

The Effectiveness of Online Dispute Resolution as an ADR Mechanism

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Abstract

Alternative conflict resolution refers to a range of ways for resolving conflicts without resorting to litigation and approaching the courts, or, in layman's terms, addressing situations outside of the courtroom. Using digital technology in alternative dispute resolution (ADR) techniques including arbitration, mediation, and negotiation to settle disputes is known as online dispute resolution (ODR). This is especially true for small and medium-sized cases. In recent years, it has gained recognition as a dispute resolution approach or tactic by a large number of people, including members of the legal profession. These days, the whole nine yards, excluding the Time, may be bought with the potential of paper money. Time is precious and boundless. Every advancement in technology is in some way related to time savings. Advances are not considered to be such if they cannot save time. Approximately 4 crore cases are waiting in the Indian judiciary as of right now; no institution in the world, including the Indian judiciary, is capable of resolving this enormous backlog of cases. The aim of this article is to examine the effectiveness of Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR), while exploring presence in India. The essay also aims to investigate how electronic files and virtual hearings led to the COVID-19 pandemic.

Keywords: alternative dispute resolution, digital technology, effective, online dispute resolution

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Introduction

Court-associated Online Dispute Resolution (ODR) is a digital platform that is available to the public where parties can convene to settle disputes or cases. Court-related ODR differs from other forms of technology-assisted dispute resolution in three important ways: The programming may only be accessed online, to start with. In contrast to other court systems that provide an online interface for certain tasks (such as e-filing and video hearings), ODR users do not interact with the court for regular in-court procedures or events. The second difference is that, instead of acting as a digital platform to assist judges or court employees in making decisions, the software is specifically designed to assist litigants in resolving their disputes or cases. Naturally, there is always the chance to challenge the validity of claims or assert affirmative defences; nevertheless, court-related out-of-court dispute resolution (ODR) is more than just a way for defendants to work out a payment plan to pay off debts. Third, the programme is hosted or funded by the judicial branch. Instead of being a kind of private alternative dispute resolution, it is a digital extension of the judicial branch's conflict resolution services, combining them to provide residents with effective, efficient, transparent, and equitable services.

ODR: Origin and Background

ODR's inception can be linked to the growth of the Internet in the 1990s, which increased online commerce and the ensuing conflicts surrounding such transactions. Broadly speaking, the history of ODR may be divided into three phases, each of which benefited from subsequent developments in Information, Communication, and Technology (ICT). Each of the three stages are explained in detail below:

- eBay's trial: It is at the forefront of the first stage. It was initiated at the Universities of Massachusetts and Maryland in 1996 as the first ODR project efforts. As online shopping has grown, there has been a greater need for a reliable infrastructure to support online business. An answer to this problem was suggested by ODR. In 1999, eBay started a test programme to offer online dispute resolution services for disputes arising between buyers

and sellers on the site. Over sixty million complaints a year were being handled by eBay's ODR system by 2010.¹

- ODR Start-up Boom: It was in the second phase, due in large part to this strategy's success and the internet's explosive growth, open data reproduction (ODR) has become increasingly popular. There were as many as twenty-one new ODR initiatives launched in 1999. The environment of dispute resolution has only been significantly impacted by a few effective solutions, including Cyber settle, Smart settle, and the Mediation Room.²
- Acceptance by the government and courts: It is in the third stage that government interest in this novel addition to the dispute resolution ecosystem was sparked by the success of a few for-profit ODR platforms.³

Online Dispute Resolution in India

The UNCITRAL Model Law on International Commercial Arbitration was approved in 1985, and the UNCITRAL Conciliation Rules were adopted in 1980 by the United Nations Commission on International Trade Law (UNCITRAL). The Model Law on International Business Relations has been accepted by the United Nations General Assembly (UNGA). These principles of ADR are international and were created by the Arbitration and Conciliation Act of 1996 in India.⁴ The following timeline refers to the development of ODR in India:

- 2006: An ODR process was part of the '.IN' domain name Dispute Resolution Policy (INDRP)⁵ that was put into effect by the National Internet Exchange of India.

¹ Rule, Colin, "Designing a Global Online Dispute Resolution System: Lessons Learned from eBay," 13.2 U. of St. Thomas L.J. 353 (2017).

² Katsh, Ethan, and Wing, Leah, *Ten Years of Online Dispute Resolution: Looking at the Past and Constructing the Future*, 38 University of Toledo Law Review (2006).

³ Katsh, Ethan, *ODR: A Look at History*, Online Dispute Resolution Theory and Practice (2013).

⁴ United Nations Commission on International Trade, United Nations, https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration.

⁵ In Domain Name Dispute Resolution Policy (Indrp), Registry, <https://www.registry.in/domaindisputeresolution>.

- 2011: Chennai hosted the 10th Annual International Forum on ODR.
- 2017: The Ministry of Law and Justice urged government agencies to arbitrate disputes online in a statement made at.
- 2018: To shorten the time, it takes for Micro and Small Businesses to resolve payment disputes, the Ministry of MSME established the SAMADHAN Portal.⁶
- 2019: The purpose of the E-ADR Challenge is to identify and support ODR start-ups.
- 2020: The Vivaad se Vishwas Scheme⁷ was created by the Indian government to expedite the use of ODR in the settlement of tax disputes. A study on the integration of ODR in India was issued by the Vidhi Centre for Legal Policy. A committee led by Justice (Retd.) A.K. Sikri was established by the NITI Aayog with the goal of expanding the use of ODR in India. Chhattisgarh offered conciliation services and hosted the first virtual Lok Adalat. In its report, the Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice, which is affiliated with the Department, recommended the use of technology in the arbitration and conciliation process.⁸

ODR in India & COVID-19

A big part of the population had trouble getting quick access to the justice system because of the COVID-19 pandemic. In addition, the pandemic caused a lot of new conflicts, which made the already difficult legal processes even harder. The most important policy think tank in the Indian government, NITI Aayog, started a novel project to help people who need justice get it quickly, cheaply, and effectively by using technology and new ideas. ODR can quickly settle a number of different types of cases, which makes the court's job easier. It could also be used by government agencies to settle disagreements within the agency, and the courts could gain from using it through technology integration, Alternative Dispute Resolution (ADR) centres attached to courts, and e-

⁶ Samadhan, Samadhan Portal, <https://samadhan.labour.gov.in/>

⁷ Vivad Se Vishwas, https://incometaxindia.gov.in/booklets%20%20pamphlets/vivad%20se%20vishwas_new%20colour_as_singal%20page.pdf

⁸ Chitransjali Negi Advocate (Santaniello International; Supreme Court of India), *Concept Online Dispute Resolution in India*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2596267 (2015).

Lok Adalats. NITI Aayog had a lot of conversations with a lot of different groups of people. There were twenty discussions with stakeholders and close to one hundred contacts at the institutional and individual levels. At different times during the talks, people were asked for their opinions. People from the judiciary, such as current and former Supreme Court judges, the Attorney General, high-level government officials, industry leaders, academic institutions, civil society organizations, and other domestic and international legal and technical authorities were consulted. It was agreed upon that this project should be supported. According to the head of the Supreme Court's e-Committee, Justice DY Chandrachud:

“There is a convergence of very substantive and not insignificant, but significant, disputes that do not need to be brought before the court in the vast array of litigation that is brought before every court. In these types of situations, ODR may also handle cases involving personal damage, car accidents, and bounced checks. The NITI Aayog ODR project is praiseworthy, and the preliminary report was put together with a lot of hard work. A unique look at the different ways that technology could be used to help settle disagreements in India.”⁹

Because the Report was a result of a collaborative and all-encompassing process, it should serve as the cornerstone of an enduring strategy to position India as a global frontrunner in the extensive implementation of ODR. It explains how ODR can be expanded to become the first-place people go to avoid, limit, and, if necessary, settle disagreements.

Need for Online Dispute Resolution in India

⁹ PIB Delhi, *NITI Aayog Pushes for Online Dispute Resolution for Speedy Access to Justice*, NITI Aayog, <https://pib.gov.in/PressReleasePage.aspx?PRID=1776202#:~:text=What%20is%20ODR%3F,outside%20the%20traditional%20court%20system.>

India has witnessed a notable increase in the use of legitimate means, moving away from traditional courts and towards alternative techniques for resolving disputes. This has contributed to the growth of Lok Adalat, Arbitration, Conciliation, and Mediation. Not a lack of access to justice, but rather an increase in the volume of cases filed every day is the main underlying problem. This lessens the workload for the court while simultaneously accelerating the administration of justice and lowering costs for the general public. Physical hearings are a necessary part of the ADR process, although they are often hindered by geographic limitations, which have become increasingly rare in the COVID-19 age. We also need to adjust and make use of an option that may be advantageous called online dispute mediation in order to get out of this situation. It allows us to use modern technology, including online document dissemination and video conferencing, to settle conflicts through online arbitration, negotiation, or mediation. Online dispute resolution is becoming more popular in India, and it might be more efficient in terms of money and time. It would also help disputes that are not heard for a number of reasons, such as time or money restraints; these disputes may use ODR, which is both economical and time-efficient. ODR is used to resolve disputes in the areas of financing, real estate, credit, commerce, and retail. It is crucial to the revival of the economy. In certain instances, the courts have acknowledged the necessity of implementing ODR procedures uniformly. Even Justice Bobde, the former Chief Justice, has underlined the importance of virtual courts in light of the COVID-19 outbreak in order to prevent a top-court shut down.¹⁰ In India, online dispute resolution is still in its infancy, but as time goes on, an increasing number of people are using ODR to settle disputes.¹¹ Many ODR systems have been developed, including AGAMI, SAMA, CADRE, and the Centre of Online Dispute Resolution.¹² In collaboration with Agami and Omidyar Network India, NITI Aayog recently sponsored a conference titled "Catalysing Online Dispute Settlement in India," which brought together key stakeholders to ensure that efforts are made to expand online dispute resolution in India.¹³ ODR was found to have great potential for India at the conference, especially in small- and medium-sized conflicts. It might

¹⁰ Dr. Karnika Seth, Adoption of Virtual Courts in India, <https://www.sconline.com/blog/post/2022/01/24/virtual-courts-in-india/>.

¹¹ Chitranjali Negi Advocate (Santaniello International, Supreme Court of India), Concept Online Dispute Resolution in India, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2596267 (2015).

¹² Designing the future of Dispute Resolution (The ODR Policy Plan for India), NITI Aayog, <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>.

¹³ PIB Delhi, *Catalyzing Online Dispute Resolution (ODR) in India*, NITI Aayog, <https://pib.gov.in/PressReleasePage.aspx?PRID=1630080#:~:text=In%20a%20first%2C%20UNITED%20Aayog,online%20dispute%20resolution%20in%20India.>

make it easier to access the legal system and do business, as COVID-19 will require efficient conflict resolution to stimulate the economy. Additionally, the Supreme Court cleared the path for ODR's growth in India, most notably in the *State of Maharashtra v. Dr. Praful B. Desai*¹⁴. The Supreme Court of India ruled that video conferencing is a legitimate way to record witness testimony.

Consequently, the legal framework and precedents set by the Indian Supreme Court encourage the use of ODR methodology and technology in conflict settlement. The legality and technological viability of alternative dispute resolution with the help of technology (ODR) methods are guaranteed by Indian legislation, according to a combined analysis of the Indian Evidence Act of 1872, the Arbitration and Conciliation Act of 1996, and the Information Technology Act of 2000.¹⁵ Furthermore, litigants can electronically file their complaints and pay their court fees or fines using the virtual court facility provided in India. In addition, litigants have access to several online service delivery options to check the status of their cases.¹⁶

ODR as the Future of Access to Justice

Richard Susskind divides the four pillars of access to justice into four categories: authoritative dispute resolution, conflict avoidance, containment of disputes, and legal health promotion. He points out that the final two of these issues have only been addressed by the conventional legal system. Both India and the US fit this description. The nation's judiciary has consistently used technology to settle cases and keep the judicial system operating virtually. But now is the moment to move the focus from resolving conflicts to preventing disputes, containing them, and strengthening the legal system as a whole. Investing in advanced second-generation technology for online dispute resolution (ODR) can assist India in transitioning to a future-oriented legal system. As has been the case with ODR so far, the business sector is expected to provide updated ODR technologies that expand to better economic ideas for settling civil disputes in addition to

¹⁴ *State of Maharashtra v. Dr. Praful B. Desai*, (2003) 4 SCC 601.

¹⁵ Monisha R, *Online Dispute Resolution (ODR) - The Need of the hour*, INFLIBNET Centre, <http://gnanaganga.inflibnet.ac.in:8080/jspui/bitstream/123456789/61/1/Monisha%20R.pdf>.

¹⁶ eCourts India - Virtual Courts, National Informatics Centre, <https://www.nic.in/wp-content/themes/NICTheme/Brochures/vCourts.pdf>.

using legal principles. It is necessary for the administration and the court to collaborate in order to create and execute these capabilities for the benefit of the public. The future of dispute resolution is based on technology, maybe artificial intelligence, as hard as it may be to understand. In order to take early action, ODR may be very important in this by paving the way for a more impartial analysis of legal connections. India undoubtedly contains the essential elements needed to create a thorough framework for the use of technology in conflict resolution in terms of institutional readiness, technological capability, and expertise.¹⁷

Benefits of ODR

- **Cost-effectiveness:** ODR may result in a reduction in legal expenses. Firstly, by shortening the settlement period; and secondly, by doing away with the need for legal representation in a certain set of circumstances.
- **Flexible Nature:** ODR facilitates speedy settlement in a variety of informal ways, as opposed to the strict legal processes that have been in place for centuries. It eliminates the need for travel and synchronization of schedules.
- **Motivates Negotiation:** Because alternative dispute resolution (ADR) techniques, such as online negotiation and mediation, rely on the parties coming to a mutually agreeable settlement, they lessen the adversarial and challenging nature of the dispute resolution process.
- **Enhanced accessibility to justice -** India is committed to ensuring that everyone has fair access to justice as part of its leadership and commitment to fulfilling the Sustainable Development Goals set out by the UN General Assembly in 2015. Online negotiation and mediation reduce the intensity and difficulty of the dispute resolution process for the parties involved because they are predicated on mutual agreement.
- **Eliminates unconscious bias:** When resolving conflicts, ODR procedures lessen the implicit bias of the neutral. The investigation of Online Dispute Resolution (ODR) and its vast potential might contribute to making the conduct of business in India easier.

¹⁷ Richard Susskind, *Online Courts and the Future of Justice*, 65 Chapter 6 Access to Justice, <https://doi.org/10.1093/oso/9780198838364.003.0008>.

- Easy to Use: Depending on the parties' needs and convenience, ODR can be accessed anytime and wherever the internet is accessible.
- Data Storage: One of the most frequent issues in Indian courts is document storage, which the ODR approach has helped to resolve.

Challenges of ODR

- Insufficient digital framework: ODR integration needs a robust IT infrastructure throughout the nation. For the duration of the pertinent hearings, at the very least, access to computers, smartphones, and a medium-to-high speed internet connection is required.
- Digital Illiteracy: According to the Ministry of Electronics and Information Technology, just 38% of Indian homes possess digital literacy. Cities have a higher rate of digital literacy (61%), whereas rural areas only have a 25% rate. Just one-third of Indian internet users are women, according to the 2019 Internet India Report. Programming aimed at improving internet access in rural areas is also required, as are targeted campaigns to raise awareness of the core competencies required to use ODR services.¹⁸
- Privacy and confidentiality concerns: This includes impersonating someone online, distributing papers and data obtained via ODR proceedings in breach of confidentiality, manipulating digital evidence or digitally transmitted awards or agreements, and more. In India, enforcing the outcome of the ODR process is difficult and time-consuming. Most states have requirements regarding stamp duties. An otherwise smooth online transaction is hampered by the outdated requirement to affix an e- Stamp certificate to the document.
- Insufficient Faith in ODR Services: There are several reasons for this distrust, from worries about the execution of ODR rulings to cynicism (or fear) towards technology.
- Mutual Consent of Parties: An important and fundamental question is whether or not ODR is admissible. Whether by a separate mutual agreement or an express contractual clause, the parties must agree to start the ODR procedure. Without this, any decision made in an impartial manner is not legally valid and binding on the parties.

¹⁸ TOI Online, *How E-learning is contributing to Digital Literacy in India?* THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/education/online-schooling/how-e-learning-is-contributing-to-digital-literacy-in-india/articleshow/94350600.cms> (2022).

Way Forward

While recent court decisions and reforms have placed India back on track, we still need to provide incentives for ODR to become the go-to method for resolving disputes. It is imperative to expedite ODR compliance in light of the proliferation of online transactions. India is well-positioned to become the hub of ODR innovations, as stated by the NITI Aayog; but, for this to happen, we need to solve issues with funding, infrastructure, and public policy support. The following methods can be used to boost ODR in India:

- **Boost Physical Access to Digital Infrastructure:** The government and the courts are the two key players, and must work together to enhance physical access to technology and infrastructure. Offering universal broadband access and enabling effective participation in the global digital economy are the goals of the National Broadband Mission ¹⁹ and the National Digital Communication Policy, ²⁰ both of which were adopted in 2018.
- **Become More Digitally Literate:** Digital infrastructure access is made up of several components, one of which is physical access to devices and technologies. For these technologies to reach their full potential, users need to be tech-savvy. Even the most remote and marginalized sections of society will benefit greatly from access to justice thanks to the Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA).²¹
- **Platforms for Innovation:** In order to be extensively utilised, ODR platforms need to be designed with mobile devices in mind. Considering the constraints of digital literacy, voice

¹⁹ National Broadband Mission, Department of Telecommunications, Ministry of Communications, Government of India New Delhi, https://dot.gov.in/sites/default/files/National%20Broadband%20Mission%20-%20Booklet_1.pdf?download=1#:~:text=The%20NDCP%2D2018%20has%20envisaged,and%20provisioning%20of%20services%20thereon.

²⁰ Cabinet approves National Digital Communications Policy-2018, Press Information Bureau, Government of India, Cabinet, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=183711>.

²¹ Pradhan Mantri Gramin Digital Saksharta Abhiyaan, <https://www.pmgdisha.in/>.

prompt technology is especially essential. A web-based tool called LIMBS ²²helps the Indian federal government to track cases more efficiently and openly. It is an initiative of the Department of Legal Affairs (DoLA) of the Ministry of Law and Justice.

- **Building Capacity:** All ODR practitioners in the nation must participate in training programmes, have access to improved paralegal services in their communities, and receive uniform training standards based on hands-on instruction via role-plays and simulations. ODR training may be obtained through the government scheme Study Webs of Active-Learning for Young Aspiring Minds (SWAYAM), ²³which also offers ODR courses.
- **Proper Regulation:** It is imperative that India's regulatory framework safeguards the rights of end-users while making sure that excessive regulation does not stifle creativity. Legislative changes that incorporate ODR, for example, mandate pre-litigation online mediation in certain types of instances. Recently, a panel of ministers was established to evaluate the creation of a GST Appellate Tribunal with ODR capabilities. It will function independently. Section 111 of the Central Goods and Services Tax Act of 2017 grants the GST tribunal the power to create its own process.²⁴
- **Commonplace E-stamping:** State-by-state uniformity in stamp-duty and procedural requirements is necessary, as ODR regularly handles inter-state disputes involving contending parties who live in different jurisdictions.
- **Permit notary online:** By offering an online method of identification and validation, electronic notary seals and secure e-signature technology can mitigate this problem through online notarization. Digital lockers may be provided to notaries so they may store and manage all the necessary documents for documents notarized online.

²² Legal Information Management & Briefing System (LIMBS), Department of Legal Affairs, Ministry of Law & Justice, https://limbs.gov.in/limbs/about_us.

²³ Study Webs of Active-Learning for Young Aspiring Minds, <https://swayam.gov.in/>.

²⁴ Central Goods and Services Tax Act, 2017, https://taxinformation.cbic.gov.in/content/html/tax_repository/gst/acts/2017_CGT_act/documents/Central_Goods_and_Services_Tax_Act__2017_30-March-2022.html.

- **Cryptocurrency Technology:** It may be used to provide tamper-proof evidence storage by preventing e-evidence from being altered.

Government Involvement: Among India's biggest plaintiffs are the government and public sector enterprises (PSUs). Using ODR to settle disputes between and within governments would be a crucial first step in building process confidence. The problem of trust in ODR procedures and results will be automatically resolved by doing this.

Conclusion

Over the ages, human society has advanced significantly in the area of dispute settlement. The desire to settle disputes swiftly and affordably led to the development of online dispute resolution (ODR) techniques. The ODR mechanism requires substantial public education and awareness due to the rapid growth of the online market. This may be achieved at the local level using a variety of means, including social media, education, street plays, conferences, seminars, and campaigns. In order to support ODR efforts financially and aid in the development of the administrative and technological infrastructure needed to build an ODR process, government engagement is also crucial. The system's reach has to be expanded to include as many societal sectors as possible in order to ensure that everyone has access to justice. Raising literacy rates, lowering linguistic and cultural barriers, and facilitating simple access to e-courts are all important steps in creating a strong infrastructure for ease of access and guaranteeing that justice is administered in a timely and sufficient way. Therefore, creating ODR is essential to promote world peace and international cooperation in the settlement of cross-border disputes. The global e-commerce sector witnessed an explosion in ODR when eBay and PayPal began to resolve disputes electronically. A number of sovereign governments, such as those of the European Union, China, and Brazil, have already adopted the ODR mechanism and established autonomous forums for the resolution of disputes arising from electronic commerce. Millions of disputes have been amicably resolved to date, devoid of a single lawsuit being filed in a traditional court of law. Given that technology serves as the foundation for numerous ODR strategies, it is inevitable that over time, ODR will devise novel

and more enticing approaches. This has been verified as a fact. While open data reconstruction is still in its nascent stage in India, its widespread adoption is imminent. By employing technological methods to resolve conflicts, efforts are made to enable previously unattainable alternatives, such as the capability for all involved parties to be practically present concurrently at a particular location and time. With congestion of 350,000 cases in the top 5 central tribunals, 4.5 million cases pending in high courts, and 31 million cases pending in district courts, it is indisputable that an increasing number of ODR platforms are required to save the day.²⁵ The potential integration of the ODR mechanism into conventional dispute resolution processes is undeniable, owing to its straightforwardness and efficacy. Future developments in ODR will involve the employment of thousands of advocates and arbitrators, in addition to facilitating the expeditious resolution of disputes.

“Technology is a Useful Servant but a Dangerous Master”

- Christian Lous Lange

²⁵ ODR: The Future of Dispute Resolution in India, VIDHI Centre for Legal Policy, <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/>.