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FROM ADR TO ODR: EXAMINING ONLINE ARBITRATION, LEGAL CHALLENGES, AND DATA PROTECTION CONCERNS IN THE DIGITAL ERA

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I. ABSTRACT

“When will mankind be convinced and agree to settle their difficulties by arbitration?” by Benjamin Franklin. ODR websites have become an unavoidable tool within the modern online environment, as it is necessitated to enable risky conflict management within the online business and international transactions setting. ODR combines the classical Alternative Disputes Resolution (ADR) practices such as arbitration, mediation and negotiation with high-tech innovation. In this script, ADR is examined and the development of ADR into ODR is explored with a specific focus on online arbitration. Even though the process of digitalization has significant advantages to the arbitration process, it also presents an extensive array of complex challenges that requires careful consideration. Major concerns include weak cybersecurity, data confidentiality, procedural fairness, technological access difference between disagreeing parties, enforceability of arbitration decisions, and lack of face-to-face communication. The paper explores the issue of data protection in the digital environment, clarifying the basic concepts of data protection and the issues that appear due to the current enforcement systems in the domain of online arbitration. It also reflects on how applicable rules like the GDPR are to an arbitration process, especially in international disputes relating to the cross-border cases where jurisdictional and compliance facts are often raised. This paper will discuss the process in which the legal systems of the EU, India and US are moving toward online disputes resolution (ODR) and online arbitration by comparing the three legal systems. It outlines defensive safeguards to the safety of party data and achieving equitable results, and offers remedies to enhance confidence,

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transparency, and efficiency in technology-driven procedures that do not reduce the fundamentals of arbitration in the age of technology.

II. KEYWORDS

Online Disputes Resolution, online Arbitration, GDPR, Data Protection and Cybersecurity, Confidentiality in Arbitration.

III. INTRODUCTION

The rapid advancement the introduction of digital technology has heavily influenced the sphere of Alternative Dispute Resolution (ADR) and has, therefore, given rise to the concept of Online Dispute Resolution (ODR) as a crucial tool that enhances access to justice.³ ODR uses online systems, digital arbitration, and automated mediation systems to facilitate the process of conflict settlement without having to invite the disputing parties to the real world being physically present in a court or mediation center.⁴ This development significantly reduces expenses, geographical barriers, and shortens the justice delivery time frame, which makes justice more accessible to people and businesses worldwide.⁵

Among the most remarkable areas of ODR application is the use in e-commerce disputes in which the international platforms such as eBay and PayPal solve the millions of consumer complaints annually with the help of online arbitration and mediation.⁶ Research indicates that ODR does not only represent a technological modification of ADR, but also redefines the justice delivery to align with the digital age.⁷ ODR can offer scalable solutions to handle large volumes of disputes by tapping into artificial intelligence, chatbots, and secure video conferencing.⁸

³ Daniel Murphy, *The Emergence of Online Dispute Resolution*, 19 J. Cyber L. 143 (2020).

⁴ Daniel Murphy, *The Emergence of Online Dispute Resolution*, 19 J. Cyber L. 143, 148 (2020).

⁵ Robert Yang, *Technology and Justice Delivery* 148 (HKU Press 2021).

⁶ Katia Rodriguez, *E-commerce Disputes and ODR Models*, 12 J. E-Bus. L. 221 (2019).

⁷ Katia Rodriguez, *E-commerce Disputes and ODR Models*, 12 J. E-Bus. L. 221, 228 (2019).

⁸ Alan White, *AI and the Future of ADR* (Jossey-Bass 2021).

ODR platforms have been very effective in reducing the urban-rural gap, especially in emerging jurisdictions, whereby parties in distant localities have been able to access legal services without taking a trip to the city and incurring costly travel and legal costs.⁹ Further, there are also hybrid models that have emerged, which combine both offline and online procedures, which guarantee procedural fairness and exploit the benefits of technology.¹⁰

However, the integration of technology into ADR is not without its challenges. Concerns relating to data privacy, cybersecurity, and the absence of uniform legal frameworks for ensuring the enforceability of ODR outcomes remain significant. Moreover, differences in digital literacy and technological access across regions may hinder the broader adoption of such systems and risk widening existing inequalities in access to justice.¹¹

Despite these issues, the trend of the ODR demonstrates a clear possibility of becoming the main tool in approaches used in the resolution of disputes in the international arena.¹² Its adaptability, effectiveness, and openness point to a new paradigm of a more inclusive and technology-filled system of justice that can meet the demand of an ever more interconnected world.¹³

A. Research Objectives

The present paper seeks to achieve the following objectives:

1. To examine the transition from traditional Alternative Dispute Resolution to Online Dispute Resolution in the digital era.
2. To analyse online arbitration as a developing mechanism within the broader framework of ODR.

⁹ Chen Liu, ODR in Rural Justice Systems, 9 Asian J. L. & Soc'y 174 (2020).

¹⁰ Chen Liu, ODR in Rural Justice Systems, 9 Asian J. L. & Soc'y 174, 181 (2020).

¹¹ Sakina Anwer & Tariq Hussain, The Role of Alternative Dispute Resolution (ADR) in Enhancing Access to Justice, 3 Contemp. J. Soc. Sci. Rev. 7 (2025).

¹² Michael Stevens, The Future Trajectory of ODR, 34 Harv. J. L. & Tech. 402 (2021).

¹³ Sakina Anwer & Tariq Hussain, The Role of Alternative Dispute Resolution (ADR) in Enhancing Access to Justice, 3 Contemp. J. Soc. Sci. Rev. 7 (2025).

3. To identify the major legal, procedural, jurisdictional, confidentiality, cybersecurity, and enforcement challenges arising in digital arbitration.
4. To assess the implications of data-protection laws, particularly the GDPR and India's data-protection framework, on online arbitration.
5. To compare the regulatory approaches adopted in the European Union, the United States, India, and selected Asian jurisdictions regarding ODR and online arbitration.

B. Research Questions

The paper is guided by the following research questions:

1. How has the evolution from ADR to ODR transformed the nature and accessibility of dispute resolution?
2. What are the key legal and procedural challenges associated with online arbitration?
3. How do concerns relating to confidentiality, cybersecurity, consent, jurisdiction, and enforcement affect the legitimacy of digital arbitration?
4. What role do data-protection laws such as the GDPR and India's emerging privacy framework play in regulating online arbitration?
5. How do the regulatory models of the European Union, the United States, India, and selected Asian jurisdictions differ in addressing ODR and online arbitration?

C. Research Methodology

This paper adopts a doctrinal and comparative legal research methodology. It relies on primary legal materials, including statutes, regulations, international instruments, policy documents, and relevant legal developments concerning arbitration, online dispute resolution, and data protection. It also refers to secondary sources such as books, journal articles, reports, and scholarly commentaries. The comparative aspect of the study examines the approaches adopted by the European Union, the United States, India, and

selected Asian jurisdictions in order to identify regulatory gaps, legal challenges, and possible reforms for strengthening online arbitration in the digital era.

IV. ONLINE DISPUTE RESOLUTION: A RESULT AND A CONSEQUENCES OF THE DIGITAL ERA

A. Integration of Technology and ODR

Information Technology has become an important element in legal practice. The use of electronic tools in the creation, purchase, editing, storing, transmitting, and erasing of information has turned out to be more efficient, quicker, and accessible. As such this development has created a climate that has contributed to the proliferation of the modern environment of information technology, especially owing to the spread of the notion of information dependent and dynamic nature of dispute resolution processes.¹⁴ The Internet has actually become a truly global and borderless market where anyone with access to a computer with a connection to the World Wide Web may participate in any type of international business transactions. As a result, electronic commerce has replaced traditional high-tech retail making the Internet a groundbreaking and fast-developing medium of communication and an entirely new tool of running business.¹⁵

Online Dispute Resolution (ODR) as a novel tool offshoot of Alternative Dispute Resolution (ADR) uses digital tools to mediate, arbitrate, and negotiate.¹⁶ This is an effect that has increasingly gained significance in the field of a lot of momentum since its creation with various cases of online conflict resolutions that are specifically designed to solve problems within the context of e-commerce. Like its traditional counterpart, ODR makes use of ADR techniques, such as arbitration, mediation, and negotiation, but the key similarity of this technique is that it takes place in an online platform.¹⁷

¹⁴ Ibrahim Saad Eddine Saad El-Masri, *ADR in the Digital Age: Between Data Protection, Information Technology and Cybersecurity* 92 (2021).

¹⁵ Devaiah M. M., *Protection of Confidentiality and Security of Parties in Online Dispute Resolution*, 7 *Int'l J. Multidisciplinary Rsch.* 1, (2025).

¹⁶ Satish Kumar, *ADR in the Digital Era: Cyber Dispute Resolution* (2025).

¹⁷ Devaiah, *supra* note 15.

Online Dispute Resolution (ODR) is a dispute management system that seeks to resolve a dispute by using online mediums without necessarily involving the physical presence of a court and thus, this is the way in which technology can be used in legal affairs. The possibility of ODR in offering cost-effective, convenient and substantive justice, especially in consumer, corporate and employment disputes has led to its rising popularity in India. ODR model is credited with being transparent, efficient and economically viable when compared to the traditional ADR practice and litigation. At the same time, the issue of data privacy and information self-sufficiency have grown in importance, with these sites becoming increasingly dependent on user data, including the history of transactions, personal identifiable information, communication, and documentary evidence, to mediate in the event of dispute.¹⁸

B. Paradigm Shift in the field of Online Dispute Resolution

The shift of ADR to ODR did not happen in the short run. There should be a critical distinction between the ADR techniques of traditional methodologies that involve the use of the internet and other information technology tools and the online dispute resolution methods which are becoming relevant, initiated, carried out and implemented using purely digital tools in cyberspace.

This transition was informally adopted by the ADR practitioners even prior to the mid 1990s in the form of information booths or intermediary platforms that were meant to help people. Later, informal systems of online dispute resolution started to gain respect especially in the United States where they were treated separately as ADR systems in traditional approaches and developed to become a recognized industry by 1998.¹⁹

ODR is an amalgamation of ADR and Information and Communication Technology (ICT). Different terms have been used to describe this phenomenon such as Technology-Mediated Dispute Resolution (TMDR), Online ADR (o-ADR), Electronic ADR (e-ADR),

¹⁸ Akash Gupta & Apoorva Dixit, Data Privacy and Implications for India's Online Dispute Resolution Economy, *Int'l J. Econ. Pracs. & Theories* 129 (2025).

¹⁹ Mohamed S. Abdel Wahab, Ethan Katsh & Daniel Rainey, *Online Dispute Resolution: Theory and Practice* 23 (Eleven Int'l Publ'g 2013).

Internet Dispute Resolution (IDR), among other labels that use the prefixes virtual and cyber along with the conventional dispute resolution systems. The original mission of ODR was to resolve conflicts emerging in online space, especially in cases when the traditional systems of dispute resolution did not exist at all or were considered to be too weak.²⁰

As a result, ODR became an online form of ADR, and it was mostly viewed by the academia as ADR with ICT devices added on it.²¹ A broader meaning was then embraced and included describe online litigation and other similar structures types of dispute resolution supported by ICT.²² However, at the global level, ODR has been confined in its definition to include only extra-judicial online dispute resolution. Thus, it is possible to interpret ODR as a modernized and upgraded form of ADR that has been developed in line with the demands of the era of the Internet. The very purpose of ADR is to offer solutions to conflicts that are extra-judicial in the sense; therefore, ODR is an online extra-judicial reflection of the digital space, which hopes to attain similar results.²³

Despite this, although ODR is an updated form of ADR, the aspect of integrating ADR with information technology is not that of transplantation; but of synergistic growth that makes ODR unique in itself.²⁴

On top of its ability to resolve low and medium scale online disputes (e.g., e-disputes, e-commerce conflicts), ODR can resolve offline and high-value disputes. This ability is demonstrated through the activities of websites like the “Cybersettle” and the clickNsettle which operate as an online dispute resolution service provider. Simply put,

²⁰ Ethan Katsh & Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* 9 (Jossey-Bass 2001).

²¹ Colin Rule, *Online Dispute Resolution in Business: B2B, E-commerce, Consumer, Employment, Insurance, and Other Commercial Disputes* 44 (John Wiley & Sons 2002).

²² Online Dispute Resolution: Challenges to Contemporary Justice, Gabrielle Kaufmann-Kohler & Thomas Schultz *Online Dispute Resolution: Challenges to Contemporary Justice* 22 (Kluwer Law International 2004).

²³ Rule (Colin), OP. Cit. *supra* note 9, page 43

²⁴ Julia Hörnle, *Cross-Border Internet Dispute Resolution* 76 (Cambridge Univ. Press 2009).

ODR applies to a wide array of conflicts, regardless of whether their origin is online or offline. However, it is particularly beneficial in disputes arising in cyberspace, where its use may help reduce jurisdictional complications and facilitate more efficient resolution.²⁵

V. DIGITAL ARBITRATION AND ITS NOTABLE ISSUES

Many international institutions and business organizations have expressed their concern in digital arbitration, which is a particular illustration of ODR. Digital arbitration works in a similar way as traditional arbitration, and the only difference is that disputes are settled using the modern technological resources including video conferencing, electronic mail, chat programs, and electronic signatures (e-signatures).²⁶

Within the framework of international arbitration, the participants have, over a long period of time, got accustomed to the utilization of the modern communication technologies throughout their proceedings.²⁷ The 2018 International Arbitration Survey conducted by Queen Mary University of London and White & Case, titled *The Evolution of International Arbitration*, reported that technology was already widely used in international arbitration. In Chart 35, the survey recorded that respondents had used videoconferencing “frequently” or “always” in 60% of cases, hearing-room technologies such as multimedia presentations and real-time electronic transcripts in 73% of cases, and cloud-based storage such as FTP sites or data rooms in 54% of cases. The manuscript should therefore cite the primary survey report with a precise pinpoint reference rather than relying on a general secondary citation. On the same note, the participants of arbitration are not new to the practice of using online, virtual, or remote hearings which are carried out through telephone or video conferencing; in fact, a large majority of case management conferences were done through telephone, and some of the hearings concerning procedures were done through telephone. It has been quite a common

²⁵ El-Masri, *supra* note 14, at 95.

²⁶ Devaiah, *supra* note 15, at 1.

²⁷ Ostrove et al., *Online Arbitration Hearings: A Review of Key Developments in Response to COVID-19*.

practice that witnesses or experts give evidence through video connections.²⁸ Some of the notable issues in digital arbitration includes:

1. **Security and confidentiality:** This is one of the greatest issues in the field of digital arbitration, the maintenance of security and confidentiality. Privacy is one of the core values of arbitration, and many parties choose the tool specifically due to the search for confidential dispute resolution that is not dependent on open criticism. However, the movement to the digital field has created significant cyber security risk. Video conferencing applications, online portals, electronic document management systems, among others, are prone to cyber intrusion, data breach and unauthorized access. Hackers are able to exploit vulnerabilities in the systems thus possibly discovering sensitive information such as trade secrets and personal details or privileged messages. The difficulties connected with these problems are compounded by the international arbitration where the parties involved might be of different jurisdictions and might find different data privacy laws. Virtue of evidence, emails, and virtual hearing recordings can be subject to local data protection laws that can considerably affect the make transnational proceedings more difficult.²⁹ The regulatory enforcement of the policies such as the General Data Protection Regulation (GDPR) and other systems of the same type that can be considered as being compliant with the specified provisions. Similar laws have strict requirements about managing and protecting personal data. Data security of electronic communications is now crucial to the preservation of the confidential and safe nature of arbitration. Moreover, the growing adoption of cloud storage and electronic case management tools is provoking important questions about the future access and security of data.³⁰ The most critical aspect that needs to be

²⁸ Queen Mary University of London & White & Case, *2018 International Arbitration Survey: The Evolution of International Arbitration* 32, Chart 35 (2018).

²⁹ Anisha Bano & Rahul D. Chouhan, *The Evolution of Arbitration in the Digital Era: Opportunities and Challenges*.

³⁰ Bano & Chouhan, *supra* note 29.

determined by arbitrators, legal professionals, and conflicting parties is that the digital platforms they use are secure and of international data protection standards. To curb these issues, different arbitral institutions have established security controls including end-to-end encryption, two-factor authentication, and secure data storage control to address such vulnerabilities. Without adequate protection, the privacy of the arbitration process can be compromised, which will eventually affect the integrity and credibility of the arbitration process.³¹

2. **Consent under e-arbitration agreement:** An arbitration agreement is a written agreement in which two or more parties agree to resolve a disagreement through arbitration rather than in courts. This idea is closely intertwined with the system of e-arbitration arrangements. In essence, the main distinction between the e-arbitration and conventional arbitration arrangements is the acceptance by one of the parties to the online dispute resolution based on the electronic arbitration modalities. This acceptance can be in many cases as simple as clicking on a button that says “I approve” or “I accept” when filling in an online consumer agreement form.³² Another significant difference is the nature of the conventional arbitration agreements, as they are written and signed by both parties, e-arbitration occurs through the Internet and thus written documentation is not needed and the only agreement is the clicking of the “I approve” or “I accept” button.³³ Such a strategy has raised so many issues concerning the authenticity and validity of such agreements. Interestingly, the Model Law of UNCITRAL gives direction on Electronic Commerce 1996. The e-arbitration agreement should be considered as legally binding as an arbitration agreement and it will achieve the status of validity in accordance with the provisions outlined in Article 6.³⁴ Moreover, UNCITRAL has provided the

³¹ Bano & Chouhan, *supra* note 29.

³² Nwandem Osinachi, *Online Dispute Resolution: Scope and Matters Arising*, 1 SSRN Elec. J. 1 (2015).

³³ Osinachi, *supra* note 32.

³⁴ Article 6(1) of the UNCITRAL Model Law on Electronic Commerce

standards such that electronic signatures and electronic documents can be regarded in the same manner as the paper counterparts and many countries have passed laws to govern electronic commerce.³⁵

3. **Jurisdiction Issues:** A basic legal aspect that relates to jurisdictional issues in online arbitrations involves the issue of jurisdiction. Taking into consideration the international character of arbitration per se, some issues can arise in the context of the relevance of certain national legislation, especially in cases when the hearings are performed with the help of digital platforms and the documentation is handled.³⁶ The interregional nature of the operations of such digital platforms usually creates legal issues, especially when there is controversy regarding the arbitration process, which includes questions of the validity of an award or enforcement of a resolution. The complexity of the jurisdiction concerns, as well as the differences in the national standards of the recognition and application of arbitral awards create confusion as to how the digital arbitration is handled in different jurisdictions.³⁷
4. **Enforcement of Awards:** A notable issue in digital arbitration involves the electronic enforcement of awards, such the application of borderless ODR outcomes is facing significant legal obstacles in the conventional legal framework. Particularly, the provisions of the New York Convention of 1958 and the UNCITRAL Model Law propose that arbitral awards have to be both written and signed, as well as that the enforcement process presupposes the presence of a duly authenticated original, which creates legal issues related to the validity of entirely digital awards and electronic signatures.³⁸ The current reliance of the practitioners on other methods, like the generation of certified hard copies or the general interpretation of the principle of the functional equivalency to validate online results is not sufficient. Also, the lack of enforcement mechanisms of non-

³⁵ Devaiah, *supra* note 15, at 5.

³⁶ Bano & Chouhan, *supra* note 29.

³⁷ Bano & Chouhan, *supra* note 29.

³⁸ El-Masri, *supra* note 14, at 115.

binding ODR often forces winning sides to refer to the traditional courts that they were trying to avoid in the first place, which negatively affects the efficiency and the original purposes of digital arbitration. Finally, instead of continuing to adopt archaic treaties to suit the progress of modern technologies, the international law requires official amendments to clearly recognize and standardize smooth e-enforcement systems.³⁹

VI. IMPLICATIONS OF DATA PROTECTION ON ONLINE ADR ARBITRATION WITH SPECIAL REFERENCE TO THE APPLICATION OF GDPR

The advent of the Online Dispute Resolution (ODR) approaches, particularly online arbitration, elevates data protection as a paramount legal concern. Technological advancements enabling this shift introduce novel risks, challenges, and ethical issues for parties and arbitrators. These must be resolved to uphold arbitration's integrity, fairness, transparency, and security. The transition to digital arbitration raises critical issues in the realms of security and confidentiality, fairness and equality of access, technological limitations, and legal and ethical concerns. Each of these must be addressed to create a balanced and robust framework for digital arbitration.⁴⁰

Other Arbitration, Mediation and Conciliation are also known as the alternative dispute resolution (ADR) methodologies and are considered to be distinct and specialized so that they aim to provide remedies and solutions to those that are in contracting or are disputants. The following are the methodologies that are based on the assumption that maintenance of interpersonal relations, the compromise facilitation, and the reconciliation of divergent views.

Digital arbitration brings several challenges, especially around data security, confidentiality, access to technology, and legal as well as ethical concerns. In international

³⁹ El-Masri, *supra* note 14, at 115.

⁴⁰ Anisha Bano & Rahul D. Chouhan, *The Evolution of Arbitration in the Digital Era: Opportunities and Challenges*, 7 Int'l J. for Multidisciplinary Rsch. (IJFMR) Issue 3 (May-June 2025).

arbitration, these issues become more critical in those situations when many stakeholders are involved and great amounts of personal data are handled. As a result, arbitration is no longer completely private and as well as comply with data protection and privacy laws, which can make the process more complex.⁴¹

Since online arbitration is data-driven, data-protection analysis cannot remain confined to the GDPR alone. In the Indian context, the Digital Personal Data Protection Act, 2023, read with the Digital Personal Data Protection Rules, 2025, is now directly relevant to India-seated or India-linked online arbitration. The Act was enacted on 11 August 2023, and the Rules were notified in November 2025, marking the operationalisation of India's digital personal-data protection framework through a phased compliance timeline. The framework applies to processing of digital personal data within India and also has extraterritorial application where personal data is processed outside India in connection with offering goods or services to individuals in India.

A. Theoretical Implementation of the GDPR on International Arbitration

Due to its wide territorial reach and the data-intensive nature of arbitral proceedings, the GDPR, or Data Protection Regulation, may theoretically apply to international arbitration even if the arbitration's seat is outside the EU. This leads to conflicts between arbitration's requirement for evidence disclosure and cross-border data sharing and data privacy rules.

The General Data Protection Regulation (GDPR) establishes the principal EU regulatory framework for personal-data processing and confers substantial rights and protections upon data subjects. The European Data Protection Board (EDPB) is not a successor to the GDPR; rather, it is an independent EU body established under Article 68 of the GDPR to ensure the consistent application of data-protection rules across Member States and to promote cooperation among national data-protection authorities. The EDPB succeeded the Article 29 Working Party, while the GDPR itself remains in force. These provisions

⁴¹ Ibrahim Saad Eddine Saad El-Masri, *ADR in the Digital Age: Between Data Protection, Information Technology and Cybersecurity* (Master's Dissertation, Lebanese Univ., Fac. of Law & Pol. & Admin. Scis.

and institutional mechanisms have a direct influence on court proceedings, ADR processes, and international arbitration where personal data is processed within the GDPR's material and territorial scope. The present inquiry therefore concerns the extent to which the GDPR applies to international arbitration.⁴²

B. Compliance Authority

Supervisory Authority Recital 20 of the GDPR⁴³ that provides that data protection supervisory authority is not supervised by the judiciary and other judicial authorities in the Member States. Rather, these institutions have remained part of the territory of the jurisdictions of the respective Member States. This consideration should be mainly based on the following reason excluded is because it is necessary to preserve the independence of the law courts in the enforcement and disposition of the cases.⁴⁴ A review of the language used in Recital 20 shows that the concept of arbitration is not mentioned given specifically, but it is subject to the observation of data processing by the courts and other judicial bodies as outlined in Regulation.

Therefore, arbitration needs to be considered as lying under the exemption of data protection authorities' oversight, especially since it also involves the functions of decision-making that are similar to those of courts. Nevertheless, to accomplish that the exception can be applied, the authority of Data Protection Authorities (DPAs) has to be replaced by the control of the courts, although the court jurisdiction of the EU Member States does not extend to the oversight of the arbitration processes.⁴⁵ Additionally, Article 55 of the GDPR does not deal with arbitration where it states that supervisory authorities are incompetent in information processing carried out orally in judicial capacity by the

⁴² Ibrahim Saad Eddine Saad El-Masri, *ADR in the Digital Age: Between Data Protection, Information Technology and Cybersecurity* (Master's Dissertation, Lebanese Univ., Fac. of Law & Pol. & Admin. Scis.

⁴³ Right to data portability

⁴⁴ GDPR OP. Cit. supra note 2, Recital 20

⁴⁵ Kathleen Paisley, *It's All About the Data: The Impact of the EU General Data Protection Regulation on International Arbitration*, 41 Fordham Int'l L.J. 841, 857 (2018).

courts.⁴⁶ Thus, arbitration is still under the jurisdiction of data protection authorities, and is not eligible for the exemption mentioned above.

C. Exclusion of Certain Rights

Article 23 of the GDPR⁴⁷ allows the Member States to waive particular rights of data subject entitlements (including: deletion, access, rectification, portability, restriction, objection to automated decisions and transparency) when the Member State deems necessary and proportionate to promote judicial independence, proceedings or enforcing civil claims in a democratic place.⁴⁸ The Data Protection Bill of Ireland adopts such exemptions to enable the creation and justification of legal actions in legal contexts, such as courts, tribunals, administrative authorities, or other dispute resolution procedures, such as arbitration.⁴⁹ This clause guarantees the integration of the GDPR to the judicial roles of international arbitration and yet the foundation principles of data protection.

VII. THE DEGREE TO WHICH THE GDPR APPLIES TO INTERNATIONAL ARBITRATION

A. What does it mean to be Personal Data in Arbitration

According to the General Data Protection Regulation (GDPR) defines personal data as any information (e.g names, addresses, contact information) that can be used to identify a person, both on its own and together with other information, covering any physical, financial or social identity. Its relevance is also in international arbitration where all the processing of such data, including the collection, utilization, distribution, deletion, organization, and retention is subject to it.

Special category data, information relevant to ethnic origins, political or religious beliefs, or genetic or biometric data, or health status, is usually forbidden, unless it is essential to

⁴⁶ GDPR, OP. Cit. *supra* note 2, Art. 55

⁴⁷ Ibid, Art. 23

⁴⁸ Irish Data Protection Bill (No. 10b of 2018), Art. 57(1)(a)(b); Art. 57(3)(a)(iv); Art. 57(7)(b), found at https://data.oireachtas.ie/ie/oireachtas/bill/2018/10/eng/ver_b/b10b18s.pdf visitation date 9/12/2020

⁴⁹ Paisley, *supra* note 45, at 858.

the establishment, the exercise or defense of legal, and other reasons or there is express authorization by the data subject. Arbitration documents often contain personal data: witness statements (names, addresses, political views, CVs, photos); expert reports (names, addresses, resumes, photos); statements of case (witness details); exhibits and document requests (content-dependent).

B. So, what is Handling of personal data in Arbitration?

First, assess GDPR applicability to international arbitration proceedings. Its broad “processing” definition and geographical scope apply widely. This affects parties, counsel, arbitrators, witnesses, experts, custodians, and vendors. Anyone involved in disclosure or fact-finding could be covered. Key condition: any player or data subject under GDPR jurisdiction. Processing is ongoing - from data collection/storage to destruction. Arbitration players must navigate these protections carefully. Compliance starts early and persists through the entire process.⁵⁰

The GDPR permits processing on several legal bases, including consent, contractual necessity, legal obligation, public interest, and the controller’s or a third party’s “legitimate interests.” By contrast, India’s DPDP Act follows a more consent-centred structure, supplemented by narrower “certain legitimate uses” such as voluntary provision of data for a specified purpose, employment-related processing, compliance with legal obligations, medical emergencies, and other statutorily recognised situations. Therefore, arbitral participants in India should not assume that the broad GDPR-style “legitimate interests” basis automatically applies. In India-linked online arbitration, the safer approach is to identify a clear lawful purpose, provide notice, obtain consent where required, and rely on non-consent grounds only where they fall within the specific legitimate-use categories recognised by the DPDP Act.⁵¹

⁵⁰ Paisley (Kathleen), OP. Cit. supra note 219, pages 864,865

⁵¹ GDPR Art. 6.

Sensitive data requires more complex requirements, with criminal convictions and offenses being at the top of that list.⁵² Moreover, other principles apply such as transparency⁵³, proportionality, data minimization, storage limitations, data accessibility, correction, deletion, etc. ⁵⁴all of which need to be adhered to in arbitration.

C. Who is involved?

The General Data Protection Regulation (GDPR) provides in Article 3 the conditions in which the legislation applies based on geographical factors. In short, the regulation is applied in a situation in which personal data is being handled by any organization or individual involved with the European Union (EU) whether in fact the data processing is taking place within the territorial aspects of the EU. Also, the regulation applies to organizations that are located outside of the EU and are involved with people who are located within the EU- e.g. offering services to them, tracking their activities.⁵⁵

Under international arbitration,⁵⁶ It means that a plethora of stakeholders, such as arbitrators, institutions, experts, or even witnesses, can be deemed under GDPR by being involved in processing personal data and having any form of affiliation to the EU. As an example, when one of the arbitrators or an institution, e.g. the International Chamber of Commerce (ICC) with its headquarters situated in Paris is based in the EU, the GDPR can be applied to the whole arbitration process.

As a result, the GDPR often presupposes the relevance in arbitration cases where divergent parties involved in managing data can be jointly liable. Moreover, other individuals not a direct part of the dispute, but whose personal information is processed (e.g. employees or business partners) can have rights under the GDPR⁵⁷ - as long as the regulatory regime in question relates to their case.

⁵² Ibid, Articles 9, 10

⁵³ Ibid, Articles 13,14

⁵⁴ Ibid, Article 5

⁵⁵ Ibid, Article 3

⁵⁶ GDPR, OP. Cit. supra note 2, Article 3

⁵⁷ David Rosenthal, *Complying with the General Data Protection Regulation (GDPR) in International Arbitration- Practical Guidance*, Journal in 37 ASA Bull. No. 4/2019, published by Kluwer Law

VIII. COMPARISON OF ODR REGULATORY FRAMEWORK: USA, ASIAN AND EUROPEAN UNION

A. European Union (EU)

The European Union's consumer ODR framework has undergone a significant statutory shift. Earlier, Regulation (EU) No. 524/2013 created the European Online Dispute Resolution Platform as a single digital entry point for consumer-trader disputes arising from online sales and service contracts. However, this framework is no longer operative. Regulation (EU) 2024/3228 repealed Regulation 524/2013 with effect from 20 July 2025, discontinued the EU ODR Platform, stopped the submission of new complaints from 20 March 2025, and required deletion of platform case data by 20 July 2025. The repeal was justified largely on grounds of limited practical use, as only about 200 cases per year across the Union were ultimately transmitted to ADR entities.

Consequently, the EU can no longer be described as maintaining an active centralized ODR platform model. Its present approach is better understood as a post-platform consumer ADR reform framework. The ADR Directive 2013/11/EU continues to form the basis of consumer ADR, but it has been amended by Directive (EU) 2025/2647, which entered into force on 19 January 2026. The amended framework expands the material scope of ADR to certain digital-content and digital-service disputes, extends access in some disputes involving non-EU traders, introduces trader-response obligations, permits bundling of similar disputes, and requires safeguards where ADR entities use digital tools. The Commission has also indicated the development of a new redress portal/digital tool to support consumer access to ADR after the closure of the former ODR platform.

The closure of the platform was linked to its limited practical use and the disproportionate cost of maintaining it. The European Parliament's legislative summary records that the platform's performance did not justify the public and private costs

International, The Netherlands, pp. 822- 852 pages 823,824, found at <https://www.rosenthal.ch/downloads/Rosenthal-ArbitrationGDRP.pdf> visitation date 11/12/2020

necessary for its continuation. Accordingly, the EU framework should now be described not as an active platform-based ODR model, but as a reformed consumer ADR framework following the discontinuation of the ODR Platform.

The current EU approach is reflected in Directive (EU) 2025/2647, which amends Directive 2013/11/EU on consumer ADR following the closure of the European ODR Platform. The revised framework seeks to modernize consumer ADR, strengthen access to dispute-resolution bodies, and address the limitations that had affected the earlier ODR system. Therefore, the EU model continues to demonstrate a strong consumer-protection orientation, but its operative structure has shifted away from a single centralized ODR platform toward an updated ADR framework and planned digital support mechanisms for helping consumers identify appropriate dispute-resolution channels.

B. United States of America (USA)

The USA follows a decentralized, market-driven model with no federal ODR law, relying on federal agencies like the FTC⁵⁸ for e-commerce guidance, state-level court programs (e.g., Utah's small claims pilot, Michigan's MI-Resolve for civil disputes), and private platforms.⁵⁹ Examples include eBay's Resolution Center (automated negotiation + human review for millions of disputes) and PayPal's transaction system. Sector-specific rules apply (e.g., finance, e-commerce), with ABA ethical guidelines for lawyers. Private sector dominance contrasts with the EU's top-down regulation.

C. Asian Countries (e.g., China and India)

Asian jurisdictions such as China and India have adopted a pragmatic and technology-forward approach to ODR, often using digital systems to overcome institutional delay and access barriers. China has developed Internet Courts in Hangzhou, Beijing, and

⁵⁸ Federal Trade Commission (FTC) Guidance on e-commerce dispute resolution
<https://www.ftc.gov/system/files/documents/plain-language/alt067-electronic-commerce-selling-internationally-guide-businesses.pdf>

⁵⁹ [1] Federal Trade Comm'n, Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 C.F.R. pt. 255 (2013).

Guangzhou, supported by digital filing, online hearings, and technology-enabled case management, while large e-commerce platforms have also used internal ODR mechanisms for consumer and commercial disputes. India's development has similarly been shaped by the e-Courts project, private ODR platforms, and increasing legislative attention to online arbitration.

Most notably, the Draft Arbitration and Conciliation (Amendment) Bill, 2024, released by the Department of Legal Affairs for public consultation in October 2024, proposes to amend the definition of "arbitration" to include proceedings conducted wholly or partly through audio-video electronic means.⁶⁰ The proposed definition of "audio-video electronic means" covers video conferencing, e-filing of pleadings, recording of evidence, transmission of electronic communication, and other matters incidental to arbitral proceedings. This proposal directly responds to the need for statutory recognition of online arbitration in India and draws from the recommendations of the T.K. Viswanathan Expert Committee, which submitted its report in February 2024. However, as the proposal remains a consultation draft and has not yet been enacted, it should be treated as an important reform proposal rather than binding law.

IX. POLICY SUGGESTIONS AND RECOMMENDATIONS.

1. ODR Infrastructure Development: Invest in government-backed ODR frameworks, and especially in cases involving consumers and small to medium-sized enterprises (SMEs).
2. Education and Capacity Enhancement: Train legal practitioners and arbitrators extensively on technology-based mechanisms of resolving disputes.
3. International Cooperative Framework: Develop international norms that will be applied in ODR processes that are recognized as such.
4. Legal Recognition of ODR Awards: Change the domestic legislation to explicitly reflect and recognize the validity of ODR decisions.

⁶⁰ Arbitration and Conciliation Act, No. 26 of 1996, § x, as amended by Arbitration and Conciliation (Amendment) Act, No. 3 of 2016, § x.

5. Data Protection Protocols: Privacy protection and enhanced cybersecurity in digital adjudication procedures.

X. CONCLUSION

Introduction of Information Technology in the sphere of Alternative Dispute Resolution has made the Online Dispute Resolution (ODR) an essential tool in the modern world market. Altering the usage of technology is not the last phase of digital arbitration as explored in this academic work, it represents a synergistic development of redefining the paradigm of justice delivery. The reliance on the digital platforms makes the arbitration process susceptible to massive cybersecurity risks, which threatens the very essence of confidentiality.

Moreover, this research clarifies that international arbitration is highly affected by the regulations of data protection, including the GDPR. The relentless use of personal data across different jurisdictions breeds legal tension, which means that the arbitration process in the digital environment is no longer fully personal and should strictly adhere to the rules and regulations. The further evidence of our comparative analysis of the various legal systems in Europe, the U.S, and Asian jurisdictions is that the lack of unified legal systems creates significant challenges to the enforcement of arbitral awards electronically through the traditional treaties.

Finally, instead of merely adapting outdated legal frameworks to technological developments, formal statutory reforms are required. In India, the Draft Arbitration and Conciliation (Amendment) Bill, 2024 is particularly significant because it proposes express recognition of arbitration conducted wholly or partly through audio-video electronic means. Although this proposal has not yet acquired binding legal force, it reflects an important legislative direction towards recognising online arbitral proceedings, electronic filing, remote evidence-recording, and technology-enabled arbitral procedure. The adoption of clear international standards, robust data-protection safeguards, and statutory recognition of electronic arbitral processes and awards will be

essential for ensuring that ODR remains an effective, credible, and transparent mechanism for dispute resolution in the digital era.

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