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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE FUTURE OF ONLINE DISPUTE RESOLUTION IN INDIA: TRENDS AND CHALLENGES

AUTHORED BY - DR. SANJAY KUMAR PANDEY¹

ABSTRACT

The concept of Online Dispute Resolution (ODR) is changing the way law is practiced in India. At present, this is about the vast proficiency of technology as well as the need for quick mechanisms for resolving conflicts, which was particularly felt during the pandemic. This paper explores the contemporary state of ODR, in terms of judicial support and its wide adoption as government measures and technologies aimed at facilitating its use evolve. The positive attributes of ODR such as improving usability, affordability and speed in resolving conflicts are well elaborated in the paper. Nonetheless, appropriate challenges prevail such as the digital divide, lack of awareness and trust of the users and absence of a solid regulatory framework. In the face of these issues, the contributors need to work together to facilitate the active use of these technologies in India through raising levels of digital literacy and ensuring access to justice for all. If these impediments are surmounted, there is every chance that the Nation will be able to fully maximize the advantages that ODR avails while establishing a fair and efficient legal system.

Keywords: Online Dispute Resolution, Legal Technology, Digital Divide, Regulatory Framework, Justice System, Accessibility.

INTRODUCTION

Over the past few years, the age-old methods and practices of resolving disputes have changed dramatically, giving birth to Online Dispute Resolution (ODR) as one of the most important aspects of this change. ODR makes use of paired and audio-visual communication to assist the parties in resolving their disputes by using information technology, in place of going to courts of law. In India, the use of ODR is on the rise, especially given the context of the COVID - 19 pandemic, which made most interactions remote and exposed the drawbacks of traditional court systems.²

¹ Assistant Professor, Amity Law School, Amity University, Haryana

² United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018.

The Indian judiciary has appreciated the ability of ODR to improve access to justice, mitigate the problem of backlog of cases, and ease the processes of resolving disputes. Therefore, with the efforts of institutions like NITI Aayog, the improvement of technology, among others, ODR is being promoted for different kinds of disputes including those of e - commerce, consumer, and even family disputes in the country.³

The ODR in India holds a lot of potential but many factors hinder its full realization. One of them is the digital divide, which presents a significant challenge to the almost universal acceptance of such a system. Besides, the lack of digital reading culture and trust in the electronic platforms creates some obstacles to the full acceptance of the ODR solutions. In addition, absence of matured mechanisms to regulate the processes, raises issues regarding the quality and legitimacy of ODR.

This paper primarily focuses on analysing the present scenario of ODR in India, its advantages and disadvantages and how various stakeholders can contribute to make the future of online dispute resolution in India brighter. Addressing these areas will also help in determining the extent of efficiencies and effectiveness that can be achieved in the administration of justice in India through ODR systems.

CURRENT TRENDS IN ONLINE DISPUTE RESOLUTION (ODR)

Judicial Support and Recognition

The judicial system in India has progressively acknowledged and supported ODR as an option that can substitute the conventional court process. This was a seminal case, *State of Maharashtra v. Praful Desai*⁴, in which the Supreme Court upheld the use of video conferencing for the purpose of taking evidence, thus adding more credibility to the already established use of such technology in law. The above case illustrates how the courts are not averse to changes in scientific innovations, thus making ODR practices more acceptable.

Most notably, the Supreme Court has also begun to promote the use of digital filing of online arbitration agreements which indicates that online dispute resolution mechanisms are beginning to be accepted.

³ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (2020)

⁴ 2003 4 SCC 601

Government Initiatives

The Indian government has taken the initiative and supported the development of ODR through various initiatives. In this regard, the NITI Aayog's 'Designing the Future of Dispute Resolution'⁵: The ODR Policy Plan for India proposes a detailed plan which envisions improving digital literacy, infrastructure development, and training of personnel in ODR. Within this report, the government's intention to assimilate ODR for various verticals including e-commerce and consumer disputes has been addressed. Other important initiatives include:

- **National Centre for Dispute Resolution (NCDR):** National Centre for Dispute Resolution NCDR was established under the auspices of the Ministry of Law and Justice, for the purpose of establishing alternative means of resolving disputes as well as enhancing its practicing.
- **Online Consumer Mediation Centre (OCMC):** Established at NLSIU, Bengaluru OCMC aims to provide modern infrastructure to facilitate both online and offline consumer dispute resolution.
- **Digital India Program:** Focused on realizing the vision of a Digitally Empowered Nation, where the role of Online Dispute Resolution ODR in this vision is very significant.
- **SAMADHAAN Portal:** This portal was introduced by the Ministry of Micro, Small and Medium Enterprises MSME to tackle the payment issues of Micro and Small Enterprises along with their buyers and suppliers.⁶

Such initiatives demonstrate a government-wide commitment to using technological innovations in enhancing access to justice.

Technological Innovations

The role of technology cannot be discounted in the ODR evolution in India. Take for example the recent launch of AI-based devices such as the SUVAS translation engine, which indicates the extent to which technology could improve dispute resolution processes and their efficiency. Furthermore, the development of easily accessible ODR has been enhanced by the presence of private sector creativity, which promotes cut-throat competition. For instance, ODR ways and Presolv360, as well as SAMA include such platforms that provide services to cater various needs of the disputants.

⁵ NITI Aayog, Agami, and Omidyar Network India initiatives on ODR adoption during COVID-19

⁶ SAMADHAAN Portal launched by the Ministry of MSMEs for dispute resolution

Technology ensures that the dispute resolution process is efficient but also promotes the overcoming of challenges faced by marginalized groups. Thanks to digital public goods and open-source software, ODR can also involve those sections of the population that formerly had little access to legal services.⁷

India's current trends in Online Dispute Resolution suggest a strong system backed by the courts, government efforts, and technological advancements. As these trends evolve, they potentially tend to ease access to justice and speed up the processes of resolving disputes in all sectors. However, constant efforts are still required to deal with issues such as challenges of human and information technologies in ODR implementation in India.

BENEFITS OF ONLINE DISPUTE RESOLUTION (ODR)

Accessibility and Convenience:

The use of Online Dispute Resolution resolves the many limitations posed by the geographical or physical presence in resolving disputes because such a method does not require them. This is very ideal and advantageous especially for those people living in distant places, or those who are bed-ridden or incapacitated. They can participate in disputes in sitting rooms instead of going to court⁸.

- **Geographical Limitations:** ODR allowing remote participants means that many people can engage in the proceedings without traveling from different geographical locations which is a great step towards ensuring 'access to justice'. For example, even people living in the most remote areas can amicably settle disputes without spending money on transport or even coming out of their daily employment.
- **Flexible working hours:** The working nature of the online facilities essentially allows the parties to fix the hearings at their own pleasure irrespective of the time zones and other activities. This in turn fosters a healthy practice where all the members participate in the activities without facing any geographical limitations.
- **Time-difference Interaction:** Most of the ODR systems enable time-difference interaction that is understandingly simply allowing the parties to file their documents and arguments at different times helping in making it easier for those who cannot attend live sessions due to time constraints.

⁷ SUVAS AI-powered translation engine for dispute resolution

⁸ Drishti IAS, Online Dispute Resolution Mechanism in Indian Judiciary, (last accessed November 26, 2024)

Cost-Effectiveness:

The cost implications of ODR are substantially less than those of going through the courts.

- **Lowered Expenses:** With ODR, one no longer must worry about costs associated with travels, lodging, or even attending hearing appointments since such appointments are done less frequently. In this way, parties to a dispute can incur less in attorney's fees. To illustrate, litigation takes several years and vast amounts of financial resources; however, ODR resolves comparable issues within a few weeks or even days and costs very little.⁹
- **Affordability for Low-Value Disputes:** This cost-effectiveness is particularly important in the case of low-value disputes that may otherwise be commercially unreasonable to resolve in traditional courts. The large expense often associated with pursuing claims may lead many people to simply forgo them; however, ODR presents a sensible option, enabling them to pursue redress.¹⁰
- **Effect of ODR's Usage on the Economy:** It has been projected that due to the efficiency of ODR and the resources saved in its implementation, ODR in its full-scale implementation can save up to \$26.5 billion every year in different sectors such as e-commerce and consumer services.

Efficiency in Resolving Disputes:

The possibility of improving the effectiveness of any given dispute resolution process with the application of ODR is very high.

- **Reduction of Case Backlogs:** Indian judiciary is overburdened with more than 5 lakh pending cases towards the National Consumer Disputes Redressal Commission and more. Besides, ODR can help in offering speedy resolution and in clearing these case backlogs more efficiently as compared to conventional court systems.¹¹
- **Improved Efficiency:** Online Dispute Resolution (ODR) systems are built with features that help, among other things, speed the resolution of disputes through the automation of such processes as filing of documents and even interaction of the parties. This increases the speed of the process reducing the waiting times that are normally encountered in modern-day court procedures.

⁹ Online Dispute Resolution: The Future of Dispute Resolution in India, *Mapping ADR*, Available at <<https://jgu.edu.in/mappingADR/online-dispute-resolution-the-future-of-dispute-resolution-in-india/>> (last accessed November 20, 2024)

¹⁰ M Doyle, "Captain Mbaye Diagne," *Granta*, vol. 48 (August 1994): pp. 99–103.

¹¹ Online Consumer Mediation Centre (OCMC), National Law School of India University, Bengaluru.

- **Cost Implication:** Research shows that the time wasted in resolving disputes using ODR can be cut down from 70%-80%, hence enabling the parties to bring their issues to conclusion quickly and therefore avoiding unnecessary waiting.¹²

Owing to the insights - accessibility, cost-effectiveness, and efficiency, Online Dispute Resolution is likely to be a game changer in the law sector in India. With the continued expansion of technology and the willingness to utilize ODR, the concept can be beneficial in augmenting access to justice for all while easing the burden on a thinly stretched judiciary. Beyond that, to harness the full benefits of ODR, that which owing to current threats, digital illiteracy and infrastructure among others, hinders its complete deployment, India should be proactive and include it in her legal fabric.¹³

CHALLENGES FACING ONLINE DISPUTE RESOLUTION (ODR) IN INDIA

Online Dispute Resolution (ODR) has become a revolutionary approach to dispute resolution, which is more efficient and cheaper than the conventional methods of resolving conflicts. It uses electronics within the turn of conflict management incorporating the processes to make it faster and easier than the customary approaches. However, in India, the acceptance and usage of ODR has many problems that must be solved for it to be effective. These challenges refer to factors such as the digital gap, lack of insight and confidence, and a changing legal environment.¹⁴

Digital Divide:

Overcoming the challenges of ODR Implementation in India, the digital divide is probably the most persistent among them. In as much as the urban areas tend to enjoy better digital infrastructure, the rural regions are way behind. Recent statistics have indicated that only 27% of India's rural populace has access to the internet.¹⁵ Considering this inequality gives rise to a concrete problem:

- **Constrained Reach:** People living in remote outskirts frequently do not have much needed dependable internet connectivity to enable them take part in the ODR processes.

¹² Shakti Bhog v. Kola Shipping, S.L.P.(C) No.16109 (2009)

¹³ Importance of Digital Literacy and Infrastructure Development for Effective ODR Implementation," *Indian Journal of Law and Technology* 16 (2020): 45–60

¹⁴ Available at <<https://www.drishtiias.com/summary-of-important-reports/the-future-of-dispute-resolution>> (last accessed on November 26, 2024)

¹⁵ *Supra* Note 8

This bars a huge proportion of the populace from adopting ODR services in settling disputes.

- Worsening of Disparities: Issues of the digital divide may serve to enhance the disparity between the rich and poor in society. Those shut out of ODR might have to suffer the fate of slower and expensive dispute resolution and going back to handling quarrels, thus creating more inequalities in accessing justice¹⁶.

To bridge this gap, there is a need for a comprehensive strategy that includes investments in digital infrastructure, government efforts to increase internet access, as well as reduced costs for digital devices.

Lack of Awareness and Trust:

A major challenge for ODR in India is awareness and usage among potential users. This challenge presents itself in the following ways:

- Awareness Deficit: Despite its prospects, a considerable portion of society, mainly inhabitants of semi-urban and rural regions are unaware of ODR and the advantages that come with it. Even in cities, only a few can explain how such platforms work. This lack of information creates a challenge on the use of ODR as an alternative conflict response strategy.¹⁷
- Trust Deficit: Among those who have an idea of ODR tool, security issues of the digital platforms in use tend to stamp authority to the use of the tool. Plenty of users often feel that the systems are untrustworthy where their information is sensitive in cases such as these ones where some data can be harmful. As this case is associated with some disputes, putting reliance on ODR platforms is very important.

To resolve these problems, it is necessary to mobilize considerable resources to educate the public on ODR through specific campaigns. Moreover, ODR platforms need to enforce high security levels and open their processes to the users to build confidence in the users.

Regulatory Framework:

The rule of law governing ODR in India is still evolving and this poses as a major threat against its growth. The following issues come in handy:

¹⁶ Resolving Disputes Virtually: An Analysis of Position in India, Available at <Legal500.com> (last accessed on November 26, 2024)

¹⁷ Drishti IAS, The Future of Dispute Resolution, (last accessed November 26, 2024)

- **Absence of Regulation:** There is no uniform regime in place to regulate the ODR processes within India. This absence of regulation results in different norms and practices on different platforms which in turn affects the results.
- **Protection of consumers and ethical principles:** Consumer protection and ethical conduct remain the top priorities. There is a need for a guarantee to the users that their rights will not be violated and that the service providers will be fair and impartial.¹⁸
- **Soft touch regulation** While stiff rules may curb innovation less control is likely to lead to a loss of trust in users. It is therefore proper to have a regulatory approach that is affirmative but not aggressive. A 'soft touch' regulation that is aimed at minimum standards for the safety and ethical practices of consumers but does not discourage advancement is useful in promotion sustainable and credible ODR practice.

The problems encountered in relation to ODR in India cannot be dealt with in isolation, rather it requires concerted efforts from all stakeholders such as the government, the judiciary, the private sector and civil society. The objectives of bandwidth expansion, increasing awareness, building trust and creating a sound regulatory infrastructure are imperative if ODR is to realize its potential of ensuring accessibility to justice. In my view, as a legal researcher, the effectiveness of the utilization of ODR will depend on the resolution of any challenges, if at all, with the use of technology; there should be no contradiction in the justice system.¹⁹

CASE LAWS

State of Maharashtra v. Praful Desai, (2003) 4 SCC 601

A landmark case in the realm of ODR is the verdict given in *State of Maharashtra v. Praful Desai (2003) 4 SCC 601*. The Supreme Court of India, in this case, examined the possibility of recording witness deposition through video - conferencing thus giving a boost and recognition of technology in the judiciary.²⁰

➤ **Background:**

The situation emerged when there was a necessity to take down witness statements from different places without their physical appearance in the court, as was the norm. The conventional method in this case would have involved moving around which might be time-

¹⁸ NITI Aayog Report on Data Protection Framework for ODR

¹⁹ Available at <<https://www.drishtiias.com/daily-news-editorials/online-dispute-resolution-mechanism-in-indian-judiciary>> (last accessed November 26, 2024)

²⁰ *Supra* Note 4

consuming, and more expensive.

➤ **Judgment:**

In a landmark judgment, the Supreme Court held that evidence may be recorded through video - conferencing and stated that “virtual reality is real”. This ruling extended the rationale by stating that electronic means can be adopted during every judicial activity legitimizing the use of technology in the resolution of disputes.

➤ **Implications:**

The judgment has wide-ranging consequences for Internet Dispute Resolution (IDR) in India:

- **Legitimization of Tech Use:** Court's acceptance of the use of video - conferencing in each case set out a new scope of employing electronic means in the justice process, encouraging the development of acceptance of ODR.
- **Motivation for Future Cases:** This decision has been applied in other cases as a reason why online systems of course should be adopted to resolve conflicts, especially those concerning consumers and businesses.
- **All ODR Frameworks Shown:** The principles enunciated in the case assist in the currently emerging ODR structures within the Indian legal environment, persuading the users to embrace technology.

***Grid Corporation of Orissa Ltd. v. AES Corporation (2002) 7 SCC 736.*²¹**

A further notable case that informs ODR is *Grid Corporation of Orissa Ltd. v. AES Corporation (2002) 7 SCC 736*. In this case, the Supreme Court accepted the use of electronic media and remote conferencing.

➤ **Background:**

The dispute arose from questions relating to obligations under a contract which was entered into by parties who were situated in different territories. Thus, mechanisms for resolving the dispute in question were of primary importance to curb any delays that could be because of physical separations.

²¹ [2002] 7 SCC 736

➤ **Judgment:**

The court acknowledged the potential of electronic means to enable effective communication and resolution without the necessity of physical attendance. This information also enhanced the rationale for the use of technology in court proceedings.

➤ **Implications:**

- **Support for Remote Proceedings:** This ruling further cemented the belief that video conferencing could effectively replace physical hearings to enhance ODR.
- **Legal Framework Development:** It played a role in developing the legislative structure aimed at the implementation of forward-looking ways of resolving disputes including but not limited to the use of machines and artificial intelligence.

The growing body of judicial pronouncements on Online Dispute Resolution in India represents a clear appreciation of technology within the justice system. The growing body of ODR jurisprudence has been built on earlier cases such as *State of Maharashtra v. Praful Desai and Grid Corporation of Orissa Ltd. v. AES Corporation* in which the use of video technology together with telephonic communication was upheld. As the legal system in India is being transformed, these orders will be crucial in institutionalizing the practice of ODR as a quick and cost-effective way of resolving conflicts in different segments of the economy.

CONCLUSION

The expansion of Online Dispute Resolution in India is however, faced with polices which hamper full capability to be utilized. The evolution of both technology and practice opens opportunities for government, the legal practice, and society to work on strategies aimed at enhancing e-literacy, infrastructure development, and building confidence towards ODR systems. These hurdles, nonetheless, will enable the country to take a bold step in being at the forefront of new approaches to resolving conflicts while making justice accessible to its people.²²

²² Available at <<https://forumias.com/blog/online-dispute-resolution-odr-need-and-significance/>> (last accessed November 26, 2024)