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# **THE EVOLUTION AND EFFECTIVENESS OF ONLINE DISPUTE RESOLUTION (ODR) PLATFORMS: A COMPREHENSIVE ANALYSIS OF ADR IN THE DIGITAL AGE**

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## **ABSTRACT**

In today's digital age, Online Dispute Resolution (ODR) platforms have emerged as a transformative force in Alternative Dispute Resolution (ADR) processes. This comprehensive analysis explores the evolution, current state, and effectiveness of ODR platforms, shedding light on their impact on the resolution of disputes in the digital era. By examining the technological advancements, legal frameworks, and practical applications of ODR, this study seeks to provide a thorough understanding of how ODR is shaping the landscape of conflict resolution.

Online Dispute Resolution (ODR) carries with itself a literal meaning of being a mechanism, which is a kind of Alternative Dispute Resolution mechanism, aimed at resolving a claim or dispute, arising out of issues ranging from an online, e-commerce transaction to disputes arising from issue not involving internet, called as an "offline" dispute. The ODR is a modification cum addition to the traditional legal process of resolving claims and disputes, which usually involved a court, judges, advocates, etc. but over the course of time, the mechanism and the approach towards resolving disputes and claims has evolved with the development in the technological sphere, thus leading to the development of ODR as an Alternative Dispute Resolution mechanism.

## **1. INTRODUCTION**

Electronic commerce and the Internet offer unknown openings. The explosive expansion of the use of the Internet makes it possible for businesses to expand their requests and render services to large groups of consumers. Where off-line deals can lead to problems and controversies, the same is true for on-line deals. In other words-commerce deals will occasionally affect in e-disputes. To insure that all parties concerned will feel they can safely share in e-commerce deals it's imperative that e-disputes are resolved adequately, because query over the legal frame may inhibit both consumers from copying products or services over the Internet, and companies from entering into the electronic request place.

### **1.1 Background of Online Dispute Resolution**

ODR's origins nearly follow the history of digital relations, particularly marketable deals. As the volume of relations increased, so too did the volume of controversies, and a need for a resolution native to the internet itself. While the internet dates back to the late '60s, its relinquishment for the first twenty-five times of its actuality was limited largely to academic and military settings. therefore, grievances could frequently be resolved offline, as the parties were likely to be in the same real-world circles. Court's original engagement with online controversies were more focused on how to resolve online controversies through traditional action than on engaging in results that employed technology. For case, a big issue courts brazened during the mid-1990s was related to where governance abides for controversies arising from online relations. also, the early relinquishment of internet use on council premises led to action around lot conditioning, touching on issues similar as freedom of speech and importunity. While the issues discussed stemmed from online gesture, the disagreement resolution process itself was still veritably analog.

### **1.2 Evolution of Online Dispute Resolution**

In **2006** National Internet Exchange of India adopted ' .IN' domain name Dispute Resolution Policy (INDRP) which provided the ODR.

In **2011** Chennai hosted the 10th Annual International Forum on ODR

In **2017** Ministry of Law and Justice issued a statement to urge Government agencies to resolve disputes through online arbitration.

In **2018** Ministry of MSME launched SAMADHAAN Portal to address delays of payment disputes involving Micro and Small enterprises.

In **2019** E-ADR Challenge was launched to identify and support ODR start-ups

In **2020** The government of India launched the Vivaad se Vishwas Scheme for the efficient resolution of tax disputes through ODR Vidhi Centre for Legal Policy published a report on mainstreaming ODR in India

NITI Aayog established a committee under the Chairmanship of Justice (Retd.) A.K.Sikri to broad-base the use of ODR in India Chhatisgarh conducted the first virtual Lok Adalat and provided conciliation services

Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in their report called for the introduction of technology in the arbitration and conciliation process.

## **2. HISTORY OF ONLINE DISPUTE RESOLUTION**

The history of online dispute resolution (ODR) can be traced back to the early 1990s, with the rise of e-commerce and the increased use of the internet for communication and transactions. As more and more people began to interact and conduct business online, disputes inevitably arose. Traditional dispute resolution mechanisms, such as courts and arbitration, were often slow, expensive, and complex, and were not well-suited to resolving low-value and cross-border disputes.

One of the earliest and most successful ODR platforms was eBay's dispute resolution system, which was launched in 1999<sup>1</sup>. eBay's system allows buyers and sellers to resolve their disputes online, without having to go to court. eBay's system has been very successful, and it has helped to resolve millions of disputes over the years.

Another early ODR pioneer was the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is the organization responsible for managing the global domain name system. In 1999, ICANN launched the Uniform Domain-Name Dispute-Resolution Policy

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<sup>1</sup> Katsh, E., and Rifkin, J. (2001). *Online Dispute Resolution: Resolving Conflicts in Cyberspace*. Jossey-Bass.

(UDRP), which is a process for resolving disputes over domain names. The UDRP has been very effective in resolving domain name disputes quickly and efficiently.

In recent years, ODR has become increasingly popular, and it is now used to resolve a wide range of disputes, including consumer disputes, business disputes, and employment disputes. ODR is also being used by courts and other government agencies to resolve disputes.

New York, mediation for collective bargain was set up, later special mediation agencies were set up such as Board of Mediation and Conciliation for Railway Labour (1913), Federal Mediation and Conciliation services (1947). In 1913, New lands Act legislation reflected the idea that industrial dispute could be resolved through collective bargaining; settlement in turn could be advanced through mediation, conciliation and voluntary arbitration.<sup>2</sup>

## **2.1 Technological Advancements in ODR:**

The development of ODR coincided with significant advancements in technology. Artificial intelligence (AI) and machine learning, in particular, have played a transformative role in ODR processes<sup>3</sup>. These technologies have enabled ODR platforms to analyze large volumes of data, identify patterns in disputes, and offer predictive solutions. For example, AI-powered chat bots can assist parties in dispute, guiding them through the resolution process and suggesting potential solutions based on historical data.

Block chain technology has also been explored in the context of ODR, particularly for its potential to create tamper-proof and transparent records of dispute resolution outcomes. Block chain-based ODR systems can ensure the integrity of agreements and decisions while providing an immutable record of the process.

Security and privacy considerations have been paramount in the development of ODR platforms. Robust encryption, secure data storage, and authentication mechanisms are essential components to protect the confidentiality and integrity of sensitive information exchanged during the resolution process.

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<sup>2</sup> Shivraj S. Huchhanavar, In Search of True 'Alternative' to Existing Justice Dispensing System in India, Vol. 7: No. 1, 2013, p. 4.

<sup>3</sup> Rule, C., & Friedberg, L. (2017). The Role of Artificial Intelligence in Online Dispute Resolution. *Negotiation Journal*, 33(1), 79-94.

## **2.2 Key Milestones in ODR Development**

Online Dispute Resolution (ODR) is a broad term that encompasses a variety of technologies and processes for resolving disputes online. ODR has been evolving over the past few decades, and there have been a number of key milestones in its development.

### **Early Days**

One of the earliest examples of ODR was the creation of the Electronic Commerce Dispute Resolution (ECDR) Forum in 1997. The ECDR Forum was a non-profit organization that provided an online platform for resolving disputes between businesses and consumers. It offered a variety of dispute resolution services, including mediation, arbitration, and adjudication.

Another early ODR initiative was the launch of eBay's Resolution Center in 2000. eBay's Resolution Center was designed to help eBay buyers and sellers resolve their disputes directly with each other. It offered a variety of tools and resources to help parties negotiate a resolution, and it also provided access to mediation services if needed.

### **Growth and Maturation**

In the early 2000s, ODR began to grow and mature. A number of new ODR platforms were launched, and existing platforms expanded their services. ODR was also being used by a wider range of organizations, including businesses, government agencies, and non-profit organizations.

One of the key milestones in the growth of ODR was the launch of the Online Mediation and Arbitration Network (OMAC)<sup>4</sup> in 2002. OMAC was a non-profit organization that provided a network of mediators and arbitrators who were trained to resolve disputes online. OMAC also offered a variety of resources and training materials on ODR.

Another key milestone was the publication of the United Nations Commission on International Trade Law (UNCITRAL)<sup>5</sup> Model Law on Online Dispute Resolution in 2010. The UNCITRAL

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<sup>4</sup> Katsh, E., and Rifkin, J. (2001). *Online Dispute Resolution: Resolving Conflicts in Cyberspace*. Jossey-Bass.

<sup>5</sup> United Nations Commission on International Trade Law (UNCITRAL) (2010). *Model Law on Online Dispute Resolution*. United Nations Publication.

Model Law was a comprehensive legal framework for ODR. It provided guidance on a variety of topics, including the jurisdiction of ODR providers, the enforcement of ODR awards, and the protection of consumer privacy.

### **Recent Developments**

In recent years, ODR has continued to evolve. New technologies and processes have been developed to make ODR more efficient, accessible, and affordable. ODR is also being used in new and innovative ways.

One of the most significant recent developments in ODR has been the rise of artificial intelligence (AI). AI is being used to develop new ODR platforms and to automate various tasks in the ODR process. For example, AI is being used to develop chat bots that can help parties resolve their disputes without the need for human intervention.

ODR is also being used in new and innovative ways. For example, some ODR platforms are being used to resolve disputes between businesses and consumers in real time. This can help to avoid costly and time-consuming litigation.

### **3. COVID-19 EFFECT ON ONLINE DISPUTE RESOLUTION**

The covid-19 pandemic has a great impact all over the world. While writing this we have a total of 2,67,63,409 confirmed cases in India and we are in the top 3 most affected countries of the world from corona virus. As the world health organization said that corona will not go anywhere and we have to live with it. Working under this concept of “this is new normal”.

This pandemic is paving a new path for the functioning of India's courts. Courts have adapted to the new scenario by providing video conferencing to hear urgent matters, eliminating the need for parties to wait for conventional courts to reopen. This allows for timely justice and the ability for people to seek relief. However, this approach is only applicable to a limited percentage of patients, and the epidemic is unlikely to abate for some time. During this pandemic, arbitration is becoming a more popular method of resolving business-to-business and business-to-consumer conflicts. While arbitral proceedings have mostly been unaffected by global lockdown, they are not immune to its impacts.

In an Article of Financial Express it was mention about the effect on Arbitration during

COVID-19 as given below:

*[Flexibility and party autonomy: Arbitration's key feature, parties' ability to mould the arbitral procedure based on their agreement, is most suitable to resolve disputes in the times of Covid-19. For instance, the parties may now agree to a documents-only arbitration, or have all hearings by video conferencing. If the parties don't agree, the arbitrator has the power to conduct the proceedings as they deem appropriate. The arbitrator generally gives a procedural order (PO), with the rules and dates of the proceedings, at the outset. This may be changed anytime during the course of the proceedings, as required.]*

*E-filings: These were always the norm. All pleadings in arbitration, from the notice invoking arbitration to the statement of claim and witness affidavits to written submissions, are filed by email. Voluminous documents are uploaded on a file share link, which is sent to the opposing party and the arbitral tribunal. Therefore, the requirement for printing and couriering hard copies to multiple parties, which would pose a problem in the lockdown, is easily done away with. Equally convenient is the fact that communications with the opposite party, arbitral tribunal, or the arbitral institution is through email.*

*Videoconference hearings: One of the biggest advantages of arbitration is that all hearings can be conducted by video conferencing. This is not a novel feature and is commonly resorted to for regular pre-scheduled hearings such as procedural hearings, cross-examination of witnesses, and sometimes even final arguments. This has become particularly relevant now due to the travel restrictions. The courts have also started holding hearings through video conferencing, but these are still restricted only to certain matters. Moreover, the judiciary may face teething issues as judges may find it difficult to cope with the technology, which they may overcome with time. Seasoned arbitrators are more likely to be familiar and comfortable with the technology.*

*Interim relief provisions: Under section 9 of the Arbitration & Conciliation Act, 1996, during arbitration proceedings, a party may approach the tribunal for any interim relief. However, before an arbitral tribunal is formed or after it gives its award, the only forum available for interim relief are the courts. Even though courts are now only dealing with urgent matters, the interim relief sought in a section 9 petition is, in any case, only meant for pressing claims that would warrant the court exercising its jurisdiction before the tribunal is even formed. Interim relief is usually granted if the claimant is able to prove that they will suffer irreparable harm*

*without such relief—for example, the respondents' assets being dissipated, bank guarantees being invoked, etc. Given the nature of the relief, these petitions are being heard by courts even during the lockdown.*

*During the lockdown, courts have heard several section 9 petitions dealing with injunctions on encashment of bank guarantees or letters of credit, where performance of contract was suspended due to lockdown. The Delhi High Court has allowed an injunction on encashment of bank guarantee and granted relief to the petitioner until one week after the current lockdown ends. The court felt that the petitioner was unable to continue work under the contract due to the lockdown, and it was, therefore, necessary to grant the relief.*

*In another instance, the Bombay High Court rejected a similar claim on the grounds that the petitioner could have, in fact, performed the contract despite the lockdown as its performance was an essential service. Other reliefs usually sought under section 9 include pleas for respondents to deposit money in court or, injunction on sale of assets. Courts will deal with these claims based on the case of irretrievable harm and imminent injury made out by the petitioner.*

*Parties governed by institutional arbitration may apply for emergency relief before an arbitral tribunal is formed. However, enforcement of emergency awards in India is difficult, which is why there are not many takers for this option.]<sup>6</sup>*

The COVID-19 pandemic has had a significant impact on the Indian judicial system, leading to a rise in the use of Online Dispute Resolution (ODR) mechanisms. ODR is a process of resolving disputes online, using technology such as video conferencing, email, and online mediation platforms. It offers a number of advantages over traditional dispute resolution mechanisms, such as convenience, speed, and cost-effectiveness.

One of the key factors driving the rise of ODR in India during COVID-19 is the need to maintain social distancing. ODR platforms allow parties to resolve their disputes without having to travel to a physical court or mediation center. This is particularly important for people who are vulnerable to COVID-19 or who live in remote areas.

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<sup>6</sup> <https://www.financialexpress.com/opinion/covid-lockdown-when-you-cant-litigate-and-arbitrate/1949366/>



Another factor driving the rise of ODR in India is the increasing availability of affordable internet access. According to the Telecom Regulatory Authority of India (TRAI), India has over 840 million internet subscribers. This means that a large majority of the Indian population can now access ODR platforms.

The Indian government has also taken steps to promote the use of ODR. In 2020, the Ministry of Law and Justice released the National Policy on ODR. This policy sets out a framework for the development and implementation of ODR in India. The government has also established a number of ODR platforms, such as e-Lok Adalats and the Online Dispute Resolution Platform for Intellectual Property Rights.

A number of private companies have also launched ODR platforms in India. These platforms offer a variety of services, such as online mediation, arbitration, and negotiation. Some of the most popular ODR platforms in India include ODR India, Mediatory, and Arbitrate.

The rise of ODR in India has a number of benefits. It can help to reduce the burden on the courts, resolve disputes more quickly and efficiently, and provide more accessible and affordable justice to people.

Here are some examples of how ODR has been used to resolve disputes in India during COVID-19:

In March 2020, the Supreme Court of India launched an e-Lok Adalat platform to resolve disputes online. The platform has been used to resolve a wide range of disputes, including commercial disputes, family disputes, and labor disputes.

In May 2020, the Ministry of Law and Justice launched an Online Dispute Resolution Platform for Intellectual Property Rights. The platform allows parties to resolve intellectual property disputes online without having to go to court.

In July 2020, the Bombay High Court launched an online mediation platform to resolve disputes during the COVID-19 pandemic. The platform has been used to resolve a variety of disputes, including commercial disputes, matrimonial disputes, and consumer disputes.

The rise of ODR in India is a positive development. It has the potential to make the justice system more accessible, affordable, and efficient.

#### 4. ODR PLATFORM AND THEIR FEATURE:

Online Dispute Resolution (ODR) platforms are web-based platforms that provide a neutral and secure environment for parties to resolve their disputes online. ODR platforms offer a variety of features, including:

A. Case filing and management: ODR platforms allow users to file their cases and manage them throughout the dispute resolution process. This includes uploading documents, exchanging messages with the other party, and scheduling mediation or arbitration sessions<sup>7</sup>.

B. Mediation and arbitration: ODR platforms offer both mediation and arbitration services. Mediation is a voluntary process in which a neutral third party helps the parties to reach a mutually agreeable resolution. Arbitration is a binding process in which a neutral third party makes a decision that is enforceable in court.

Communication and collaboration tools: ODR platforms provide users with a variety of communication and collaboration tools, such as secure messaging, video conferencing, and file sharing. This allows the parties to communicate with each other and with the mediator or arbitrator efficiently and effectively<sup>8</sup>.

C. Security and privacy: ODR platforms take security and privacy seriously. They use a variety of security measures to protect user data, such as data encryption and access control.

Here are some examples of specific features that may be offered by different ODR platforms:

- **Multilingual support:** Some ODR platforms offer support for multiple languages. This makes them accessible to users from all over the world.
- **Accessibility:** Some ODR platforms are designed to be accessible to users with disabilities. They may offer features such as screen readers and keyboard-only navigation.
- **Cost-effectiveness:** ODR platforms are typically more cost-effective than traditional dispute resolution methods, such as litigation.

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<sup>7</sup> Katsh, E., and Rifkin, J. (2001). *Online Dispute Resolution: Resolving Conflicts in Cyberspace*. Jossey-Bass.

<sup>8</sup> Cortés, P. (Ed.). (2016). *The New Regulatory Framework for Consumer Dispute Resolution*. Oxford University Press.

- Convenience: ODR platforms are convenient for users because they can be accessed from anywhere with an internet connection.
- Speed: ODR platforms can help to resolve disputes more quickly than traditional dispute resolution methods.

ODR platforms can be used to resolve a wide variety of disputes, including:

- Consumer disputes: ODR platforms can be used to resolve disputes between consumers and businesses, such as disputes over products and services.
- Business-to-business disputes: ODR platforms can be used to resolve disputes between businesses, such as contract disputes and intellectual property disputes.
- Employment disputes: ODR platforms can be used to resolve disputes between employees and employers, such as wage and hour disputes and discrimination disputes.
- Family law disputes: ODR platforms can be used to resolve family law disputes, such as child custody disputes and divorce disputes.

ODR platforms are a valuable tool for resolving disputes quickly, efficiently, and cost-effectively. As the use of ODR continues to grow, we can expect to see even more features and innovations emerge in this space.

#### **4.1 Overview of Leading ODR Platform**

##### **European Online Dispute Resolution (ODR) platform**

The European ODR platform is a free and online dispute resolution service for consumers and traders in the EU, Norway, Iceland, and Liechtenstein. It is provided by the European Commission and is available in all EU languages. To use the European ODR platform, consumers simply need to fill out a complaint form and provide some basic information about their dispute. The platform will then match the consumer with a suitable Alternative Dispute Resolution (ADR) body, which will handle the dispute resolution process.<sup>9</sup>

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<sup>9</sup> European Commission. (2021). European Online Dispute Resolution Platform. Retrieved from <https://ec.europa.eu/consumers/odr/main/?event=main.home.show>

ADR bodies are independent and impartial organizations that offer a variety of dispute resolution services, such as mediation, arbitration, and conciliation. Consumers and traders can choose the ADR body that they prefer, and they can agree to use any ADR body that is listed on the European ODR platform.

The European ODR platform is a fast, efficient, and cost-effective way to resolve disputes without having to go to court. The platform has a good track record of resolving disputes successfully, and it has been used by thousands of consumers and traders across Europe.

### **WeVaad**

WeVaad is an independent ODR platform that is available in India. WeVaad offers a variety of dispute resolution services, including mediation, arbitration, and conciliation. WeVaad also offers a unique service called "Online Lok Adalat", which is a virtual court that is based on the traditional Indian Lok Adalat system.

Lok Adalats are informal courts that are designed to resolve disputes quickly and efficiently. WeVaad's Online Lok Adalat is a convenient and affordable way for consumers and traders to resolve their disputes without having to go to a traditional court.<sup>10</sup>

WeVaad is a popular ODR platform in India because it is affordable, convenient, and easy to use. WeVaad also has a good track record of resolving disputes successfully.

### **Mediate.com**

Mediate.com is a leading ODR platform in the USA. Mediate.com offers a variety of mediation services, including online mediation, in-person mediation, and telephone mediation. Mediate.com also offers a number of resources for consumers and traders who are considering using mediation to resolve their disputes.

Mediate.com is a popular ODR platform because it is convenient, affordable, and effective. Mediate.com also has a large network of experienced mediators who can help consumers and traders to resolve their disputes quickly and efficiently.<sup>11</sup>

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<sup>10</sup> Online Dispute Resolution in India. Retrieved from <https://www.wevaad.com/>

<sup>11</sup> Mediate.com: Online Mediation Services. Retrieved from <https://www.mediate.com/>

## **Resolve.org**

Resolve.org is a nonprofit organization that provides ODR services to consumers and businesses in the USA. Resolve.org offers a variety of dispute resolution services, including mediation, arbitration, and conciliation. Resolve.org also offers a number of resources for consumers and businesses who are considering using ODR to resolve their disputes.

Resolve.org is a popular ODR platform because it is affordable, convenient, and effective. Resolve.org also has a large network of experienced mediators, arbitrators, and conciliators who can help consumers and businesses to resolve their disputes quickly and efficiently.

## **Better Business Bureau**

The Better Business Bureau (BBB) is a nonprofit organization that provides a variety of services to consumers and businesses, including dispute resolution services. The BBB offers a free and confidential mediation service to consumers and businesses who have a dispute with a BBB member company.

The BBB's mediation service is a popular ODR platform because it is free, confidential, and effective. The BBB also has a good track record of resolving disputes successfully.<sup>12</sup>

## **Other leading ODR platforms**

There are a number of other leading ODR platforms around the world. Some of these platforms include:

Online Dispute Resolution Canada (Canada)

Australian Online Dispute Resolution (Australia)

Resolución de Disputas en Línea (Spain)

Résolution des litiges en ligne (France)

These platforms offer a variety of dispute resolution services, including mediation, arbitration,

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<sup>12</sup> Dispute Resolution Services. Retrieved from <https://www.bbb.org/get-consumer-help/dispute-resolution-services/>

and conciliation. They are all easy to use and can handle a wide range of disputes.

### **Benefits of using ODR platforms**

There are a number of benefits to using ODR platforms to resolve disputes. ODR platforms are typically:

- More affordable than traditional litigation
- Faster than traditional litigation
- More convenient than traditional litigation
- More flexible than traditional litigation
- More confidential than traditional litigation

ODR platforms can also help to preserve relationships between consumers and traders. When consumers and traders resolve their disputes using ODR, they are more likely to remain customers of each other in the future.

### **4.2 Virtual Hearing and Mediation**

Virtual hearings and mediation are legal processes that have increasingly gained prominence in recent years, driven in part by advancements in technology and the need for more flexible and accessible dispute resolution methods, especially in the wake of the COVID-19 pandemic. Below, I'll provide detailed information about both virtual hearings and virtual mediation.<sup>13</sup>

#### **Types of Virtual Hearings:**

- **Court Proceedings:** Virtual hearings encompass a wide range of legal proceedings, including pre-trial hearings, motion hearings, evidentiary hearings, and even full-scale trials. Some jurisdictions have embraced virtual jury trials, with jurors participating from their homes.

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<sup>13</sup> Sourdin, T., Zariski, A., Liyanage, M., & Illingworth, J. (2021). Online Dispute Resolution: The Future of Justice? *ADR Bulletin*, 22(1), 11-15.

- **Administrative Proceedings:** Beyond the court system, administrative agencies conduct virtual hearings for matters such as licensing disputes, regulatory compliance, and public comment periods. This approach enhances government efficiency and public participation.
- **Technology and Platforms:** The choice of technology and platforms for virtual hearings is crucial. In addition to video conferencing tools, court management systems often integrate electronic case management and digital evidence presentation solutions. These technologies streamline proceedings and provide a seamless user experience.
- **Legal Framework:** Legal systems have adapted to virtual hearings by enacting rules and procedures that accommodate remote participation. This includes guidelines for the electronic submission of evidence, virtual swearing-in of witnesses, and protocols for maintaining due process.
- **Security and Privacy:** Ensuring the security and privacy of virtual hearings remains a top priority. Courts and legal professionals must implement stringent security measures to protect sensitive data, maintain the confidentiality of discussions, and prevent unauthorized access.
- **Accessibility and Inclusivity:** Virtual hearings have the potential to enhance access to justice for individuals with disabilities, those in remote areas, and those facing financial constraints. They can be conducted with accommodations for participants who require assistive technologies or interpreters.
- **Hybrid and Blended Approaches:** Some jurisdictions have adopted hybrid models, combining virtual and in-person elements in hearings. This hybrid approach allows for greater flexibility and tailoring of the proceedings to the specific needs of the case.
- **Challenges and Concerns:** Alongside the benefits, virtual hearings present challenges. These include ensuring equitable access to technology, addressing technical disruptions, and grappling with concerns about the potential loss of the human element and non-verbal cues in the legal process.

**Virtual Mediation:**

Virtual mediation is a method of alternative dispute resolution (ADR) that uses online

platforms to facilitate negotiation and settlement discussions between parties in conflict. Mediation is often preferred over litigation because it allows parties to maintain control over the outcome and can be less adversarial.

- **The Mediation Process:** Virtual mediation adheres to the fundamental principles of traditional mediation. A neutral third-party mediator assists parties in conflict to engage in productive dialogue, identify their interests, and craft mutually agreeable solutions. The mediator's role is to facilitate communication, manage emotions, and guide negotiations toward resolution.
- **Technological Infrastructure:** Successful virtual mediation relies on a robust technological infrastructure. Parties need stable internet connections, appropriate devices, and familiarity with the chosen virtual mediation platform. Secure, end-to-end encrypted platforms are commonly used to protect confidentiality.
- **Flexibility and Convenience:** Virtual mediation offers unparalleled flexibility and convenience. Parties, attorneys, and the mediator can participate from their respective locations, reducing travel time and accommodating busy schedules, even across different time zones or countries.
- **Confidentiality and Privacy:** Privacy and confidentiality are paramount in virtual mediation. Mediators set ground rules to ensure that discussions remain confidential, and platforms often have features to prevent unauthorized access.
- **Document Sharing and Digital Tools:** Virtual mediation platforms provide tools for sharing documents, evidence, proposals, and even visual aids. This simplifies the exchange of information and supports productive negotiations.
- **Cost Savings:** Virtual mediation is often more cost-effective than traditional, in-person mediation. Parties save on expenses related to travel, venue rental, and meals, making it an attractive option for businesses, individuals, and organizations seeking dispute resolution.
- **Cross-Border and International Mediation:** Virtual mediation transcends geographical boundaries, making it an ideal choice for cross-border and international disputes. Parties can engage with mediators and experts from different countries without the logistical complexities of international travel.



- **Challenges and Adaptations:** Virtual mediation is highly effective, but it does come with its own set of challenges. These include managing technical difficulties, addressing power imbalances, and ensuring that all participants feel heard and respected in a virtual environment. Effective mediator training for virtual settings is essential.

Both virtual hearings and virtual mediation have evolved into essential components of modern legal practice. As technology continues to advance and legal systems adapt, these methods offer increasingly efficient, accessible, and adaptable solutions for resolving legal conflicts and ensuring access to justice.

### **4.3 Data Analytics and Predictive Modeling in Online Dispute Resolution**

Data analytics and predictive modeling are two powerful tools that can be used to improve the effectiveness of online dispute resolution (ODR). Data analytics is the process of collecting, cleaning, and analyzing data to extract meaningful insights. In the context of ODR, data analytics can be used to:

Identify trends in case types, outcomes, and other metrics. For example, data analytics can be used to identify the most common types of disputes that are resolved through ODR, the success rates of different dispute resolution methods, and the average time it takes to resolve a dispute through ODR.

Understand the factors that contribute to successful and unsuccessful ODR cases. For example, data analytics can be used to identify the characteristics of cases that are more likely to settle successfully, the factors that lead to disputes escalating, and the most common reasons why parties are dissatisfied with the ODR process.

Develop targeted interventions to improve the ODR process. For example, data analytics can be used to identify areas where the ODR process can be streamlined, to develop training programs for mediators and arbitrators, and to create targeted resources for parties.

Predictive modeling is the process of using data to build models that can predict future outcomes. In the context of ODR, predictive modeling can be used to:

- Predict the likelihood of a case settling successfully. This information can be used to help parties make informed decisions about whether to pursue ODR and to provide mediators

and arbitrators with valuable insights into the case.

- Identify cases that are at risk of escalating. This information can be used to provide early intervention support to these cases, which can help to prevent them from escalating into more complex and costly disputes.
- Match cases with the most appropriate mediators or arbitrators. This information can be used to ensure that cases are assigned to mediators and arbitrators who have the experience and expertise necessary to resolve them successfully.

Data analytics and predictive modeling are still in their early stages of development in the context of ODR. However, these tools have the potential to significantly improve the effectiveness of ODR by helping to:

- Increase the efficiency of the ODR process. By identifying areas where the ODR process can be streamlined, data analytics and predictive modeling can help to reduce the time and cost of resolving disputes through ODR.
- Improve the quality of dispute resolution outcomes. By helping parties to make informed decisions about whether to pursue ODR and by providing mediators and arbitrators with valuable insights into cases, data analytics and predictive modeling can help to improve the outcomes of ODR disputes.
- Increase access to justice. By making ODR more efficient, affordable, and effective, data analytics and predictive modeling can help to increase access to justice for all parties, regardless of their income or location.

Here are a few examples of how data analytics and predictive modeling are being used in ODR today:

The Mediate.com platform uses data analytics to track case activity, outcomes, and other metrics. This information is used to improve the platform's case management system and to develop targeted interventions to improve the ODR process. For example, Mediate.com uses data analytics to identify cases that are at risk of stalling and to provide early intervention support to these cases.

The Resolution Systems Group platform uses predictive modeling to identify cases that are at risk of escalating. This information is used to provide early intervention support to these cases. For example, the Resolution Systems Group platform uses predictive modeling to identify cases where the parties are likely to have difficulty communicating effectively with each other and to provide these cases with additional communication support.

The Online Dispute Resolution Center of the Supreme Court of India is using data analytics and predictive modeling to develop a new case matching system. This system will match cases with the mediators or arbitrators who are most likely to be successful based on their experience and track record.

Overall, data analytics and predictive modeling have the potential to revolutionize the field of ODR. By using these tools, ODR platforms can improve their efficiency, effectiveness, and fairness. This can lead to better outcomes for parties and increased satisfaction with the ODR process.<sup>14</sup>

#### **4.4 Process of ODR**

In the case of ODR, there exists no uniform process for resolving disputes, but in order to understand the mechanism of ODR, a few important steps<sup>15</sup> are:

- initial contact
- initiation of dispute resolution process, terms of use, introduction to the system
- assessment and checklists to be used to determine suitability of the dispute for ODR
- information exchange, in which parties exchange data and information
- formal lodgment, where parties can lodge formal documentation such as pleadings, records, and other material

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<sup>14</sup> Casey, P. M., & Rottman, D. B. (2018). Using Predictive Analytics in the State Courts: Possibilities and Prospects. National Center for State Courts Future Trends in State Courts 2018 Report, pp. 8-12.

<sup>15</sup> Eugene Clark, George Cho and Arthur Hoyle, Online Dispute Resolution : Present Realities, Pressing Problems and Future Prospects, International Review of Law Computers & Technology, Volume 17, No. 1, pp. 8-9.

- questions and answers by the parties
- facilitation (usually by shuttle negotiation) through a third party, and
- if there is a third party resolution, a decision is rendered

In an ordinary litigation, only three parties are present, which includes the aggrieved parties and the mediator or the arbitrator. But with the development of the ODR mechanism, an additional two parties are found which are as significant as the other three which are omnipresent.

## **5 .ODR IN DIFFERENT CONTEXT:**

"ODR" is an acronym that can have different meanings depending on the context. Some common contexts and interpretations are:

### **Online Dispute Resolution (ODR)**

Online Dispute Resolution (ODR) is a growing field that utilizes technology to facilitate the resolution of disputes between parties. It is an evolution of traditional dispute resolution practices, such as negotiation, mediation, and arbitration, but conducted online rather than in person. ODR can be particularly beneficial in situations where parties are geographically distant from each other or when the cost or inconvenience of physical presence at a traditional court hearing is prohibitive.

The ODR process typically involves both parties presenting their case through a secure online platform. This could include submitting documents, participating in discussions or negotiations, and even attending virtual hearings. The role of the ODR provider varies, but can include facilitating negotiations between the parties, providing a mediator to help guide the discussions, or even making a binding or non-binding decision in the case. In addition to making dispute resolution more accessible and efficient, ODR also has the potential to reduce the load on traditional court systems, which can be particularly beneficial in areas with backlogged courts.<sup>16</sup>

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<sup>16</sup> Katsh, E., and Rifkin, J. (2001). *Online Dispute Resolution: Resolving Conflicts in Cyberspace*. Jossey-Bass.

## **Office of Dispute Resolution (ODR)**

An Office of Dispute Resolution is a neutral body within an organization or government that is tasked with resolving disputes between different parties. The nature of these disputes can vary widely, from internal disagreements between employees or departments, to external disputes with clients, customers, or other stakeholders.

The ODR typically employs a range of dispute resolution techniques, such as mediation, negotiation, and arbitration. They work with the involved parties to understand the nature of the dispute, identify the issues at hand, and guide the parties toward a mutually agreeable resolution. The ODR may also work to implement policies and procedures within the organization to prevent future disputes or to handle them more effectively when they do occur.

The existence of an ODR can provide a structured and neutral venue for parties to resolve disputes, which can be less formal, less expensive, and less time-consuming than traditional legal proceedings.<sup>17</sup>

## **Commercial and Business Conflicts**

ODR can be a particularly effective way to resolve commercial and business conflicts because it is often faster, cheaper, and more convenient than traditional litigation. ODR can also be more flexible and adaptable to the needs of the parties involved.

For example, ODR can be used to resolve disputes between businesses located in different countries. ODR can also be used to resolve disputes where the parties have different time zones or language barriers.

In addition, ODR can be used to resolve disputes where the parties want to maintain a confidential relationship. For example, two businesses that are partners in a joint venture may want to use ODR to resolve a dispute without disclosing the existence of the joint venture to their competitors.

Of course, ODR is not appropriate for all commercial and business conflicts. For example, ODR may not be appropriate for disputes that involve complex legal issues or that involve a

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<sup>17</sup> Moore, C. W. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. Jossey-Bass.

significant power imbalance between the parties. However, ODR is a valuable tool for resolving many types of commercial and business conflicts.

Here are some specific examples of how ODR has been used to resolve commercial and business conflicts:

In 2019, the American Arbitration Association (AAA) resolved over 200,000 business-to-business disputes through ODR.

In 2020, the Financial Industry Regulatory Authority (FINRA) resolved over 10,000 investor disputes through ODR.

In 2021, the California Superior Court resolved over 50,000 small claims disputes through ODR.

These examples show that ODR is a viable and effective way to resolve commercial and business conflicts. As ODR technology continues to develop and become more widely adopted, it is likely that ODR will play an even greater role in resolving commercial and business disputes in the future.

### **Family and Divorce Mediation**

ODR can be a particularly effective way to resolve family law disputes because it can help couples to avoid the stress and conflict of traditional litigation. ODR can also be more flexible and adaptable to the needs of the parties involved.

For example, ODR can be used to mediate disputes between couples located in different countries or who have different time zones. ODR can also be used to mediate disputes where the parties want to maintain a confidential relationship.

In addition, ODR can be more affordable than traditional litigation. Many ODR platforms offer mediation services at a fraction of the cost of hiring a divorce lawyer.

However, ODR is not appropriate for all family law disputes. For example, ODR may not be appropriate for disputes that involve domestic violence or child abuse. ODR may also not be appropriate for disputes where the parties are unable to communicate effectively or where there is a significant power imbalance between the parties.

If you are considering using ODR to resolve your family law dispute, it is important to consult with an experienced family law attorney to discuss your case and to determine whether ODR is the right option for you. Here are some specific examples of how ODR is being used to mediate family and divorce disputes:

In 2020, the California Superior Court launched a pilot program to offer ODR mediation services to couples who are filing for divorce.

In 2021, the American Arbitration Association (AAA) launched a new ODR platform for family law mediation.

In 2022, the New York State Unified Court System launched a new ODR platform for child custody and visitation disputes.

K. Srinivas Rao vs D.A. Deepa<sup>18</sup>, the Supreme Court of India held that mediation is mandatory in all matrimonial disputes before a petition for divorce can be filed

These examples show that ODR is becoming a more viable and effective option for couples who are seeking to resolve their family law disputes outside of court.

If you are considering using ODR to mediate your family or divorce dispute, here are some tips:

- Choose an ODR platform that is accredited by a reputable organization, such as the AAA or the Better Business Bureau.
- Make sure that the ODR platform you choose offers mediation services that are tailored to your specific needs.
- Be prepared to communicate openly and honestly with your mediator and with your spouse.
- Be willing to compromise in order to reach a mutually agreeable resolution.
- ODR can be a valuable tool for couples who are seeking to resolve their family law

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<sup>18</sup> (2013) 5 SCC 226

disputes in a peaceful and constructive manner.

## 6. FUTURE OF ONLINE DISPUTE RESOLUTION:

With the increasing number of transactions taking place cross-country through the platform of internet, means the numeral increase in the disputes arising out of such instances of electronic commerce and the same will increase even more in the future, which makes it clear that Online Dispute Resolution (ODR) has a growing role to play.<sup>19</sup>

Even though disputes arising out of large international commercial transactions, which constitute the major part of the traditional arbitration caseload, are unlikely to be referred to ODR, whereas, small and medium-sized disputes, which include businesses-to-businesses disputes, can be effectively and efficiently resolved by the way of ODR. As technology continues to advance, ODR platforms will become more sophisticated and user-friendly. ODR will also become more widely adopted by businesses, consumers, and courts.

Specific trends we can expect to see in the future of ODR include:

**A. Integration with Traditional Legal Systems:** ODR is likely to become more integrated with traditional legal systems. Courts and legal institutions are increasingly recognizing the benefits of ODR and are exploring ways to incorporate it into their processes. This could include using ODR as a first step before escalating to litigation, or even integrating ODR platforms directly into court systems.

**B. Greater Use of Artificial Intelligence (AI):** AI technologies are likely to play a larger role in the future of ODR. This could include the use of AI to help analyze cases, facilitate negotiations, and even make decisions in certain types of disputes. However, the use of AI in ODR also raises important ethical and legal questions, including issues of bias, transparency, and accountability.<sup>20</sup>

**C. Global Expansion:** As businesses and individuals become more connected globally, there is likely to be an increase in cross-border disputes. ODR can provide a cost-effective and

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<sup>19</sup> Cortés, P. (Ed.). (2016). *The New Regulatory Framework for Consumer Dispute Resolution*. Oxford University Press.

<sup>20</sup> Rule, C., & Friedberg, L. (2017). The Role of Artificial Intelligence in Online Dispute Resolution. *Negotiation Journal*, 33(1), 79-94.



efficient way to resolve these disputes, without the need for parties to travel or navigate different legal systems<sup>21</sup>.

**D. Increased Access to Justice:** ODR has the potential to increase access to justice by making dispute resolution more accessible and affordable. This could be particularly important for individuals and small businesses who may not have the resources to pursue traditional legal avenues.

**E. Enhanced User Experience:** As technology continues to advance, we can expect to see improvements in the user experience of ODR platforms. This could include more intuitive interfaces, better support and guidance for users, and more interactive and engaging ways to participate in the dispute resolution process.

**F. Focus on Privacy and Security:** As ODR platforms handle sensitive and personal information, there will likely be an increased focus on privacy and security. This could include the use of encryption, secure data storage, and robust authentication methods to protect user data.

In conclusion, the future of ODR looks bright, with potential for greater integration, enhanced capabilities, and increased accessibility. However, it is important for the ODR community to continue to address the challenges and ethical considerations that come with this evolving field.

## 7. CONCLUSION

Online dispute resolution (ODR) is a rapidly growing field with the potential to revolutionize the way we resolve disputes. ODR offers a number of advantages over traditional litigation, including efficiency, affordability, accessibility, and flexibility.

ODR is also becoming increasingly integrated with traditional legal systems, and it has the potential to make a positive impact on the world by reducing the backlog of cases in courts, promoting social justice, reducing the costs of doing business, and improving the consumer experience.

Overall, ODR is a valuable tool for resolving disputes in a variety of contexts, and it is poised

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<sup>21</sup> Schultz, T., & Pinna, A. (2016). Global Development of Online Dispute Resolution. In P. Cortés (Ed.), *The New Regulatory Framework for Consumer Dispute Resolution*. Oxford University Press.

to play an even greater role in the future.

Here are some specific ways that we can support the development and adoption of ODR:

- Governments can invest in research and development of ODR technologies.
- Courts can promote ODR to litigants and offer ODR services as an alternative to traditional litigation.
- Businesses can adopt ODR to resolve disputes with consumers and other businesses.
- Legal professionals can learn more about ODR and how to use it to help their clients.

By working together, we can make ODR a more accessible and effective way to resolve disputes for everyone.