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## Online dispute resolution: An evolutionary step in Indian justice system

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### Abstract

The Enormous number of pending cases in India is posing problem not only to judiciary but to public at large who are hoping to get justice within an expected time period. The judiciary has come under great stress and is crumbling under its own weight. The scaling of cases in different courts and unjustifiable delay results in various legal and social problems.

As per data of PRS Legislative Research, the pendency of cases increased by 2.8% annually in all courts between 2010 to 2020 and the number gets piled up over 4.5 crore cases upto September 15, 2021. The share of pending cases is 20% and 13% between High Courts and Subordinate courts respectively. One thing is important to note here that it was the time when not only India but whole of the world was combating against dreaded corona virus. Thus, on the one side the number of new cases reduced but on the other side the disposal rate became slower as courts were not working in physical mode. During this hard time, the tribunals, fast track courts and family courts have also witnessed high pendency of cases. As per written reply of Law Minister Kiren Rijju, till March 2022, 4,10,47,976 cases are pending in various district and subordinate courts. The data is strong evidence to prove the reasons for delayed justice system in India. Therefore, evolution of an alternative mechanism for speedy disposal of disputes become unavoidable. Further, the conversion of traditional court mechanism into innovative mechanism have led us to accept and adopt different ADR processes. With passage of time and especially during pandemic the concept of ODR mechanism due to its effective familiarization and utilization of technology received a great boost. This article discusses the ODR as an evolutionary step in the Indian justice system.

**Keywords:** ODR, covid-19, dispute, resolution, technical

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### Introduction

The technological boom in 1990s and liberalisation of Indian economy had its impact on methods of resolution of disputes and significantly changed traditional Alternative Dispute Resolution into innovative Online Dispute Resolution mechanism. The E-commerce website such as eBay, provided for an easy procedure for filing complaints and resolution of same with automated negotiation followed by mediation or arbitration<sup>[1]</sup>. Outbreak of covid 19 further obstructed all physical activities but significantly enhanced the virtual activities in all fields.

The methods of dispute resolution mechanisms with more sophisticated variations are used by various government and other organisations are popularly known as Online Dispute Resolution i.e., ODR. Farah tried to define 'ODR' as a mean to utilize the technology to support and bring out the dispute resolution<sup>[2]</sup>. Schiavetta outlined ODR as composition of both online and other methods for dispute resolution that use internet<sup>[3]</sup>.

This is indeed a positive step in dispute resolution mechanism but as everything has its loopholes, ODR mechanism do have the drawbacks like invasion on privacy, IPR infringements issues and so on.

### Impact of ODR on Privacy

The major matter to ponder upon that associated with ODR is cyber security and privacy. Privacy has always been crucial in Indian justice system. Providing justice to aggrieved party is not only essential but to protect their right is also mandatory in our justice delivery system. The process of ODR necessitate disclosures in certain circumstances that are required to be protected otherwise it will result into breach of privacy that resultantly may hamper the parties trade secrets and have adverse effect on their business activities/ transactions. Further, the trust that ordinary people and families have in the alternative methods may get tarnished if privacy of their matters are not maintained while making resolution in their dispute.

When one opts for any kind of online service for any purpose including ODR, one may be reluctant to use it due to the reason of security lapses that may be encountered while using the same. One may be a victim of crime of hacking and may suffer the monetary and other personal loss.

### Need of ODR Mechanism in India

The enormous number of pending cases forced us to think about some other alternate which would be simple, simple and more economic. This idea resulted in evolution of ADR and to apply the same at worldwide level, certain international conventions and protocols played a positive role. Further, ODR proved itself as another

substitute of ADR system <sup>[4]</sup>. Outbreak of covid 19 in recent years, further gave impetus to transformation of dispute resolution into Online Dispute Resolution Mechanism. This helps in reducing the burden of court besides speedy delivery of justice.

This technique of dispute resolution with intervention of neutral third party (ADR) that involves physical proceeding got barred during outbreak of Covid-19. Such kind of peculiar situations or other problems may also surface in future as well. Therefore, we all need to think about expanding the scope and application of potentially advantageous ODR mechanism.

Applying online dispute resolution particularly in India would be beneficial especially for the cases which are existing in the society but are still unheard due to high cost and time issues. After pandemic Covid-19, certainly ODR proved itself as fast and economic tool for justice delivery in India.

Most encouraging role can be seen of Supreme Court of India in embracing technology. CJI of India SA Bobde opined that AI <sup>[5]</sup> is most suitable mechanism for disputes where we can go away with requirement of evidences. Justice Chandrachud, has been the chief to dealt with e-courts initiative and important transpose are noticeable <sup>[6]</sup>. Courts have transformed themselves by introducing 24/7 e-filing from any part of India, a paperless hearing with laptops, video- conferencing and online sharing of documents. Justice Chandrachud very rightly said that “the question today is not whether we should adopt technology but how well do we adopt technology.”

In India, ODR is still in its infancy stage but it can be said that certainly most of the disputant parties would be opting for ODR mechanism very shortly in near future due to its advantageous nature. The emergence of IT Act 2000, e-commerce and e-governance gives birth to an efficient and sensible mode of dealing with issues. To reduce the burden of courts has always been the main aim of Indian justice system. The solution of it lies in dispute resolution with more efficient and less time-consuming processes; e-mediation, e-conciliation and e-arbitration. The whole ODR mechanism rests on three main pillars- Trust, Technology and Expertise. If we are sufficiently providing all these attributes, ODR will definitely be a success in India.

### **Top ODR Platforms**

Some of the top ODR platforms such as CADRE <sup>[7]</sup>, SAMA <sup>[8]</sup>, CODR <sup>[9]</sup>, AGAMI <sup>[10]</sup>, Trilegal and Vahura have been established in India. NITI Aayog in cooperation with AGAMI and ONI <sup>[11]</sup> hold a conference on the theme- “Catalysing Online Dispute Resolution in India”, with an objective to bring all stakeholders to work in a collective manner to scale up ODR in India. In the meeting it came out to be accepted that ODR possess immense possibilities to deal with minor and moderate conflicts. The ODR mechanism procedurally is also very sound. It not safeguards the information with the help of electronic signatures but it has a very simple and scheduled procedure. With the help of Panel of ODR arbitrators, some established international institutions like WIPO <sup>[12]</sup>, ICC <sup>[13]</sup> and SIAC <sup>[14]</sup> have marked the headlines. Our top ODR platforms working in this field will certainly shine one day.

ODR has the possibilities to upgrade the access to justice. It can also help in strengthen the Indian economy by paving the way to ease to business. The hon’ble Apex Court of India also opined in favour of admitting recording witness testimony through video conferencing as admissible evidence <sup>[15]</sup>.

### **Advantages of ODR**

1. Like ADR mechanism, ODR can relieve the court congestion. The parties can participate in court proceedings from their home without coming to the court premises that ultimately will be helpful in reducing the cost and time of parties as well as of courts.
2. ODR helps in enhancing the community involvement in dispute resolution mechanism.
3. Another advantage to ODR is that the parties to the dispute can negotiate themselves with the assistance of some neutral mediator. Further the ODR procedure is devoid of inflexibilities and suits all the parties who lacks sufficiency of time.
4. Due to its protective feature of electronic signatures the exchange of documents are safe. Conduct of proceedings through video conferencing are much cheaper and economically affordable to all. Moreover, the data can be stored in electronic way giving way to paper custom.
5. In ODR mechanism, the responsibility to resolve the dispute is solely on e-conciliator, e-mediator or e-arbitrator as the case may be. Thus, the parties to the dispute feel less burdensome and can more actively participate in their business activities.
6. Another advantageous feature is that it consumes shorter time period comparatively with traditional court mechanism. As we all know that human conflicts are inevitable and disputes are equally inevitable. With increase in population, the number of disputes is piling to mountains and there is a dire need to resolve the dispute in minimum possible cost and time. ODR is an efficient and speedier method where disputes are being resolved in few weeks.
7. The geographical limit is no limitation in case of ODR mechanism. Further, parties can mark their presence sitting from anywhere in the world. This is the beginning of totally a new kind of justice administration in India.
8. The most important advantage of ODR mechanism is that it enables to record the proceedings that can be kept for a long time.

### Disadvantages of ODR

1. The process of ODR is not an easy one due to technicalities involve in it. Many times, it results into dissatisfaction between the disputant parties. Further, it causes problems in checking accountability of parties and witnesses. It totally lacks face to face interaction thereby hamper the credibility of parties.
2. ODR can be applied in all type of cases but in practical sense it is not acceptable and satisfactory in every case. It has its application only in limited subjects- e-commerce, domain name etc. another type of disputes that require inspection, discovery and claims cannot be settled with the help of ODR mechanism.
3. To maintain confidentiality is another aspect where ODR has its limitations. Though safeguarding of information with the help of electronic signature is claimed but in this era of cyber issues, hackers can hack the information.

### ODR is Upcoming Technological Tool

Richard Susskind set forth that justice has four main objectives to be achieved–

1. Promoting Legal Health
2. Avoidance of dispute at initial stage
3. Containment of dispute and
4. Resolution of dispute <sup>[16]</sup>

Dispute containment and authoritative dispute resolution are only two features that can be associated with the physical courts. However, by adoption of virtual court system during pandemic covid-19 and demand of time, it now has become a dire necessity to think about for achieving other two objectives also, as not only India but whole of the world is passing through a judicial transition phase. ODR is very much popular in private fields as they have the expertise and the technology; thus, the courts and private administration must collaboratively work together to adopt and implement the skills for the benefit of general public at large.

### Online Dispute Resolution as the Need of the Hour

We all became acquainted with ODR during covid-19, but it was a long back in 2012 in Shakti Bhog case <sup>[17]</sup> the hon'ble apex court of India declared OAA <sup>[18]</sup> legal. Lately, the Apex Court in a writ petition- "*Expeditious trial of cases under Section 138 of N. I. Act, 1881*", considered observation made in Meter sand Instruments Pvt. Ltd. Vs. Kanchan Mehta <sup>[19]</sup>, and held that "Use of modern technology needs to be considered not only to make the courts paperless but also to reduce overcrowding of courts". Thereafter, in 2019, Nilekani Panel committee recommended for setting up of ODR mechanism for disputes arising out of digital payment issues. Thought we are having legislative provisions and judicial pronouncements favouring ODR, still we need to pay our attention towards logistic and other infrastructure facilities that are needed to make ODR a practical reality.

### Availability of Technology for ODR Mechanism

The successful outcome of ODR mechanism depends upon the availability of digital technology at both the ends- the justice provider and the justice seeker. The technological boom around the world and in India had impact upon the competition between service providers. India stands at the second rank in using the internet but in numbers <sup>[20]</sup> it is far less then the other countries in the world but maximum users recorded in 2020 <sup>[21]</sup>. When half of Indian population feeling ease in using the internet facility and becoming digital, then certainly the time has come to shift justice system from physical to virtual one.

### Conclusion

The liberalisation of economic activities is giving rise to a new dispute every day and Indian justice system is longing for an inexpensive and speedy resolution of dispute mechanism. ODR mechanism is sufficiently large to fulfil and achieve the desired objective. In order to give ODR mechanism an enormous expansion, India needs to organise seminars, conferences, conduct workshop, campaigns and through audio and visual media a widespread publicity of advantages is required at grass-root level. An active contribution of government with regard to expanding administrative and technical infrastructure is a prerequisite for ODR mechanism. Besides this increasing digital literacy rate, decreasing cultural and language barriers for providing an easy access to e-mechanism will be a channel for achieving the smooth ODR mechanism to all.

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