



## Online dispute resolution- Its prospective in India

Lakshmi Prasanna Bolem<sup>1</sup>, Dr. Kama Sai S V M<sup>2\*</sup>

<sup>1</sup> Research Scholar, College of Law, Koneru Lakshmaiah Education Foundation, Deemed to be University, Guntur, Andhra Pradesh, India

<sup>2</sup> Associate Professor, College of Law, Koneru Lakshmaiah Education Foundation Deemed to be University, Guntur, Andhra Pradesh, India

### Abstract

Indian Courts are packed with cases pending from different Sectors, be it Civil cases or Criminal cases or newly evolved Cyber cases. In the new economy, where more and more transactions are completed in cyberspace, ADR seems natural. The COVID-19 pandemic has been extremely unfortunate, and has necessitated change. In India, the judiciary has led the way in adopting technology solutions to keep the system accessible even while safety measures have altered the routines. ODR is often simplistically understood to mean e-ADR or ADR that is enabled through technology. ODR can help in not just dispute resolution but also in dispute containment, dispute avoidance and promotion of general legal health of the country. ODR has the potential to be an effective alternative that utilises technology to bridge barriers and access in resolution. Through facilitating low cost, remote, technology-augmented, linguistically- friendly, amicable and incentivised dispute avoidance, containment and resolution while adhering to principles of natural justice. In India there has been a rise in the number of ODR start-ups and businesses that are willing to experiment with ODR as an alternative to the traditional forms of dispute resolution.

**Keywords:** online dispute resolution, methods, hindrance

### Introduction

The primary purpose of ODR is to allow the parties to resolve their dispute with the use of electronic technology. It may occur in “real time” or unroll in an asynchronous manner, depending on the rules of the ODR Provider, as well as the wishes of the parties. Often, this process is more convenient and cost efficient than face to face meetings in order to negotiate, mediate, or otherwise resolve existing disputes. On-line Dispute Resolution (ODR) in India is in its infancy stage and it is gaining prominence day by day. With the enactment of *Information Technology Act, 2000* in India, e-commerce and e-governance have been given a formal and legal recognition in India. Even the traditional Arbitration law of India has been reformulated and now India has *Arbitration and Conciliation Act, 1996* in place that is satisfying the harmonised standards of UNCITRAL Model. The amendment made in the *Code of Civil Procedure, 1908* by introducing Section 89 was made to provide methods of Alternative Dispute Resolution (ADR) in India. ODR has the potential to raise equity, fairness, access in the dispute resolution ecosystem in India. The convenience brought by ODR has been exhibited by e-Lok Adalats conducted in several States throughout India during Covid Pandemic time, where disputes were resolved simply over WhatsApp audio/video calls. Although almost all ODR processes tend to be ones that allow for written submissions only, there is a broad spectrum of ODR services that range from Online Arbitration to fully automated online ‘Blind Bidding’ negotiation services, and chat based mediation programs. The selection of the appropriate ODR format may depend on the nature of dispute and the parties involved. ODR processes should also be convenient for the users and not cause any undue accessibility concerns.

### Characteristics of online dispute resolution <sup>[1]</sup>

ODR may be:

#### Voluntary

Most ODR processes allow the parties to elect to participate in them, or pursue their claim in another Forum. Most also allow the parties to withdraw from the process at any given time.

#### Informal

The proceedings are generally more relaxed and informal than in-person proceedings such as mediation, litigation or Arbitration. Depending on the ODR Provider and the rules in place, the process may be conducted in an asynchronous manner and allow the parties, time to reflect on their positions before coming to any agreement.

#### Confidential

ODR is generally a confidential process, unless the parties agree otherwise. Notwithstanding a confidentiality clause or agreement, when the Government is a party, the access to information and privacy must be examined to determine the extent to which they can restrict disclosure and withhold information.

### Objective of online dispute resolution <sup>[2]</sup>

The primary purpose of ODR is to allow the parties to resolve their dispute with the use of electronic technology. It may occur in “real time” or unroll in an asynchronous manner, depending on the rules of the ODR Provider, as well as the wishes of the parties. Often, this process is more convenient and cost efficient than face to face meetings in order to negotiate, mediate, or otherwise resolve existing disputes.

The actual terms of the agreement that the parties come to, can be as broad or as specific as the parties desire, particularly if the matter is concluded at the negotiation or mediation phase. The enforceability of the settlement agreement may depend on the rules and jurisdiction of the ODR Provider, particularly if the dispute is international.

The following questions could be important to consider in determining whether ODR is an appropriate manner to settle the existing dispute or not:

1. Are there really only a few issues at stake?
  - ODR is best-suited to deal with a small number of issues, and is often best when the issue at stake is an amount of money rather than issues pertaining to liability.
2. Are there only a few parties?
  - ODR works best when there are only a few parties.
3. Can the factual and/or legal issues be concisely presented?
  - Given that most of ODR involves electronic communication, often in writing, it works best where the issues can be clearly stated.
4. Are the factual issues dependent on the parties' differing opinions or on their credibility?
  - ODR is more effective where factual issues are not dependant on credibility.
5. Are witnesses required to give testimony in order to resolve the dispute?
  - Some ODR processes may not easily allow for witnesses to testify, particularly if the ODR process focuses on the negotiation or mediation phase of a dispute.
6. Are the parties being unrealistic regarding the outcome of the case?
  - Where the parties are unrealistic about outcomes, ODR may not be successful, particularly if the process is focused on the negotiation or mediation phase of the dispute.
7. Is the issue of law relatively settled or in flux?
  - If there are issues of law that are unsettled, the matter may not be appropriate for ODR.

### Methods of ODR

#### ▪ Automated negotiations

In this negotiation is done through developed technologies. In this area most of the ODR services are also called Blind Binding services.

Further it involves two types automated negotiation:

Double blind bidding: Solves single monetary disputes between 2 parties  
 Visual blind bidding: This can apply negotiations between N number of parties and issue.

#### ▪ Assisted negotiations

This concept can be said as alternative to mediation. In mediation, the mediator with his communication skills and training bring two parties to an agreed solution similarly in this technology evaluates the situation and provide parties with a set of advices and solve the issue with informality and in a user-friendly manner.

### Forms of ADR

#### ▪ Expedient Non-Adjudicative Online Resolution<sup>3</sup>

Another form of Alternative Dispute Resolution prioritizes expedience and dispenses with adjudication all together, in recognition of the litigants' desire to simply dispose of the

matter as quickly as possible. By removing any hint of adjudication, services (e.g., One Day Decisions) "fast track" a version similar to blind bidding which is restricted privately to the two parties and an algorithm determines a fair value to be accepted by each party. Unlike other services, once accepted by both parties, the settlement amount is applied to the issuance of a Certificate of Final Resolution which both parties accept as irrevocable proof of resolution and final settlement. By avoiding adjudication, expedient non-adjudicative online resolution saves litigants time in court, time away from work and other fees and expenses, while protecting each from ancillary damage: The winning party generally collects more of his disputed amount and the losing party suffers no credit damage from having a judgment entered against him. Expedient Non-Adjudicative Online Resolution is generally utilized in cases that might otherwise be heard in small claims or limited civil matters.

#### ▪ Crowd justice

This new form of ODR is an alternative to the small claims court which allows the disputing parties to create video rguments and the public votes on the outcome of the same. "Ujuj" is an example of such a model of dispute resolution wherein the disputants may upload the video to the ujuj website for the online public to vote on the same. The parties agree to be bound by the final outcome by signing an e-contract. The users registered can select the case that they would like to judge, and cast their vote between a scale of 0%- 100% depending upon the amount of compensation that they feel must be awarded based on the claims put forth by the Claimant. Upon expiration of the case, the average is taken for all the votes which is then multiplied by the amount claimed, and a final award is hence determined.

#### ▪ The Uniform Domain Name Dispute Resolution Policy (UDRP)

The Uniform Domain Name Dispute Resolution Policy (UDRP) and the au Dispute Resolution Policy (auDRP) provide the legal framework for resolving domain name disputes on the internet. It has been acknowledged that the UDRP is one of the most well-known Online Dispute Resolution (ODR) systems and has experienced considerable success in resolving disputes in Cyberspace. Indeed, both policies have proven to be highly effective for resolving domain name disputes using online Arbitration processes, and since their inception some 50,000 or so decisions have been decided under the international UDRP, while 400 or so have been decided under the Australian auDRP.

#### ▪ Chargebacks

Is the process that occurs when a customer is calling for a chargeback, disputing a purchase s/he made with his/her credit or debit card, for various reasons such as a misunderstanding, not being aware of the purchase, or, in the worst case, involving fraudulent behaviour. Whenever a shopper disputes a purchase, the issuing bank is automatically involved to investigate further. On the other hand, the merchant also has the right to dispute a chargeback, to counteract situations when consumers are abusing the chargeback process to secure a refund.

#### ▪ Resolving the Dispute Digitally<sup>[4]</sup>

Online Dispute Resolution may not overtake the Dispute Resolution process but there are certain ways in which it influences the way in which the disputes can be resolved and taken care off. There are different methods as to how can the disputes be resolved the specified procedure for the same is as below:

- Filing a Claim Online- Many online platforms use specific ways to file a claim. Many include the process of direct negotiation and provide online forms to the parties to fill so that their disputes can be resolved easily. If the direct negotiation doesn't work then the mediator can join in. For example- Square Trade used the tool called the direct negotiation which could really helped in the resolution of the disputes.
- Trading Settlement Offers- In many of the platforms a claims professional initiates the process with the confidential offers and the same is notified to the opposition via fax, e-mail or mail and the respondent tries to settle the claim and if his offer is less than or equal then the claim settles. For example- Cyber settle's system is very effective as regard to the trading settlement offers.
- Discussing the Issues- It includes allowing the parties to create an entire ODR system, handling case document-sharing between the parties and offering full security. The parties share, discuss and collaborate of documents and even reach the agreements online as well.
- Signing an Agreement- This is the way of putting the signature into the document which has become an essential part of verifying the document.

#### **Rise in the Online Dispute Resolution in India** <sup>[5]</sup>

- The Online Dispute Resolution is defined by the United Nations Commission on International Trade Law Working Group as “a mechanism for resolving disputes accelerated through the use of electronic means of communications and other information and communication technology”. ODR is conspicuous, fast, easily accessible and cost-effective. Online Dispute Resolution is considered as ADR and it includes mediation, negotiation or arbitration but is restricted to civil cases where both parties have given their mutual consent. Out of these, ODR mediations are 70% preferred, it has proven as the most effective mode for dispute resolution. There are few ODR platforms that have made the process quite convenient as well as efficient which are mentioned below:
- CADRE (Centre for Alternative Dispute Resolution Excellence) is a website-based manifesto for ODR in which one party addresses the platform and then contact the other party. When both the parties agree, an Arbitrator is appointed, the parties in the dispute do not come in contact face to face but through electronic means such as video calls. The details regarding the meeting are sent to both parties through e-mails or WhatsApp. The result of the meeting which is lawfully binding comes out within 20-25 days of time. Moreover, this particular platform has been engaged in resolving tenant and rental contract dispute for NestAway an online rental start-up.
- Another popular ODR platform is Sama that provides for the convenient approach to high-quality ADR service providers and assists the public to resolve disputes online. Same is being used by ICICI Bank as

an ODR platform to resolve around 10,000 disputes with values rising up to INR 20 lakhs.

- The Centre for Online Dispute Resolution (CODR) is an institution that handles cases online end-to-end. The decision is made unbiased and confidentiality is maintained. Agami is a non-profit ODR platform that aims to create a better system of law and justice by providing time stamping and convenient dispute resolution method.

#### **Online Arbitration** <sup>[6]</sup>

A number of major Arbitration Institutions on account of COVID-19 have postponed hearings, and no postponement request has been denied by the registry / secretariat of these institutions. Though, the institutions have maintained that they wish to avoid delays and conduct proceedings in order to maintain the sanctimony of Arbitral proceedings. Thus, virtual hearings are indispensable, and a properly held virtual hearings can save considerable time and costs, and so by adopting certain good practices in conducting them, one can ensure a smooth experience, which are as under –

- Logistical and technological specifications such as the number of participants, access to technology, time-zone difference, guiding protocols, any data privacy concerns, the online platform i.e., Face Time, Skype, Vidyo Cloud, Microsoft Teams, Zoom, or Blue jeans, and the online document management system should be agreed prior to the hearing.
- The conduct of the online Arbitration proceeding must be fair to both parties, so the length of arguments and time allocation to each party has to be agreed, and Arbitral Tribunal should ensure that parties stick to them and do not speak over each other.
- A practice round between the Arbitral participants should be organized to ensure that all participants, including the Tribunal, have adequate hardware and sufficient training to work the technology so that no one is left at a disadvantage, and that the hearing runs efficiently.
- The audio-video quality and the Tribunal's clarity of line of sight of the witness should be properly ensured.
- The functionality of the break-out rooms, common and private chat features, and understanding how and when these will be engaged should be in place and be available when required.
- Access of the parties and the Tribunal to e-documents must be ensured, and presentation of evidence by witnesses must be closely monitored and efficiently displayed via computers at all venues to ensure security of the documents and efficiency of the proceedings.
- There should be a back-up plan in place, in case of any unanticipated circumstances, such as moving to teleconference.
- The participants at their end should also ensure of quiet location with adequate lighting with proper access.

#### **The process for ODR is stated below**

According to the International and Domestic Arbitration Centre (IDAC) of India, the completion of arbitration proceedings entails four basic steps, namely:  
The disputed parties are served with a notice.  
To carry out the proceedings, arbitrators are appointed.  
Proceedings and hearings are carried out.  
Execution of the award.

The ODR process involves filing e-documents, in which parties may use encryption or electronic signatures to ensure document integrity and transaction authentication. The parties usually seek support for the appointment of a neutral panel of judges or panellists by an ODR service provider for dispute settlement using online resources. Parties prefer a structured and clearly defined procedure when a simple and definite resolution process. In the resolution of online disputes by mediators or other alternative methods of dispute resolution, institutions such as WIPO, SIAC and ICC enjoy an established reputation. Negotiation occurs first, when communication is initiated, and mutual agreement is made to move the proceedings forward. ODR serves as an administrator as well as an infrastructure provider.

The complainant seeks compensation or other remedies by filing the complaint and the respondent provide detailed replies when it consents to participate in the proceedings. Oral proceedings via video conferencing may or may not take place. This varies depending on the circumstances. Many times, a dispute can be resolved using specially designed software without the presence of a third party. This is known as Algorithmic Dispute Resolution. The party who is dissatisfied with the compensation can reopen the case within a certain time frame. After it gets reopened, the arbitration procedure will begin.

#### ▪ **The role of ODR Neutral**

Depending on the nature of the ODR process, the Neutral may:

Permit the parties with or without counsel to present their positions regarding the dispute;  
 Help and direct parties to search for common ground and narrow the scope of the dispute;  
 Assess the relative strengths and weaknesses of the parties' positions, explaining the reasons of his or her assessment and estimate, where possible, the likelihood of liability and the verdict range of damages; Suggest and help the parties explore the possibility of a settlement.

#### ▪ **The role of the Counsel**

Lawyers may or may not be involved in an ODR process, depending on the nature of the dispute and the issues involved. The presence of lawyers may be advisable if the matter involved is proceeding with a more formal type of ODR process that contains an adjudication phase and involves complex legal issues. However, for many types of ODR that are more informal, flexible, and deal with low-cost transactions or issues, it may not be necessary to have a lawyer as the one to summarize the factual issues and legal arguments supporting his or her client's case.

#### **Advantages of ODR** <sup>[1]</sup>

ODR has several advantages over traditional court

1. It leads to efficient time management by cancelling out the time required for travelling. It also substantially reduces costs as a result.
2. It ensures speedy access to justice
3. It has a more informal and casual set up.
4. It can be accessed from anywhere in the world without any geographical limitation acting as a barrier.
5. The asynchronous internet communications have advantage of being edited in contrast to impulsive

responses that often can take place in real time face to face mediation discussions

#### **Strengths**

##### ▪ **Chance of settlement**

As the online trader is informed about the complaint early on, he has a chance to solve the issue with the consumer directly if it has already not done so.

##### ▪ **Low cost**

If the parties do go ahead with the process, the dispute resolution body deals with the consumer complaint at moderate cost or no cost at all.

##### ▪ **Two-way process**

The traders are also allowed to file a complaint against the consumers. This largely depends on the jurisdiction of the dispute resolution body the parties chosen.

##### ▪ **Expertise, independence and impartiality**

The dispute resolution body dealing with the complaint has technical expertise on various forms of ADR and can only deal with the complaint if it does not have any conflict of interest.

##### ▪ **Transparency**

The dispute resolution body has to display all the relevant information on its website and on this basis the parties can agree to participate in the process.

##### ▪ **Efficiency**

The regulation provides for resolution of the dispute within 120 days of the filing of the complaint.

- ODR has the potential to help bridge the gap in access to justice for litigants, but it can also entrench existing divisions between certain groups. Here are the non-exhaustive list to think about the following issues:
- While many of us take internet access for granted, for many particularly those who already face issues in accessing our justice system there are significant obstacles to getting online, such as the high cost of service or a person's geography.
- Many individuals primarily access the internet through their smartphones using limited data plans. Consider whether the applications you want to use are mobile-friendly from the perspective of both their design and data usage.
- Still others will need to utilize a computer at a public institution like a library. If one can offer computer terminals for people to access the ODR platform, that could prove to be a huge boon. One should also consider certain design features to accommodate disputants who will be potentially submitting sensitive information in a public space, such as an automatic log off feature.
- Access to Justice advocates recommend that language be written at a 4th-grade reading level.
- Will there be support for non-English speakers?
- ODR naturally appeals to individuals who rely on hourly wages or caregivers, among others, for whom taking a day off to go to court is overly burdensome. Are there steps of the process that will require them to follow up during regular business hours, and is there a way to accommodate those users?

- Have to consider the needs of individuals with disabilities, and have them be part of the design and testing process.
- Integrate resources such as guides and links to legal aid within the ODR.
- Some users will just not be able to navigate the technology without assistance. It is a good idea to create some redundant/backup systems for these individual.

### Scope of ODR in India <sup>[7]</sup>

1. The applicability of ODR in a developing nation like India is still in a primitive stage. However, owing to the pandemic outbreak, ODR is starting to acquire increased prominence. On a conjoint reading of the provisions of the Indian Evidence Act, 1872, with the Arbitration and Conciliation Act, 1996 and the Information Technology Act, 2000, it is evident that the Indian laws provide for legality and technical viability of the ODR mechanisms. Additionally, common issues in ADR pertaining to jurisdiction and other issues pertaining to geographical limitation seem to be eliminated along with ensuring automated administrative tasks, promotion of eco-friendly processes and improved productivity of professionals.
2. That being said, the three branches of governance have been taking initiatives to make our legal and judicial system more technology-friendly, in order to ensure speedy delivery even during the times of a crisis.
3. Recently, the Supreme Court of India in a suo-motu writ petition captioned 'Expedition trial of cases under Section 138 of N. I. Act, 1881', took note of the observations in *Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta*, that "Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There appears to be need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated
4. In times of Digital India, when there has been rampant advancement of technology not in urban and sub-urban cities and also in remote villages, it is fair to say that with effective use of such technology, access to justice and equity can be ensured and brought to each and every Indian irrespective of their geographical limitation.
5. It is noteworthy that on an average every judge in India is allocated 1,350 cases, whereas his counterpart in the US is required to deal with only 388 cases. Therefore, promotion and enhancement of a technology driven dispute resolution mechanism not only seems promising for the lawyers but would also lead to substantial easing of courts' burden as well as improving the efficiency of the Indian legal ecosystem.
6. Lastly, ODR also entails environmental impact – 11 billion sheets of paper are used every year in Indian courts. The green cost of this usage is 1.3 million trees and 109 billion litres of water every single year. A swift yet smooth transition to digital platform would also benefit the environment, make our judicial and extra judicial system more eco-friendly, thereby, curbing climate change and many more issues.

### Virtual courts in India

Richard Susskind propounds that access to justice encompasses four layers – legal health promotion, dispute avoidance, dispute containment and authoritative dispute resolution. He points out that the traditional court system has been concerned with only the last two of these. This observation holds true for India as well. The judiciary of the country has systematically employed technology for resolving disputes and keeping the court system alive virtually. However, the time has come for the focus to shift from dispute resolution to dispute avoidance, containment and improving the overall legal health. Investing in ODR through adoption of more advanced second generation technology, can help India progress towards a futuristic justice system. As has been the case with the evolution of ODR so far, it is likely that these newer technologies, ones which not only employ legal principles but can also expand to better economic principles for settling civil disputes, will in all likelihood originate from the private sector. It will therefore be important for the judiciary and the executive to partner with these capabilities and adopt them for the larger public use. As difficult as it might be at present to imagine this, but fact of the matter is that the future of dispute resolution lies with technology, and even AI. ODR can play an important role in this by evolving techniques for better neutral evaluation of legal relationships for early measures. It is evident that India already has the key elements for introducing a comprehensive framework for technology in dispute resolution processes, namely, institutional willingness, expertise and to a large extent, technology capacity. Going forward, a modular strategy for greater innovation and transformation is required to be ushered in a manner which caters to immediate as well as long term needs

- During Covid Pandemic time, the Supreme Court of India had issued guidelines in order to direct the courts at all levels to frame mechanism for using online video conferencing till the normalisation of the situation. While High Courts and many District Courts continue to hear cases online, some lawyers find it difficult to argue complex cases with volumes of files through video conferencing. Moreover, there is need for standardisation and consistency in deployment of software tools and practices in embracing virtual courts in India.
- After the successful launch of the e-courts project, the e-courts filing software is available for use in 21 High Courts and 18,000 District Courts of India. However, despite funds sanctioned, most High Courts had not recruited required trained personnel for e-courts project. So far only in few High Courts such as the Delhi High Court, there are functional e-courts where pleadings are digitised and accessible by lawyers and Judges through the use of computers. Fortunately, Online Dispute Resolution (ODR) and Dispute Resolution has been adopted by many countries including India and holds promising future for virtual courts in India. Centre for Online Dispute Resolution (CODR), Sama, Presolv360, Centre for Alternative Dispute Resolution Excellence (CADRE) and Crek ODR are few popular ODR platforms. Likewise, automation, Artificial Intelligence and robots have begun deciding traffic challan cases not just in USA but also in India. National Informatics

Centre has been involved in the computerisation of courts since 1990 and continues to do so to bring speedy access to justice to all litigants across India. In the present day, where the number of internet users have increased to 59% in India, the proposition of having “virtual courts” is considered to be more feasible than ever before. Therefore, institutionalising of the technology in the court process is the need of the hour.

### **PROS and CONS of Online Dispute Resolution [8]**

There are several factors which leads that dispute resolution can be done online, whereas there are factors which states that there are few disadvantages for implementing online resolution for a disputed case.

#### **The few advantages for gearing up Online Disputed Resolution as a mechanism for a dispute.**

- Firstly, it is economically feasible, cost always plays a major role in dispute, as the parties tries to reach at an optimal decision with lower costs. ODR is the best alternative for meeting all the financial demands as all the documents are exchanged via E-mail, proceedings are taken place via video conferencing. So, the venue and accommodation to conduct the proceedings are eliminated and the documents need not be sent through post. Therefore, ODR is not only easier but it is significantly cheaper.
- Secondly, it is speedy process, one of the main advantages of ODR when compared to conventional ADR is that it is less time consuming. While ADR takes several months to pass an award, ODR takes few weeks to pass an award for the disputed case. Further, the borderless nature of internet makes parties and counsels easy to communicate easily while sitting in different time zones. It is easy to access as e-mail helps for scheduling the ODR proceedings which avoids phone calls and fax-tags. As in this technological world internet is swifter and much easier to store data and documents of multiple parties which saves both time and money.
- Thirdly, it is Non-confrontational mechanism, where there will be no physical appearance of the disputed parties ODR enables the adjudicating body to resolve the dispute purely on basis of the merits of the case. Since most of the arguments takes place through asynchronously over the internet, where it allows the disputants to reflect on their positions before giving their response. Furthermore, such a mechanism neutralises any economic or other power disparities that may obtain between the disputants, as there will be several instances where one of the parties might be small-time manufacturer and the opposite party might be a global entity. So, in ODR the counsel will discharge his duties without biased decision.
- Fourthly, it can record the process of ODR for any purpose, ODR facilitates the process of recording the pleadings, statements, and written, oral or visual Fifthly, it can store the data, as storing of document is very difficult in Indian Courts which is replaced by ODR where data can be stored by the parties for future use of transmitting the documents or saving them.

#### **There are few disadvantages while going for online resolution for any dispute.**

- Firstly, it can cause misunderstanding and there will be lack of human interaction, as there will be lack of face-to-face interaction it will deprive the adjudicating authority, an opportunity to evaluate the creditability of parties and witnesses. Furthermore, due to the nature of internet, there will be lack of miscommunication as the parties might be in different countries and speaking different languages.  
Communications which rely solely on digital records
- Secondly, it has limited range of disputes, like ADR, ODR also is best suited for resolving disputes which is of certain type like domain name, e-commerce, etc. ODR may not be suitable for all kinds of disputes like tortious disputes like defamation, trespass which requires discovery, testimony of witnesses, cross examination which may not be possible via internet.
- Thirdly, it does not have adequate confidentiality and secrecy is not maintainable, secrecy is the fundamental process of the dispute resolution. According to the ODR service providers there have been certain technological arrangements made in for protection of data of the parties, by installing various software. Though there are precautions taken for implementation process by the data protection law, it is still very dangerous when hackers try to commit an offence by disturbing such data. Thus, inherent data security will be a hindrance for the growth of ODR.
- Fourthly, jurisdictional issues, when the dispute are resolved online, there is a question of what substantive law will be applicable for the dispute arising. In case of merits of parties, contact and claim. Parties to arbitration agreement. Law applicable to arbitration proceedings. Conflict of law rules applicable to each of forgoing law.
- Fifthly, it has a problem of publication of proceedings and award, if ODR mechanism has been selected to discuss the disputed case, the details of the proceedings and decisions are to be made published show the level of transparency which is not possible in ODR as the sole reason to choose ODR is to maintain confidentiality of the proceedings. Thus, the fate of ODR hangs balance with the one school of thought which provides absolute secrecy of proceedings and other school of thought seeking publication of proceedings and decisions. So, the ODR providers, keep the information confidential and release that information if only the parties agree to do so.

#### **Hindrances in the way of Online Dispute Resolution [9]**

##### **1. Hardware concern**

Apart from the internet-related issue, some hardware-related concerns make the ODR inaccessible to a major portion of society. The data charges in India are the lowest all over the world, like in the US per GB Data costs Rs.592/- Five Hundred Ninety Two whereas in India it cost only Rs.7/- per GB. But providing cheap data does not mean the devices which are required to operate it are readily available. Therefore, the lack of infrastructure and accessibility to computer resources is posing to be a major roadblock in the development of ODR.

## 2. Awareness

The next technological roadblock in the way of ODR is the awareness among the users. Technology and digital literacy among users are the poorest among internet users across the globe. More than 90% of the Indian population does not know the scope and proper usage of the internet and technology and is completely dependent upon the younger generation for even basic setup of Facebook and WhatsApp. Hence this lack of knowledge and mental barrier of the people need to be tackled and improved to make it accessible to the crowd at large.

## 3. Training and Infrastructure

Another major barrier to the inaccessibility of Online Dispute Resolution is the lack of trained professionals. Even though 10% of the Indian population is considered to be Digitally literate, such literacy is majorly in the informal sector only. But the courts and justice mechanism in India operate procedurally, and shifting the same to an entirely new platform needs that the support system is well strengthened and taught. Only when the justice support system is trained, then can they take further steps in imparting the knowledge to people about ODR and another online court mechanism.

Hence since the inception of Online Dispute Resolution, there have been multiple roadblocks in growth and development. Most of that area of concern was because of the absolute interdependence of technology. The ODR was rolled out more in an optimistic way rather than the realistic way. Very little investment in the setting up of the infrastructure and logistics was made because of which it is more of a luxury for major strata of the society. Had there been no internet boom in India in 2016, the status of ODR would have still been in its infant phase. But even after so many hindrances, as discussed above, there is a need for major infrastructure intervention both from the government and the private players in making the digital environment more conducive for Online Dispute resolution.

## Analysis

There is no doubt as to the positives which Online Dispute Resolution has injected into the Indian system, including the benefit of speedy and hassle-free justice, but at the same time, the drawbacks of the usage of technological aspects in the resolution of disputes cannot be ignored. The main reason behind the idea is the constant fear of disclosure of information and the non-availability of resources to engage and capture the benefits of the same. Since every aspect of the process moves online, it involves uploading documents, data, and other personal information on the desired platforms. It certainly renders the information vulnerable at the hands of miscreants who can hack into the systems and get the same information. It has also time and again been emphasized that more private sector expertise should be utilized in the context so that the existing problems especially related to the safeguards, can be taken care of.

In recent times, the government and the courts have become more vigilant towards the development of the ODR mechanism. Some of the notable steps taken are the initiative by the ministry of corporate affairs tying with the law colleges in setting up online consumer redressal centres. One of such centres in the online consumer centre at the national law school Bengaluru to resolve consumer disputes through online medium. To reach the needful people, spread

technical awareness, and resolve disputes at a basic level, independent private Online Dispute resolutions like CORD, Presolv360, and CADRe have also been established. When it concerns the steps by the government in recent times to adopt Online Dispute Resolution, the E-Assessment by the Income Tax Department and the INDRP by the national stock exchange has been worthy mention for the development of ODR.

Justice DY Chandrachud, while addressing the issue of technology and access to justice has successfully managed to include his opinion upon the importance of responsibilities of the stakeholders such as the technology service providers, government, and professional bodies. While identifying the role of the internet service providers, he mentions that such systems through which the parties can be made aware of their rights and the platforms which facilitate the resolution of disputes should be established.

## Challenges to ODR<sup>[4]</sup>

The Online Dispute Resolution is in an initial phase and has not taken a concrete shape. This phase is related to its evolutionary process and in this evolutionary process there are many barriers and hindrances to a successful online dispute resolution. These challenges are as follows:

- Cultural Challenges- These are the challenges that are predominantly found in the developing nations of the continents of Asia, Africa and Latin America. The people have lack of confidence over the online activities and hence their contribution to this field remains less. Their ideas transmit culturally and flow in an unregulated manner. There is the need of the government to understand and implement proper schemes to solve this challenge.
- ICT Infrastructure Challenge- One of the major problem in the ODR is the fact that many of the nations including India do not have robust internet infrastructure which is the first and foremost requirement of the ODR. Though, it has been the policy to focus on the internet facilities and it has been discussed continuously about considering the internet as the 'basic right' yet for the ODR procedure to take place there should be a well-developed ODR platform, legal professionals along with software to have a perfect online dispute resolution mechanism.
- Regulatory Challenges- There has been attempts to create a uniform regional legal framework for the consumer protection including the e-consumers.
- Business Models- The main challenges that are faced under this heading are the business models and the business processes. Mainly the performance and the scalability of the ODR should to be measured
- Adaptability to the present Context- The adaptability is a type of challenge which incorporates poor infrastructure, Low personal computer penetration. The Internet and the Broadband connections are expensive and unaffordable for the general masses which can be a major barrier. Moreover there has been 'low bancarization' people using basic banking services and the presence of low usage of online banking services
- Efficiency-The Court system is complex, expensive and inaccessible. The efficient system needs to be there in order to establish the principles of ADR and ODR. For this there must be a platform and a software to make the system of dispute resolution effective and efficient.

- Great Economic Divide between the Developing and the Developed Nations- Due to globalization, developing countries share the common characteristics of unequally distributed wealth the developed nations have a more potential for ODR than the developing and the underdeveloped states which causes a disparity to arise. A perfect ODR system has become a science fiction fantasy for the developing and underdeveloped nations

### Concerns

- Opacity of decisions: The lack of physical appearances or video hearings may give the impression that secret decisions are being made behind closed doors. While mandatory video hearings may alleviate this, this would not reduce as much public costs as envisioned. A cost-benefit analysis in light of each country's socio-political norms must be taken into consideration here.
- Threat to industry: With non-reimbursement of lawyer's fees and the use of case managers, this may cut down the demand for lawyers. While this is a valid concern, the maintenance of the industry is something that needs to be balanced against equal access to justice for everyone.
- Internet as a barrier: Some people cannot afford online resources such as a computer. An ODR online litigation system that completely replaces all other physical avenues to public dispute resolution ostracizes these people. The CRT attempts to overcome this by allowing for paper applications at community access terminals.

### Recommendations with regard to ODR mechanism as an effective tool in the commercial world <sup>[10]</sup>

1. Enactment of separate legislative Framework is the primary steps should be considered worldwide.
2. Steps to be taken for security measures in ODR and not completely relying on IT principles because they are framed for domestic purpose by each country.
3. Separate online arbitration procedure should be initiated.
4. Awareness among the people regarding ODR mechanism as an effective tool for settlement of dispute.
5. For proper and effective mechanism of ODR a proper infrastructure should be initiated with background support from traditional arbitration principles.
6. Need of specialised institutions that can provide training, education, research and policies for the success of ODR in India

### Conclusion

Developments in the past year or two have opened a window of opportunity for the adoption of ODR systems in India. As policymakers and private actors start warming up to the benefits of tech-enabled dispute resolution, the immediate goal should be to demonstrate capacity and build trust in ODR systems. This includes the realisation that not all sectors and user groups are equally equipped to immediately transition to ODR. Any kind of mandatory adoption should, therefore, be carefully considered so as to avoid extending digital exclusions into the domains of

justice delivery and redress. An emphasis on hybrid models of ODR, both in terms of the choice between offline and online interactions and emergence of intermediaries who can help users in bridging the technological gap, would be useful.

Creating digital trust requires a framework that incorporates accountability, equity, ethics and auditability in its functioning. Thus, another priority at this stage should be to pursue the adoption of a voluntary code of conduct that is conducive to building trust in the ecosystem. Such a code of conduct should emerge, and be implemented, from within the ODR ecosystem rather than being enforced through State coercion. In addition to concerns of stifling innovation through over-regulation, it is also important to avoid excessive central planning in the technical design of ODR systems. This could result in the locking in of specific technologies and standards, hampering the long term prospects of the ODR sector.

ODR has the capacity to increase equity, fairness and access in India in the dispute settlement ecosystem. E-Lok Adalats conducted at Chhattisgarh, Karnataka, Rajasthan, Gujarat and soon Kerala in several countries, which solved disputes simply by means of WhatsApp audio and video calls, showed the convenience of ODR. Supply-side capacity can also be improved by providing a large, competent pool of services for award and representation.

ODR has the potential to be an efficient alternative which employs barriers and resolution access technology. ODR could be the post-pandemic disruption that improves the delivery of justice to all by facilitating low costs, remote, technology-enhancing, linguistically friendly, friendly and incentivised dispute resolution, containment, and solution while adhering to natural justice principles.

### References

1. Ms. Soumya Jha, 7th August, Online dispute resolution – A compelling Option or A Far Fetched Reality During Pandemic Times, 2020.
2. Dispute Prevention and Resolution Division, Department of Justice, Canada Dispute Resolution Reference Guide, 2012.
3. Mr. S. Kulkarni. Online Dispute Resolution Mechanisms in India, 2021.
4. Mr. Dev Sareen. Online Dispute Resolution – Application and Challenges, 2018.
5. Dr. Karnika Seth. Adoption of Virtual Courts in India, 2022.
6. Mr. Ajendralpal Singh. The Adoption of Institutional Arbitration Rules and their effect on the right to appeal in Domestic Arbitrations, 2017.
7. Dr. RAKhi Singh Chouhan. Streamlining online dispute Resolution with Alternate Dispute Resolution; Chances and Challenges, 2020.
8. Ms. Neha Jain, Online Dispute Resolution – The future of solving disputes
9. Ms. Akankshya Misra. Online Dispute Resolution – A success or failure in India, 2021.
10. Ms. Apoorva Dixit. Online Dispute Resolution – An Indian Perspective, 2018.