute Resolution (ODR) is one of the potential wings of dispute resolution mechanism that unites with aspects of Information and Communication Technology (ICT). It is a derivative from the conventional Alternative Dispute Resolution (ADR) mechanism. Moreover, with the significantly rapid developing ICT sector, there is an urgent need for a direct and more efficient dispute resolution mechanism for online disputes. In Bangladesh for example, the rapid developments in the ICT sector have led to an increased access to internet facilities by the citizens. It has therefore become difficult to ignore the changes brought about by ICT developments to the world of dispute resolution. Consequently, this study seeks to address the viability of ODR mechanism in the Bangladesh context. Moreover, this study has attempted to explore the prospects of launching ODR mechanism in Bangladesh. Based on secondary data, this exploratory study has been carried out with content and case analysis approach. It will seek to clarify the barriers inhibiting this application and how they can be overcome. It will also address the validity of ODR as an independent dispute resolution mechanism contrasting it with the already established forms of ADR.

Key Words: ODR mechanism, ADR mechanism, ICT, Prospects, Launching, Bangladesh

1. INTRODUCTION

The 21st century has witnessed tremendous technological development in different fields throughout the world.¹ There has been enhanced proficiency, productivity, and transparency and has also reduced corruption in organizations as a result of the use of different modern technological means. With the passage of these significant changes, the whole world has already entered into a digitalization process in every possible spheres of human life. In

Bangladesh, the government has launched e-governance in almost every organ within it. Judiciary is one of the vital organs of a state. The judiciary of Bangladesh has also taken some initiatives to launch the digitalization process of the entire court proceedings.ⁱⁱ

The resolution system which depends on the widespread use of technological tools can play a vital role to decrease the burden of the courts. Through the means of technological devices, public can easily access to justice and operate the litigation processes and outcomes. In this era of modernization, the world is largely based on ICT, and people are ardent to get their disputes solved within a few minutes. They hesitate and even feel pain to waste even a single moment unnecessarily. But the authorities concerned are not so proactive to launch online dispute resolution mechanism in Bangladesh. It is said that there has been continuous pressure on our judicial system to resolve court proceedings within a very short time by the use of online functions.ⁱⁱⁱ This corresponds with the constant global development in various areas of technology such as online commerce and telecommunication. Consequently, ODR has a vital place in the current global space.

This study will attempt to determine the practicality of ODR in Bangladesh. It will also look at how ODR can fit in as an independent alternative form of dispute resolution. It will also assess the state of technology in the country and determine the practicality of ODR with the current technological infrastructure. It will also elaborate on the effect of ODR on the conventional ADR methods. The contribution of this research lies in the fact that it shall probably be the first of its kind in Bangladesh to understand the usefulness of ODR for business disputes in particular and other disputes in general. Lastly, it will look at some of the benefits to be expected from embracing an independent ODR framework.

2. ONLINE DISPUTE RESOLUTION

Online Dispute Resolution (ODR) is dispute resolution using information technology conducted at a distance, usually via the internet, independent from the physical location of the parties. ODR directly emerged as an online extension of ADR.^{iv} It is observing that ODR can assist the parties in resolving the dispute in a simple, fast, flexible and secure manner without the need for physical presence at a meeting or hearing. Also observing that ODR represents significant opportunities for access to dispute resolution by buyers and sellers including cross

border commercial transactions, both in developed and developing countries. ODR is born from the synergy between ADR and ICT, as a method for resolving disputes that are arising online, and for which traditional means of dispute resolution are inefficient or unavailable.

It refers to the use of ADR techniques facilitated by internet. It is seen as an important new tool, a new system, a new way of doing business that is more efficient, more cost-effective and much more flexible than traditional approaches. It combines the efficiency of alternative dispute resolution with the power of the internet to save business, money, time and frustration.^v

ODR systems have continued to evolve with the development of technology, incorporating new advancements of technology into the dispute resolution process. These developments, including the use of artificial intelligence, have increased the efficacy of ODR, fostering the popularity and use of such systems.^{vi}

ODR mechanism saves time and money by eliminating the need for face-to-face meeting. Because all interaction may be done online, parties don't have to agree on a meeting place, eradicating travel expenses and time.^{vii}

3. REASONS FOR EMBRACING ODR SYSTEM

ODR is seen as an important new tool, a new system and a new way of doing business that is more efficient, more cost-effective and much more flexible than traditional approaches. It combines the efficiency of alternative dispute resolution with the power of the internet to save businesses money, time, and frustration.^{viii} ODR has the potential to improve the state of access to justice in Bangladesh. It is needed for its independent recognition in the legal system and evaluated its viability as a legitimate alternative that can be applied in lieu of the existing conventional forms of ADR. ODR is used to portray a stand-alone system of ODR that is not annexed the conventional methods of ADR. It goes without saying that indeed the prospect of ODR will be beneficial to the current state of access to justice in Bangladesh.

Technology has come to the legal field to stay, and if the court proceedings are the civilized form that mankind has found to make war and ADR is a way to rationalize it, digitalization of dispute resolution is in its advanced form.^{ix} ODR methods will undoubtedly serve to improve access to justice since these methods are capable of reducing the judicialization of ordinary conflicts of a simple nature. From a social perspective, it is necessary to question whether investing a large part of our limited public resources in the judiciary is, in fact, appropriate

when there are faster and less expensive alternatives available. ODR is that type of newly explored dispute resolution system. It can serve different objectives and be designed to meet a wide variety of different goals which directly related to improve the administration of justice and rule of law. We have broadly explored the following reasons for which ODR system will be embraced:

(a) Flexible Approach:

This is one of the major advantages of ODR over offline court action. ODR allows for various methods of ODR to be used incrementally: if negotiation/mediation does not work, the parties can move on to binding arbitration. Some ODR providers have already adopted this scalable approach.^x Furthermore, ODR may be more flexible as to the remedies and solutions adopted. A survey carried out by the UK National Consumer Council in 1995 found that out of 100 people involved in a civil dispute only 32 are primarily seeking financial compensation- 25 people answered that they were mainly trying to prevent the same thing from occurring again.^{xi} Therefore, court enforced damages, as the main remedy will be unsuitable for some disputants and ODR schemes might be in fact more appropriate. ODR can provide the opportunity for the parties to discuss and air grievances, not considered to be relevant in a court.^{xii}

(b) Cost Efficiency:

For access to justice to be ensured, the cost of dispute resolution should be proportionate to the amount at stake. The cost factor is one of the perceived important advantages of ODR. It is generally assumed that the use of networked technology and general accessibility i.e. avoidance of travelling costs makes dispute resolution much cheaper. Also, the use of intelligent software might reduce other costs such as costs for translation or for obtaining legal advice.^{xiii}

(c) Speed and Convenience:

One of the major aspects of ODR is speed and convenience of use. Again, this factor is one of the advantages of ODR compared to offline court action. This is confirmed by the Consumers International survey, which concludes that most ODR providers meet the criteria of timeliness and convenience.^{xiv}

With more and more e-commerce transactions being conducted in Bangladesh, there will be an increasing number of online disputes. E-Commerce disputes arising out of business-to-

consumer contracts or business-to-business contracts, initiated on the internet, could be resolved online.^{xv} In these contractual disputes, the parties are both presumably familiar with operating the internet, have e-mail facilities, and have an online financial relationship, thereby making online dispute resolution easier.^{xvi} ODR can be used to resolve issues concerning delivery of products, enforcement of warranties, guarantees on products, over-billing issues, and issues arising out of click-through agreements i.e. “By clicking you are accepting personal liability”, among many others. In fact, several ODR providers all over the world are involved in assisting parties to reach a settlement in online contractual disputes. From the above, it is evident that ODR can both encourage the practice of conventional methods and at the same time, it has the potential of diminishing the role of conventional ADR.

4. LEGAL FRAMEWORK FOR ODR IN BANGLADESH

ODR does not have a firm legislative foothold in Bangladesh. There are various legal instruments that deal with the practice and enforcement of ADR in Bangladesh.^{xvii} There is no legal material that deals specifically with the practice of ODR in the country. However, various provisions of law and of conventional ADR may act as footstones for the commencement and development of ODR in Bangladesh. There are a number of legal instruments that give authority to the various forms of ADR in Bangladesh.

We have the necessary institutions in place that can come up with policy that can be translated into viable laws. Consequently, these institutions can act upon those new laws and come up with cogent ODR initiatives. The scope of online disputes is increasing and ODR may be the appropriate step in catering for their growth. The current legislative framework does not promote online dispute resolution. Quite the contrary, the lack of comprehensive government regulation and legal certainty hampers the growth of ODR.^{xviii}

The legal framework of ADR has developed in Bangladesh over the last few years and acquired a distinct position in the dispute resolution process. ADR mechanisms can now be applied in resolving a wide array of commercial disputes, family disputes and civil disputes, among others, thus easing access to justice. However, if we juxtapose the ADR provisions under different laws of the country with their functional aspects, then it will be obvious that the ADR mechanisms could not manage to yield satisfactory result as it has been expected at the time of their introduction. So, it is the demand of time to introduce online system in dispute resolution by amending the above mentioned laws of our country. It is clear from the discussed ODR

structures and entities that it is essential to establish a concrete legal framework from which initiatives can be grounded on. For example, the legalization of digital signatures in Bangladesh paves the way for more online transactions thus giving more legitimacy to ODR initiatives.^{xix}

This study has attempted to identify the position of ODR in Bangladesh. It has also highlighted the relevant laws that apply with respect to ODR and other legal aspects that would pave the way for the development of ODR in Bangladesh. It has also identified various institutions in the country that have aided in the development of ADR and how they can or already have, contributed to the development of ODR in Bangladesh. The focus on ADR and not ODR is premised on the fact that Bangladesh has already embraced ADR in the resolution of disputes. In addition, ODR shares similar underlying principles envisaged in ADR i.e. access to justice, expeditiousness, and an alternative/complimentary to the court mechanisms etc. To best understand the applicability of ODR in Bangladesh, it would be key to identify legal and institutional underpinnings of ADR and thereafter scrutinize how ODR can be conceptualized within the same provisions.

5. PRACTICALITY OF ODR WITHIN THE CURRENT INSTITUTIONAL FRAMEWORK

There are a number of institutions that deal with ADR in Bangladesh. Bangladesh International Arbitration Centre (BIAC), Bangladesh International Mediation Society (BDIMS), the Negotiation Institute and the Judiciary. These institutions have important roles in the practice and regulation of ADR. The question arises as to how ODR can be practiced and regulated by the same institutions.

More so, institutions may have to invest in embracing this form of dispute resolution. Like in the UK, there may be the need to establish an ODR platform that deals specifically with ODR.^{xx} As it stands, Bangladesh does not have an ODR platform specifically dealing with online disputes. This may come as a challenge that may deter the current institutional framework from making that leap into the online platform. A communication company can be utilized to further the goal of an independent ODR system. The Communications Authority can utilize Network to provide an access point to ODR services through their mobile devices.

The institutional framework also involves the Judiciary. Unlike private institutions as mentioned above, it is part of the government and it is bound by law to act in the interest of its citizenry. Therefore, it is less likely for the judiciary to capitalize on private interests over the needs of the people. This institution is in a unique position regarding ODR. Being an arm of the government, it is in the best position to establish a centralized ODR platform as in the case of India in form of their Centralized Public Grievance Redress Monitoring System.^{xxi} A page can also be taken from the EU ODR platform and the proposed, Her Majesty's Online Court (HMOC) in the England and Wales.^{xxii}

Similarly, institutions that provide services to the general public are bound to have disputes and therefore can benefit from an ODR system. Institutions such as the Insurance Development and Regulatory Authority (IDRA), the National Board of Revenue (NBR), Bangladesh Telecommunications Company Limited (BTCL), Bangladesh Association of Banks (BAB), and the Bangladesh Bank (BB) etc can play a key role in the advancement of ODR.

The above institutions can operate in tandem with the proposed online platform. The platform can act as a link to specific online platforms hosted by the institutions. Here, specific expertise can be applied to specific cases these platforms will be regulated by the independent ODR framework.

The use of facilitative rather than role diminishing modifications can encourage its implementation. Conventional methods of ADR can be altered to cope with the ever-changing technological standards in the country. This will also require changes in the legal framework since Bangladesh has established laws on some types of ADR such as the Arbitration Act.^{xxiii}

6. TECHNOLOGY IN RELATION TO THE APPLICABILITY OF ODR IN BANGLADESH

Rapid development in the ICT sector in Bangladesh is very evident in the last few years.^{xxiv} Now, the world is called the ICT based world. Bangladesh has gone a long way of its development in ICT sector. It has therefore become difficult to ignore the changes brought about by ICT developments to the world of dispute resolution. It is a matter of great pleasure

that the present government of Bangladesh is very much eager to connect all the sectors with technology and so make any law related with technology.

Susan Sibley stated that when technology assists to promote dispute resolution, the law should act as a snap-shot of society, to ‘capture the changed society’.^{xxv} This raises the question as to whether the law has considered the changes in technology in relation to ODR. The relationship between law and technology has been criticized for not being linear but is rather seen as a multifaceted system.^{xxvi} The law can be seen as a system that runs autonomously alongside systems such as technology politics and commerce.

However, these systems can also depend on one another as is the case in ODR. Technology may take the place of the judge or decision-maker in ODR, the system must have safeguards that the persons involved would have the dispute resolved in a fair manner.^{xxvii} Therefore, ODR law should account for procedural fairness if it is to be accepted as an independent dispute resolution process. The incorporation of technological aspects into a dispute resolution process prompts the review of the current legal framework. The current legal framework supports ADR and not ODR. Therefore, to properly encapsulate all aspects of the developing state of technology into a dispute resolution process, particular attention must be given to it in the form of an independent legal background, that is to say that the current state of technology has not been sufficiently reflected in the existing ADR legal framework.

ODR may require additional expertise in terms of human input. This means that professionals in the ICT sector will be required to supplement the efforts of legal professionals. This puts pressure on the legal professionals to acquaint themselves with the technological aspects of ODR so as to avert the need of an ICT expert.

It is evident that ODR methods cannot be fully utilized where technology has not equally developed. This is simply because ODR is dependent on technology in order to be practiced. In this case, we have no problem because we have a tremendous success in the ICT sector. It is also evident that the current legal framework must be altered so as to accommodate technological developments which in turn will consequently provide a better space for the commencement and practice of ODR mechanism.

7. PROSPECTS OF LAUNCHING ODR IN BANGLADESH

ODR has a long history for its origin and development. It is not emerged overnight. Its history is directly connected with the development history of ICT sector all over the world. It is taken long time to convert from off-line to online and to inaugurate this mechanism in the litigation system of any country.^{xxviii} As we have passed a long way in the off-line litigation system that means ADR, we can easily think of online resolution process. It has been stated earlier that the process of resolving suits through ADR system is nothing new in Bangladesh. All sorts of ADR mechanism prevails in Bangladesh.^{xxix} We have a great achievement in dispute resolutions through ADR process. It is evident that ADR mechanism has played a vital role to reduce the huge backlogs of cases. So, it is high time to start moving with a view to launching ODR system in our litigation process. We have enough potential to launch and practice this system.

It is well-established that ODR is the future of ADR. It offers the strongest opportunity for ADR to expand and deliver on its fullest potential. Dispute resolvers should learn about ODR tools and experiment with ODR platforms, and training programs should make ODR a core component of ADR education, so that we can all work together to ensure ODR lives up to the mission and vision of ADR movement.^{xxx} It is matter of pleasure that Bangladesh has achieved a long in the field of ADR. In this regard, both public and private sectors including NGOs have played a vital role. We have already walked a long way of ADR movement and we are not in a backward situation in the field of ICT than the countries which already launched ODR system. So, it is possible for us to introduce ODR mechanism.

Given the affordable technological infrastructure abundantly available, it is certain that ODR would be the preferred medium for dispute resolution even when both the parties reside in the same city.^{xxxi} This is so because in most metropolitan cities especially Dhaka city, due to the traffic during peak hours, it takes an average of four or five hours to get into the heart of the city. Considering that it could take an equal amount of time to get back, a party would be well off attending the said meeting via video-conference so that he saves that extra fifty per cent time that he would have spent in traffic. Furthermore, his presence may not be required for all the time in which case he can conveniently log off and, being a businessman, get down to negotiating some or the other deal instead of negotiating his vehicle through the traffic for another hour or so.

As a large number of people of our country are poor, a party even saves on legal costs as lawyers, and especially counsels, charge by the hour and hence they could be engaged for a shorter duration if the proceedings are conducted online. And if the neutral or the other party is in another city, this would also save the cost of transport and accommodations. The additional benefit of conducting proceedings online is that this affords the parties to engage the services of experts in any field who, due to their various other commitments, would not be available thanks to the time-consuming efforts of attending an off-line meeting.

From the above discussion it is clear to us that Bangladesh has a great success in ICT sector which is the first priority to launch ODR system in any country. So, we have no problem in this regard. We have the problem in taking initiatives. Believing that governmental support is necessary for the development of ODR, it should be noted that, from organizational and structural perspectives, there are three main ministries that play important roles in domestic legislation involving online transactions of any kind, namely, the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Posts, Telecommunications and Information Technology and the Ministry of Information.^{xxxii}

Online Dispute Resolution in Bangladesh is in its infancy stage. However, Bangladesh is moving forward. With the current mobile technology boom in Bangladesh, it undoubtedly is the next big thing in the ODR space.^{xxxiii} ODR applications are expanding and the future of ODR is extremely promising even in States like Bangladesh where culture, language, and policies remain intertwined and challenging. It can thus be seen that in view of a favorable climate being brought about for dispute resolution through the initiative of court annexed ADR, a culture is soon going to set in where ADR, and in turn ODR, will take centre-stage.

Given the promising future of ODR in Bangladesh, 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 Bangladesh, and that the coming years will bring exciting innovations as Bangladesh fully realizes its potential.

8. CONCLUSION

The Bangladesh judicial system is marred by delays.^{xxxiv} Businesses suffer because disputes are not resolved in a reasonable time. Even with the use of methods of alternative dispute

resolution a fair number of high value disputes end up in a court. Thus, courts hardly have any time for taking up disputes of lower value. Also every disputant cannot afford to travel and contest in a court of law. Online Dispute Resolution has emerged as a new method which may be beneficial in a geographically small but over-populated country and also where a large number of business to business (B2B) or business to customer (B2C) disputes are significantly of low value. ODR is the best available method for resolving such business disputes.^{xxxv} Of late, Bangladesh Judiciary has been successfully inaugurated the e-courts system and the judiciary has also shown perceptible shift towards use of new technology and methods in resolution of disputes.

Considering the above, this study has attempted to determine the practicality of ODR in Bangladesh. It has also looked at how ODR can fit in as an independent alternative form of dispute resolution. It also assessed the state of technology in the country and determined the practicality of ODR with the current technological infrastructure. A regulatory authority will be essential in the establishment of ODR. Therefore, this study also attempted to determine a potential regulator given the stark differences with conventional methods. This research would also elaborate on the effect of ODR on the conventional ADR methods. Lastly, it has looked at some of the benefits to be expected from embracing an independent ODR framework.

The current laws and institutions governing ADR in Bangladesh have the potential to act as the platform necessary to facilitate the introduction of ODR. Bangladesh's constantly developing ICT sector^{xxxvi} has a key role to play in this development. With the necessary support and infrastructure, Bangladesh can comfortably make the next step by incorporating ODR-specific aspects in the pre-existing legal and institutional framework in place. Launching of ODR is the dire need for the overall development of litigation system of Bangladesh. The study has explored that there is indeed the need for the recognition of ODR, as an independent form of dispute resolution in the legal framework in Bangladesh. The study has also shown the prospects to launch ODR mechanism in the litigation system in Bangladesh, discussed its future and made a few suggestions for its success.

8.1 FINDINGS AND RECOMMENDATIONS

The findings of this study revealed that the current legal framework in Bangladesh does not expressly restrict the launching and application of ODR neither does it expressly acknowledge its existence in Bangladesh. From the research, it is found that the institutional framework has

not engaged in the promotion of ODR methods. It is also found that institutions have the necessary resources to engage in the commencement and promotion of ODR. So, following the above findings and corresponding conclusions, the following recommendations are proposed:

a) Need to formulate ODR Legislation

That the current institutions and individual experts dealing with the promotion of alternative methods of dispute resolution should engage in the development of policy that will be aimed at formulating legislation that will specifically regulate ODR and its practice in Bangladesh. This proposed document should contain all variations of ODR and include detailed guidelines on how each will be practiced.^{xxxvii}

b) Establishment of Online Platforms

The State with assistance from experts in the field of ADR should mobilize to create an online platform for the resolution of disputes online. Guidelines on how the platform will be utilized and governed should be contained in the proposed ODR legislation. Government's involvement in the initiative is essential for the maintenance of standards that are favorable to the general citizenry.^{xxxviii}

c) Launching ODR Education

The current institutions in place should place more focus in the dissemination of information regarding ODR through their publications. Educational institutions should also engage in including ODR as a method of dispute resolution. The consequence of these actions would be the increased awareness of the existence of ODR as a mechanism to resolve disputes.^{xxxix}

d) Recognition of ODR as a Stand-alone Process

For the recognition of ODR as a stand-alone dispute resolution process to be achieved, the proposed ODR legislation should be structured in such a way that ODR will have the capacity to be developed without relying on the conventional methods. ODR will in some cases inevitably derive its principles from ADR but this does not mean that the practice of ODR should be entirely dependent on conventional methods. To create this room for expansion and acceptance of ODR, the law, institutions, and other potential

ODR participants should be aligned to the idea of ODR as a stand-alone dispute resolution process.^{xi}

e) Updating the Existing Legal Framework

The law ought to adapt to changes in technology where novel aspects emerge and regulation is needed for its smooth application. However, the rate at which technology changes is significantly faster than the rate at which the law can keep up. This creates a discrepancy between the two and this discrepancy drags the adaptation process limiting the optimization potential of new technologies.^{xli} Thus, lawmakers should be keen to act upon these changes as soon as they arise. With respect to ODR in Bangladesh, its optimization greatly relies on the adequate adaptation of our legal framework to one that embraces the technology required to support ODR.

f) Improvement of the Security System

It is totally impossible to think of launching ODR system without improving the security system of our internet. Hacking has been one of the prominent dangers of the use of the internet.^{xlii} ODR methods are therefore also vulnerable due to their presence or use of the internet. Probably the most prominent danger according to Amauger and Baggott is the inadequate confidentiality, security and authenticity in ODR systems.^{xliii} So, the internet system must be secured from hacking. Otherwise, the litigants will lose their interest to resolve their disputes through online.

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