

ONLINE DISPUTE RESOLUTION (ODR) AS A DISPUTE RESOLUTION IN INDIA

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INTRODUCTION:

In India, almost around 33.47 million cases were pending before the Lower Judiciary and around 4.46 million cases before the Hon'ble High Courts in the year 2020. Approximately 21.4% number of vacancies were pending for the Judges in India. Later on, through amendment 42nd, Articles 323A and 324B under the Constitution of India are incorporated for the establishment of Tribunals. Their role is critical in reducing the burden of High Courts, Economic Governance and Environment Clearances but they also did not fructify fully. Alternative Dispute Resolution (ADR) mechanisms, such as arbitration, mediation, conciliation and *Lok Adalats*, seen as a solution to the problems plaguing India's traditional court system but during the era of COVID-19, it was felt that online mode for solving disputes is also a need. For this, dispute resolution through online mode come into consideration i.e., ODR.

CONCEPT OF ODR

For some types of disputes that can be resolved quickly, governments are increasingly establishing g court-annexed ODR centers. Along with a review of the current framework and its applicability to ODR, this study discusses the general characteristics of ODR. The requirements for mainstreaming private ODR and courts annexed in India are also mapped.

ODR is described as " a process for resolving disputes facilitated via the use of electronic communications and other information and communication technology" by the United Nations Commission on International Trade Law ODR Working Group. ODR is essentially e-ADR, in which technology facilitates online interactions. Since resolution can occur through asynchronous communication and participants do not need to be present in person, ODR actually has more benefits than typical offline ADR procedures.⁸⁹ This implies that communication between the parties and the neutral party is not required.

In light of this, technology has been referred to as the "fourth party" in ODR. In addition to this, ODR offers a number of important advantages. ODR is economical, to start. ODR can significantly lower the expenses of resolving a dispute because of the dependence on technology and video conferencing to transfer information. Second, it is especially

helpful in settling cross-border conflicts and problems that may emerge due to different jurisdictions. Because of this, ODR has been adopted early on in e-commerce transactions where parties are located in different jurisdictions and in low-value disputes arising from business-to-business and business-to-consumer transactions where it is not economically advantageous to go to court.

ODR: THE FUTURE OF ONLINE DISPUTE RESOLUTION IN INDIA

In India, online dispute resolution, or ODR, is still in its infancy. In order for ODR to be broadly accepted and mainstreamed in India, sufficient infrastructure and capacity must be built. For example, one of the prerequisites for ODR in India is better access to technology.

It is necessary to maximize capacity before progressively increasing it for the future. For example, numerous stakeholders may increase the number of trained and certified ODR specialists by cooperating and taking a logical approach. It is feasible to boost capacity without sacrificing quality by requiring universal training requirements and expanding the kinds of organizations that are permitted to provide training. Hands-on exercises and simulations that teach ethics and best practices must be incorporated into such teaching.

ODR as a concept is continually developing. ODR, to put it simply, is the process by which parties settle their disagreements by using ICT tools. Using basic to advanced communication technology, such audio-visual tools, is part of this. The main goal is to facilitate conflict settlement without the parties having to meet in person.

Based on global examples, ODR's initial stages are similar to those of ADR processes including arbitration, mediation, and negotiation. To this degree, the majority of early ODR initiatives used basic ICT tools in aggregate to mimic ADR procedures.

The report of the high-level committee on deepening of digital payments was the first official step towards the creation of ODR in India. The technical and ADR facets of ODR are covered by several pertinent legislation. The ADR domains are governed by the 1996 Arbitration and Conciliation Act. The Code of Civil Process, which was published in 1908, is the main legal document. The court can submit the parties to all

ADR processes, not just those that fall under the scope of arbitration, such as conciliation, judicial settlement, mediation, or Lok Adalat, in line with Section 89 of the Code. These Lok Adalats are governed by the Legal Services Authority Act of 1987.

The Supreme Court of India has set the groundwork for the country's adoption of ODR. The court has recognized the validity of using video conferencing to acquire information, as demonstrated in the State of Maharashtra v. Praful Desai case¹ witness testimony and supporting documentation

The Supreme Court ruled in the Grid Corporation of Orissa Ltd. v. AES Corporation¹⁴ case that electronic tools and techniques, such video conferencing, can be used for effective and fruitful consultation. Consequently, unless required by law or by both parties' consent, neither party may be compelled to sit in the same place.

However, ODR should not be interpreted as merely e-ADR. At a higher level, ODR can serve as the fourth party by assisting parties in finding solutions through algorithmic tools. This type of technology can be machine learning, automated resolution, clever negotiation tools, and intelligent decision support systems. In the future, ODR may also provide multi-door conflict resolution by using procedures that are customized for certain parties and their disagreement. These customized procedures can be created with the use of technological technologies to provide the best possible dispute resolution for each and every disputant.

ODR VS. LITIGATION

In ODR, cost and time efficiency are typical characteristics as opposed to a judicial process with consumes substantial time and cost for adjudication of disputes. Tyler and Bretherton aptly stated-

"The difficulty of utilizing traditional dispute resolution methods in low value cross border disputes has led to interest in low-cost cases, cross jurisdictional dispute resolution methods".

Since ODR can be started at any stage of a legal procedure or even before it starts, it signifies more flexibility. If both parties agree that ODR is not producing a viable solution, it may also be ended. The parties possess the independence to choose the online dispute resolution process and method in the event that disagreements emerge over a specific e-contract.

Use of ODR also allows selection of neutral third party from an experienced panel of mediator/arbitrators which means greater impartiality and parties may present their case on their own without apprehension that their private disputes will flow

into the public domain through judicial precedents. The conflicts and negotiations between parties remain confidential at all times. In B2C transactions, ODR encourages customer loyalty, in C2C transactions it minimizes acrimony and risk of fraudulent transactions between concerned parties.

ODR Implementation Challenges in India

- The Digital Divide: ODR's efficacy is hampered by rural areas' limited internet connectivity.
- Lack of Knowledge: A large number of litigants and legal experts are not familiar with O DR procedures.
- Data Privacy Concerns: When conflicts are handled digitally, confidentiality concerns sur face.
- Enforcement Obstacles: It is still difficult to enforce ODR rulings, especially in international disputes.

CONCLUSION:

Compared to ADR, ODR has a wider spectrum. Particularly in a country such as India, the courts are overloaded with cases that are still outstanding. ODR leverages the concerns of the business sector, consumers, and labor to assist address this issue. Undoubtedly, ODR is rising, which should not be accompanied by any supersize to anyone who understands the nature of dispute resolution and the potential of online communication. 90% of financial disputes were resolved without the use of an arbitrator or mediator, according to research that show major online retailers and auction platforms use ODR to resolve about 60 million disputes annually.

When the technical, business, and legal obstacles have been sufficiently addressed and enough solutions have been offered for an ideal ODR regime, ODR will be most accepted with public- private partnerships. The ODR procedure must be inexpensive, easily available, adaptable, transparent, infrastructure-equipped, safe, effective, and enforceable. To efficiently settle conflicts, the ODR process needs widespread awareness, technological training for staff, project finance, and codification of ODR law and practice. To put it briefly, ODR possesses all the qualities that make it an effective way to settle conflicts that will have long-term advantages, such as safe online business and increased confidence in the digital world.