



Online Dispute Resolution: An Effective Tool for Justice

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Abstract

Technology advancements present chances to develop and broaden its use in the lives of billions of people. It does, however, provide a number of difficulties for the legal system and the market. The massive volume of new e-commerce transactions that occur every day creates a great potential for conflict between businesses and customers that, if not carefully examined, may go ignored. The relevant authorities have been adjusting to better fit the changing circumstances. However, the development of trust is a prerequisite for these system improvement initiatives. The success of internet commerce and the efficacy of such endeavours depend on trust, a complicated phenomenon. A number of objectives guided the development and implementation of the Online Dispute Resolution (ODR) Platform, including fostering market expansion, boosting confidence in online usage (particularly internationally), and ensuring simple access to justice. However, in order to continue suggesting modifications to adapt the dispute resolution tools, it is imperative to evaluate whether these objectives are being met. This study measures and investigates if consumer outcomes match the primary goal of the platform implementation by examining online consumers' awareness and perception of the ODR Platform and their online consumption behaviours. This study will enable the hypothesis of this research to be verified or refuted and evaluate the influence of the ODR Platform on online customers.

Keywords: *Technology Advancements, E-Commerce Transactions, ODR.*

Introduction

In today's increasingly digital world, online interactions and transactions are commonplace, across sectors – private or government, individuals or organizations. The nature, speed and range of interactions - both online and traditional have become more diversified and complex. Traditional methods of resolving disputes, often reliant on personal appearance in or before the courts and lengthy procedures, can be time-consuming,

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expensive, and inaccessible for many. This is where Online Dispute Resolution (ODR) is emerging as a promising alternative. The decisive push for ODR in India came during the Covid-19 pandemic with a realization that justice delivery could not be held hostage to physical courts alone. Propelled by safety concerns and “work from home”, court proceedings and dispute resolution, like other forms of governance, shifted to the digital mode. Work from home gave ODR a final push – encouraged by all stakeholders – government, judiciary, counsels and advocates, litigants and the public.

The growth of the Internet in the 1990s, which led to an increase in online transactions and the conflicts that followed, is where ODR got its start. With the growth of e-commerce and commencement of business operations over the internet, some mechanism for dispute resolution was necessary and eBay chipped in. ODR is frequently misunderstood to mean e-ADR or ADR made possible by technological means. Its potential advantages outweigh those of ADR. In addition to assisting with conflict settlement, ODR can support the nation's overall legal health by containing and preventing disputes. Across jurisdictions, governments, judiciary and private organizations have collaborated to maximize ODR's advantages in order to increase access to justice.

Role of the Niti Aayog

Online interactions and transactions lead to disputes, and the traditional court system, overburdened and slow, is not the most effective solution. Here, ODR emerges as a transformative alternative in this context, offering a more accessible, efficient, and cost-effective way to achieve justice. However, some of the challenges are Digital Divide, evolving an acceptable Legal Framework for clarity and enforceability and Ethical Considerations: neutrality, fairness, data security, and addressing algorithmic bias are crucial for maintaining trust and ethical conduct in ODR processes. To examine these issues, the NITI Aayog in June 2020, in collaboration with civil society and other organisations, conducted a virtual consultation - ‘Catalysing Online Dispute Resolution in India’ and set-up an inter-departmental Committee under the Chairpersonship of Justice (retired) AK Sikri. The objectives assigned to this committee for mainstreaming ODR in India were - Identifying and amending existing laws/regulations/rules, Identifying and facilitating strategies in the relevant sectors; Analysing global best practices for dispute avoidance, containment and resolution, to recommend suitable models for justice delivery; Collaborating with the judiciary, industry, and the ecosystem; and any other matter which may be in the interests of ‘access to justice’.

The Committee opined that ODR is distinct from virtual courts. The use of ICT tools within the judiciary is covered under the term ‘virtual courts’ or ‘online courts.’ On the other hand, ODR is the use of ICT tools outside the court system. That said, cases could be referred to ODR during the various stages of a life cycle of a case. ODR can be used prior to a case being filed into court (e.g. pre-litigation mediation) or referred to ODR after a case is filed in court (e.g. reference under Section 89 of the Code of Civil Procedure, 1908), or even after a case is resolved in a court and considered closed, e.g. for modifying divorce orders post-separation (Designing the Future of Dispute Resolution, 2021).

Executive Initiatives in India

Government Departments in India recognizing the potential of ODR, introduced initiatives to resolve conflicts in their respective domains. Some significant ODR efforts include Initiatives by the Department of Consumer Affairs; The Department of Consumer Affairs has promoted ODR for dispute redressal - by integrating ICT in the Consumer Dispute Redressal Commissions after the passage of the Consumer Protection Act of 2019 by creating the *Edaakhil* portal, which makes e-filing easier for Consumer Disputes. The *Samadhaan* portal offers electronic filing and online settlement of Micro and Small Enterprises' (MSEs') debts against public sector enterprises, union ministries, departments, and State governments. The National E-Commerce Policy of Department for Promotion of Industry and Internal Trade (DPIIT) recommended using an online grievance redressal system, which includes paying compensation online for disputes resulting from online transactions (Ministry of Micro, Small and Medium Enterprises, 2023). The success in adoption of ODR by government would further propel justice delivery and dispute resolution because government is the single biggest litigant among all classes of disputes – civil or criminal, private or public, local or domestic or international.

ODR Integration in the Judiciary

The Indian Judiciary is integrating Online Dispute Resolution (ODR) mechanisms to address inefficiencies and offer faster resolutions for specific cases. ODR leverages technology to resolve disputes outside the traditional courtroom setting. Examples of ODR integration in the Judiciary are listed below.

eCourts Mission Mode Project: The eCourts Mission Mode Project is a pan-India initiative aimed at revolutionizing the Indian judiciary system through Information and Communication Technology (ICT). Launched in 2007 by the Department of Justice under the Ministry of Law and Justice, it's a collaborative effort between the Government of India and the Supreme Court's eCommittee. The National Informatics Centre (NIC) initiated computerization of judiciary in 1990. In 2005, steps were taken to gradually integrate ICT into the judiciary right from the Tehsils to the Supreme Court. These initiatives began as part of the "National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary" and resulted in the eCourts Mission Mode Project (eCourts Project), one of the premier initiatives of the Judiciary. The eCourts project has resulted in the installation of standardized software and technological infrastructure in District Courts throughout the country. Among the major achievements of the NIC initiated projects are the creation and development of the National Judicial Data Grid (NJDG), the eCourts websites, and the implementation of a single Case Information System (CIS) and the Integrated Criminal Justice System (ICJS). Litigant-centric services like electronic cause lists, e-filings, e-payments, and simple access to case status and daily orders, have also expedited the legal process.

These initiatives have improved access to justice and ensured that the litigants do not have to spend unnecessary time, money and resources merely to access basic information about when the cases are being listed in a particular forum of justice. The ODR-enabling initiatives are

not Resolution mechanisms per se but are definite cutting-edge facilitators in Dispute Resolution using the digital means and ODR (E-Courts Mission Mode Project, 2024).

E-filing of cases: E-filing of cases is a key component of the eCourts Mission Mode Project in India. It allows for the electronic submission of legal documents in both civil and criminal cases before designated High Courts and District Courts. The eFiling Portal for District Courts and High Courts has been launched by the eCourts Mission Mode Project. The Supreme Court of India and many High Courts, have been successfully using these platforms. E-filing figures witnessed an exponential increase since the COVID-19.

The Supreme Court's Practice Directions for eFiling (May 2020) allowed Advocates-on-record to submit cases online via an e-filing platform in response to the growing need to mainstream e-filing. Similarly, during the Covid-19 pandemic, to keep the doors of justice open for the ordinary man, orders and instructions were issued by various High Courts like Andhra Pradesh, the Delhi High Court, the Patna High Court, and other High Courts to permit the filing of lawsuits online and also online adjudication of disputes.

Recognition of video conferencing: The Supreme Court permitted consultation through the medium of electronic media and distant conference calls between parties in order to select an arbitrator (*Grid Corporation of Orissa Ltd. v. AES Corporation*). The court extended this legitimacy to contemporary communication channels (*State of Maharashtra v. Praful Desai case*), upholding video conferencing as a legitimate means of gathering witness testimony and evidence and supported using video conferencing to get a foreign doctor's expert opinion in *Balram Prasad v. Kunal Saha and Ors* (Sinha, 2020).

Expansion of disputes that are arbitrable: Recent precedents have attempted to loosen these arbitrability requirements e.g., the Supreme Court held (*A. Ayyasamy v. A. Paramasivam* (2018)) that a case is still subject to arbitration even if there is only a suggestion of fraud. This pro-arbitration stance was reinforced in *Vidya Drolia v. Durga Trading Corporation*, which stated that arbitration could be used to settle landlord-tenant agreement disputes other than those covered by special rent control laws.

Recognition of electronic summons: The recognition of electronic summons in India is a developing area with legal backing but not yet widespread adoption. The Supreme Court permitted processes to be served via email in addition to conventional means (*Central Electricity Regulatory Commission v. National Hydroelectric Power Corporation Ltd.*). The Delhi High Court recognized service using instant messaging apps and allowed summons service through WhatsApp (*Tata Sons Ltd v. John Doe and Kross Television India Pvt Ltd v. Vikhyat Chitra Production*).

Admissibility of electronic records as evidence: Electronic evidence is admissible under Section 65B of the Indian Evidence Act, 1872. The Supreme Court has reinforced the process for electronic record admissibility in recent years.

The Supreme Court ruled (*State of NCT Delhi v. Navjyot Singh*, 2005) that electronic evidence can be included as secondary evidence without regard to whether section 65B is followed. The Supreme Court reinforced the process for admitting electronic evidence and further clarified the *Anvar P.V.* principle in *Arjun Paditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors*, (July 2020). Virtual Courts for traffic challenges and cheque bouncing cases: There's a growing interest in using virtual courts in India to handle specific types of cases, including traffic challans and cheque bouncing cases. The Supreme Court determined (*M/S Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta*) that one might totally rely on technological tools to settle disputes, noting that certain issues could be resolved partially or completely "online" and suggested using online techniques to resolve situations like those involving traffic challans and check bouncing. Delhi High Court has started district-level Digital NI Act Courts for online filing, hearing, and resolution of cases involving check dishonour.

Conclusion

The Indian dispute resolution system is currently admittedly slow. Resolving disputes entails a significant time and resource commitment due to the high pendency and delays in traditional courts and tribunals. This negatively impacts the ease of doing business being unable to offer an optimal business environment to entrepreneurs due to the ineffectiveness of its dispute resolution system. The use of ICT advances and fresh concepts are important to the future of conflict resolution. ODR can provide businesses with customized dispute resolution solutions through user-centric and easily accessible processes, making it possible for entrepreneurs to effectively enforce contracts. Additionally, it can offer the general public an approachable method of resolving disputes, which will eventually lessen the strain on the established legal system.

The future of ODR in India though promising would depend upon the four pillars of Infrastructure Development, Legal Framework Development, Technological Advancements and Public Awareness and Capacity Building. With a huge e-literate population, excellent connectivity and speeds of internet and a huge talent pool in the IT and software development sector, India can be at the forefront of the global ODR movement. Though ODR has grown, these developments are only the beginning. By incorporating cutting edge new technologies such as Artificial Intelligence (AI) and Machine Learning (ML) tools, into ODR procedures, it is possible to expand ODR's scope beyond traditional dispute resolution and provide services aimed at enhancing societal awareness of and access to the law. Furthermore, by enhancing system performance, supporting disputing parties, and bringing fresh approaches to conflict settlement, the efficient application of AI and ML can expand the potential for ODR.

The Government needs to take a proactive yet cautious stance in harnessing technology to optimize benefits in order to minimize the risks involved in integrating technology into dispute resolution. A more proactive stance in directing the creation and application of a universally acceptable, platform based on cutting-edge technology that is available across the country to provide ODR services is imperative. By using ODR, more people will have access

to dispute resolution through the usage of such platform(s) and reasonably priced services. Establishing a permanent auditing and accreditation system, is also necessary to regulating ODR. ODR is that shift in the dispute resolution ecosystem. The future of effective justice delivery lies in ODR, and the time to start is now.

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