

# ONLINE DISPUTES RESOLUTION IN INDIA: AN OVERVIEW

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## ABSTRACT

The concept of online disputes resolution in India is at a nascent stage. The incidence of Covid-19 in India, in particular and the unprecedented advancement of technology in the field of computers and Internet have proved to be the major catalytic factors in the introduction of online disputes resolution mechanisms in solving disputes of various kinds. Besides that, ever-increasing pendency in the courts and the concurrent wastage of time and money in resorting to judicial process have also initiated this new process of disputes resolution. In India, NITI Aayog had constituted a high-level committee in June 2020 under the chairmanship of Justice A.K. Sikri, retired Judge, Supreme Court of India. Its report was released on 29.11.2021. The report has suggested various measures to face the challenges in implementing online disputes resolution in India. Online ADR system operates with the help of several online techniques including video-conferencing, zoom and other apps, online audio systems etc. Mainly the process of arbitration, conciliation and mediation are being conducted online. Recently, virtual Lok Adalats also took place. So far, the results have been satisfactory. But at the same time, there are many challenges too. Low Digital literacy is a major problem. The issues of privacy and data protection are of utmost importance. Moreover, people's trust in the system is another grey area. The appropriate legal regime is another challenge. This paper explores various dimensions of online disputes resolution in India and attempts to find solutions also.

**Keywords:** Online Disputes Resolution, Video-Conferencing, Mediation, Arbitration, Conciliation.

## INTRODUCTION

Online Dispute Resolution (ODR) amounts to the resolution of disputes with the help of digital technology and techniques of Alternate Dispute Resolution (ADR), particularly in small and medium-value cases, such as negotiation, mediation and arbitration. The terminology of online dispute resolution encompasses two aspects. First, it includes solving disputes arising from an online transaction. Such dispute may have taken place by any means, either online mechanism or offline method including court adjudication. Secondly, online dispute resolution can be viewed as a method of solving a dispute of any nature, offline or online. This points towards a gradual evolution of the newer ways of solving disputes by making use of the online environment. The online dispute resolution thus comprises online negotiation, online mediation, online arbitration, online neutral evaluation, online peer jury, etc. Here, an online environment implies a setup where the technology and communication facilities are frequently in use. It includes use of telephone, fax, e-mail facilities or any other mode available on the Internet or any other information and communication technology which may be of help in solving the disputes.

The origin of online dispute resolution dates back to the 1990s with the evolution of the Internet. In 1996, the first ODR initiative was launched in the University of Massachusetts and the University of Maryland. Further, with the growth of e-commerce, a need was felt for a robust system for operating commercial activities on the Internet. Online Dispute Resolution came handy to solve this problem. In 1999, eBay initiated a pilot project to provide online mediation facilities for disputes coming up in between buyers and sellers on its platform. The eBay platform offered a customer to file a complaint online and initiate a settlement process. In the case of failure of this process, an online mediation would start. Ebay, by 2010, was handling over sixty million disputes per year by using its ODR platform. This initial model has evolved in many sophisticated forms which are being used in private organizations and states alike. ODR thus takes two forms. The first is ODR conducted by private bodies, and secondly, court annexed ODR. This online dispute resolution originated and evolved in the arena of the private international organizations such as Smartsettle, Cybersettle and the Mediation Room. They offered online mediation and settlement to the parties involved in commercial disputes. These global organizations are run by their own rules. The International Council for Online

Dispute Resolution ('ICODR') is a consortium of public and private sector organizations that resolve disputes or conflicts with the help of online dispute resolution service providers.<sup>i</sup> The success of ODR in private bodies paved the way for several governments to co-opt online dispute resolution into their own public court systems. As a result, the court annexed ODR centres for certain classes of cases such as motor vehicle accident cases, loan defaults, and consumer cases. These cases can be disposed of speedily and have questions of law and fact to a limited extent. Some significant examples of this include the New Mexico Courts Online Dispute Resolution Center in the US for resolving debt and money due cases at district level through negotiation. Money Claim Online of the United Kingdom for settling money claim disputes and Civil Administrative Tribunal of Canada for resolving a range of small value disputes are other such examples.

## **POSITION IN INDIA**

The United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985 and the UNCITRAL Conciliation Rules in 1980. The United Nations General Assembly has recommended this Model Law in regard to international commercial relations. In India, these uniform principles have been duly accorded a place in the Arbitration and Conciliation Act, 1996. Following this, several other measures have been undertaken by different bodies.

1. To begin with, National Internet Exchange of India is a not-for-profit organization working since 2003 under the Ministry of Electronics & Information Technology, adopted the .IN Domain Name Dispute Resolution Policy (INDRP) which provides for online dispute resolution. The INDRP Rules of Procedure were approved by NIXI on 28 June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996.<sup>ii</sup> Recently, on 12.01.2023, applications were invited by NIXI for empanelment of 4 Arbitrators for hearing and deciding domain dispute cases under its INDRP Policy.<sup>iii</sup>
2. A three-day 10th International Online Dispute Resolution Conference sponsored by eBay India and PayPal in association with the Internet Corporation for Assigned Names and Numbers (ICANN) took place in Chennai on February 07, 2011 under the aegis of United Nations Online Dispute Resolution Working Group. This was the first meeting

in India of this August world body. The conference was attended by experts in law, technology and conflict resolution from around the world.<sup>iv</sup>

3. The Ministry of Law and Justice issued an official statement asking the government departments to take resort to online arbitration to accelerate dispute resolution and bring down government litigation which amounts to nearly 46% of about three crore pending cases in the country. Further, the Ministry had identified 12 arbitration agencies working in India to enable the ministries and the concerned departments to quickly resolve their disputes by availing the facility of online arbitration for out-of-court settlements.<sup>v</sup>
4. The Ministry of Small and Medium Enterprises (MSME) has launched MSME Samadhan Portal on 30.10.2017 for monitoring of the outstanding dues to the Micro and Small Enterprises (MSEs) from the buyers of goods and services. On 14.6.2020, a special sub-portal was also launched monitoring the dues and monthly payments by Ministries/Departments of Government of India and CPSEs to the MSMEs.<sup>vi</sup>
5. India's first E-ADR Challenge was launched by Humlab and ICICI Bank on April 12, 2019, in which Kolkata-based team ODRWays was selected to build an ADR platform to resolve disputes at scale.<sup>vii</sup> The E-ADR Challenge is part of the Agami Challenges, which are invitations for innovators to develop solutions for specific, clearly-framed problems in the legal sector. The Challenge invites innovators to set up an institution that will offer e-arbitration services and will be an online aggregation platform for providers of mediation and Conciliation.<sup>viii</sup>
6. The Government of India launched the Vivaad se Vishwas or 'No Dispute but Trust' Scheme for efficient resolution of tax disputes through online dispute resolution. This Scheme is useful for taxpayers with ongoing legal tax disputes at any level. Under this scheme, the interest and penalty associated with the disputed tax amount is completely waived off.<sup>ix</sup>
7. Vidhi Centre for Legal Policy published a Report titled "ODR The Future of Dispute Resolution in India with JALDI as co-authors in regard to mainstreaming ODR in India.
8. In an answer given in regard to an unstarred question in the Lok Sabha on 25th March, 2022, the Minister of Law and Justice, Shri Kiran Rijiju said in the Parliament that 'the concept of Online Dispute Resolution in India is at a nascent stage'. He further told that in order to create an effective implementation framework for Online Dispute Resolution

in India, the NITI Aayog had constituted a high-level Committee in June 2020 under the chairmanship of Justice A.K. Sikri, Retired Judge of the Supreme Court of India. The mandate of the Committee was to develop an action plan that would aid in mainstreaming ODR and thus promote access to justice through ODR. The Committee's Report titled "Designing the future of dispute Resolution: the ODR Policy Plan for India" was released on 29.11.2021. The recommendations of the Report to tackle challenges in adopting ODR framework in India are as such:

"(i) At the structural level, it suggests actions to increase digital literacy, improve access to digital infrastructure and train professionals as neutrals to deliver ODR services.

(ii) At the behavioural level, the report recommends adoption of ODR to address disputes involving Government departments and ministers.

(iii) At the regulatory level, the report recommends a soft-touch approach to regulate ODR platforms and services. This involves laying down design and ethical principles to guide ODR service providers to self-regulate while fostering growth and innovations in the ecosystem.

The report also stresses on strengthening the existing legislative framework for ODR by introducing amendments to statutes. The report offers a phased implementation framework for ODR in India".<sup>x</sup>

9. The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (Rajya Sabha) in its Ninth Report on The Arbitration and Conciliation (Amendment) Bill, 2003 called for the introduction of technology in the Arbitration and Conciliation process.<sup>xi</sup>
10. In 2020, the Legal Services Authorities integrated technology with the conventional modes of dispute settlement and introduced virtual Lok Adalats. Since then, all the Lok Adalats including National Lok Adalats are organized through virtual and hybrid mode. Chhattisgarh conducted the first virtual Lok Adalat on 11 July, 2020.
11. The discourse on a formal ODR system was initiated with the Nandan Nilekani Panel in 2019. This panel produced a 'Report of the High-level Committee on Deepening of Digital Payments' which recommended the setting up of online dispute resolution systems to handle complaints arising out of digital payments. As per the suggestions of

the Committee, there should be two levels of such ODR platform-one automated and one human. Also, there should be provision for appeal.<sup>xii</sup>

12. Judicial approach towards ODR: One of the main reasons for the introduction of ODR in India has been the unbearable load of cases in the courts. At present, there exists about 33 crore cases in different courts including the Supreme Court and the High Courts. This mind-boggling number defies any solution in the near future given the working of the courts here. It requires a holistic solution instead of any piecemeal solution. Online Dispute Resolution is one of the potent solutions to deal with this huge problem. Even the ex CJI of India, Justice Bobde has put an emphasis on the need for making mediation agreements binding while recognizing the many benefits of dispute resolution system. He is also in favour of international arbitration and artificial intelligence (AI) as a leading alternative to the current impasse.<sup>xiii</sup> Desirous of introducing more technological intervention in resolving disputes, the Supreme Court has initiated "SUVAS" (SupremeCourt Vidhik Anuvaad Software) which is an AI-powered translation engine that translates judgments from English to Indian languages.<sup>xiv</sup>

In laying down the foundations of ODR through judicial pronouncements, the Supreme Court of India has played a stellar role. First, it upheld the validity of taking evidence and testimony of witnesses through video-conferencing.<sup>xv</sup> It also acknowledged virtual reality the actual reality. Later, the Court held that if it could be possible to hold consultations with the help of electronic media and remote conferencing, it was not necessary that the parties should sit with each-other in the same physical space.<sup>xvi</sup> In another case, the Apex Court observed that there was a need to categorize the cases which could be partly or entirely concluded online without physical presence of the Parties. The Court herself recommended the simple cases such as related to traffic challans and cheque bouncing. (M/S Meters And Instruments Pvt. Ltd. vs Kanchan Mehta, 2017(4) RCR (Criminal) 476) The Court further took cognizance of online arbitration the cases of Shakti Bhog vs Kola Shipping<sup>xvii</sup> and Trimex International vs Vedanta Aluminium Ltd.<sup>xviii</sup> In both the cases, it was held by the Court that an online arbitration agreement is valid provided it complies with Section 4 and 5 of the Information Technology Act, 2008 read with Section 65 B of the Indian Evidence Act, 1872 and provisions of the Arbitration and Conciliation Act, 1996. Thus, the trend to Integrate technology in the resolution

of disputes and expressing trust on ADR mechanism by the Apex Court augur well for the transition towards Online Dispute Resolution in India.

## **ODR AND THE LAW**

At present in India, there is no specific law for implementation of ODR , yet there are the provisions in the existing laws which enable the Courts to adopt online processes such as sharing of virtual documents and virtual hearings . For example, under Section 65-A and Section 65-B of the Indian Evidence Act, 1872, electronic evidence is legally recognized. Similarly, the Information Technology Act accords recognition to digital signatures under Section 4,5, 10-A and 11-15 to provide validity to online contracts. These provisions have been introduced in the corresponding laws due to adoption of the UNCITRAL Model Law on Electronic Commerce in 1996 and the Model Law on Electronic Signatures in 2001.<sup>xix</sup>

## **ODR AND THE CHALLENGES AHEAD**

### ***1. Inadequate digital literacy***

In India, digital literacy is gaining momentum, but a lot more needs to be done by the government to spread it in a faster way. Without adequate digital literacy, the progress of ODR will remain a far cry. Presently, digital literacy generally varies across age, ethnicity, and geography. This digital divide needs to be addressed at the earliest. Digital literacy should be uniformly spread in both the rural and urban areas.

### ***2. Lack of digital infrastructure***

Digital literacy depends upon robust digital infrastructure which is still in the developing stage in India. Although a good start has been given in this direction by the Digital India Mission conceptualized by the Central Government a few years back, it will require some time more to finally accomplish the task. However, in the urban areas where most of the courts are situated, the infrastructure backup is certainly better. For the proliferation of ODR on the pan-India level, the robust digital infrastructure is of utmost importance.

### ***3. People's lack of trust in ODR***

People in India are not generally aware of this new and emerging technology. Moreover, there seems to be the initial resistance against the change in the style of litigation. From the centuries gone by, they are used to facing each-other as litigating parties on any forum for justice. So, it will require a lot of initiative and drive from the lawmakers, government and the lawyers to mould their opinion in tune with times. For this, it is necessary to speed up the process of ODR for obvious results so that people at large could know about it. That will also generate people's trust in the new legal regime.

### ***4. Concerns of privacy and confidentiality***

In the current scenario, everybody seems to be concerned about his privacy concerns. In the new system, there will be less face-to-face interaction and more technological intervention giving rise to the concerns of privacy and confidentiality. This is a new challenge which the authorities concerned and the technical persons have to face and come up with plausible solutions.

### ***5. Lack of robust ODR legal regime***

At present, there are legal provisions in certain Acts which are amenable to the ODR process. But in order to carry it further to its logical ends, the concerned laws should have specific provisions for ODR in solving disputes of particular nature. In other words, ODR must be part and parcel of the entire legal regime and it should not be left for conjecture in the hands of judicial authorities.

### ***6. No separate mechanisms for private and court-related ODR***

Till now no specific mechanism for the private and court-related online dispute resolution has been laid down in the statute books. In private organizations, different rules are prevailing in the name of ODR mechanism. This will further erode the trust of complaining parties in the system. There should be uniformity in the whole system. Similarly, in a court-related ODR system also, there should be a well laid-out ODR mechanism.



## CONCLUSION

At present, India is at the cusp of a litigation explosion. Every year a fair number of cases are increasing to the existing tally. People are running to courts for even petty matters. Of late, courts have become the ultimate refuge for the parties in dispute. In such a dreaded situation, any kind of alternative dispute resolution system is the need of the hour. And if this system is speeded up with the help of latest technological advancements, this nagging problem of increasing court cases can be solved within a short time. Online dispute resolution through technical input is a system with a futuristic approach. The use of Artificial Intelligence (AI) and other advanced technologies can be made. Happily, this system is gaining ground in India steadily. But the lawmakers should bring required changes in the laws and lay down simple procedures in order to gain people's trust. It would be better for the Central Government to implement the recommendations of Justice A.K.Sikri Committee 's Report at the earliest to streamline the system of ODR in the country. Further, it is again imperative on the part of the government to strengthen the digital infrastructure throughout the length and breadth of the country to facilitate these proceedings. Digital literacy is another snag which should be wiped out with the help of private organizations, N.G.Os and the concerned government bodies. There is ample scope for the proliferation of ODR in this country where the ordinary people are already burdened with the pending litigation in large numbers. The lengthy court procedure, costly litigation process and the paucity of presiding officers are some of the prominent causes. Therefore, in India ODR is the need of the hour. Already the developed and rich countries are adopting ODR in their judicial system. Lawmakers can emulate their progress by showing will power and determination keeping in view the overall public's welfare. Now the time has come to shift the focus from dispute resolution to dispute avoidance, containment and improving overall legal health.

## ENDNOTES

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- <sup>xvii</sup> [(2009) 2 SCC 134]
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