
ONLINE DISPUTE RESOLUTION IN INDIA: SUCCESS OR FAILURE?

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Introduction

Alternate Dispute Resolution, or ADR, has attracted significant spotlight and garnered attention in India. Alternate Dispute Resolution is a dispute resolution system, different from the conventional form of taking disputes to court. It is a way of settling disputes outside the courtroom and is usually done in the presence of a third party. Common forms of ADR include arbitration, mediation, conciliation etc. Often considered as a viable alternative to litigation, ADR can be much more cost effective than litigation, can expedite the tedious process of court proceedings as well. However, the possibility of ADR proceedings continuing on an online platform makes the concept more lucrative for those seeking this method. While ADR itself may not be new to India, Online Dispute Resolution or ODR is carving a niche in a world that is digitising more and more with each passing minute, and in a country that itself endorses and encourages campaigns like 'Digital India'. Methods of dispute resolution are being revolutionised by technology in India. The question of its success is something that cannot be easily answered, however, this paper aims to analyse the advent, functioning and impact of ODR in India to measure its success. This paper will also include my own analysis of whether ODR has succeeded or failed in India and provide certain suggestions on how it can be made better in India.

A Brief History of ADR in India

ADR mechanisms have majorly revolutionised over the past decades. It is not unknown that the judiciary is overburdened in India, with only a small percentage of cases being heard in courtrooms out of all the matters listed before them. But with time, as the importance of ADR was realised and kept growing, it got statutory recognition in the Code of Civil Procedure through an amendment in 1999 which inserted the revolutionary Section 89, the formulation

and implementation of the Arbitration and Conciliation Act in 1996 and finally the Legal Services Authorities Act of 1997.

Several statutes like the Industrial Disputes Act, the Hindu Marriage Act, the Family Courts Act etc. provides for provisions of either one of mediation, arbitration, conciliation or more. While arbitration's existence is dependent on a valid arbitration agreement from before the dispute arises, mediation is the resolution of a dispute with the help of a neutral third party who helps disputants arrive at an agreement. Conciliation in India is less formal than arbitration in India wherein a conciliator separately meets the two disputant parties and settles their dispute. Finally, Lok Adalats or 'People's Courts' looks after disputes pending before regular courts or those which have not yet been brought to any other court. There is much less rigidity in Lok Adalats as compared to formal courts and parties can directly interact and communicate with the judge. These are some forms of Alternate Methods of Dispute Resolution that are being practiced in India. But it is not long before much of it changes, with the permeation of technology, as the legal field increasingly becomes impacted by it.

What is Online Dispute Resolution?

The terminology itself is a giveaway. As the name suggests, it is about taking alternate forms of dispute resolution between parties online over the internet using technology to facilitate the process. ODR mainly involves arbitration, mediation, and negotiation. It is commonly believed that ODR can resolve disputes quicker and more efficiently and provide access to justice¹. It is being called as the harbinger of the future of global dispute settlement in a highly digitized world². Ethan Katsh calls it a part of the emerging cyber law³. Believed to have been emerged in the 1990s in the United States, its history is not much old. However, even in the last 3 decades that it has been around, it has made several advancements across the world. It is not uncommon to hear of e-negotiations, e-arbitration, or e-mediation. These can take place over e-mail exchanges, video conferencing among other means. ODR mechanisms certainly have several benefits but can have some shortcomings. Some amount of surveying has researchers believe that parties tend to not communicate as much when dispute resolution mechanisms are taking

¹ J.C. Betancourt and E. Zlatanska, *Online Dispute Resolution (ODR): What is it, and is it the Way Forward?*, ADR, Arbitration, and Mediation: a collection of essays: an overview, CIARB, 309-334 (2014).

² Apoorva Dixit, *Online Dispute Resolution: An Indian Perspective*, 2, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, 1-6 (2018).

³ Ethan Katsh, *Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace*, LEX ELECTRONICA, (Apr 15, 2023, 10:32pm).
<http://www.lex-electronica.org/docs/articles 65.pdf>

place online, where parties hesitate to share much information in fear of breach of confidentiality etc⁴. However, different research says differently. Understanding ODR's success or failure can thus become tricky. Moving on to a specific jurisdiction, this paper will try to see how effective ODR has been in India.

ODR in India – a short what, when, and how!

In India, just like outside, the only thing differentiating ordinary or regular mode of dispute resolution from ODR is the use of technology to resolve disputes. Globalisation has been undoubtedly one of the primary reasons for the acceleration of ODR in India. So, in India as well, early signs of the ODR's entry could be traced back to the 1990s. But it was the period of the Covid-19 Pandemic where one could truly see the adoption of online means to resolve disputes. This was completely driven by necessity. So, as Courts begun hearing matters online through video conferencing, ADR mechanisms like Arbitration, Mediation and Negotiation too moved Online and people realised its potential. And as the Judiciary saw a time when there was almost a complete shutdown of the justice system, they realised the importance and the need for an alternate dispute resolution system which was easily accessible even remotely.

But while there are several benefits to ODR such as speedy resolution, ease of resolution for those parties who are geographically distanced from one another, synchronized communication among other reasons, there can be several concerns associated with its use as well, posing as a hindrance in its adoption and proliferation at a larger scale. Typically, these concerns can be along the lines of privacy concerns and confidentiality scares as data privacy has become a huge concern today, along with the issue of the internet not still being available to a large population of the country, some of whom may not even be literate enough to use the internet for dispute resolution. It is in this light that one must assess the successes or failures of ODR in India, in the backdrop of policy advancements around it.

ODR – Successes in India

The Report of the High-Level Committee on Deepening of Digital Payments based on the recommendation of the Nilekani Panel back in 2019 for setting up ODR to resolve a dispute about digital payments was one of the first formal steps, laying the foundation for legal

⁴ J.C. Betancourt and E. Zlatanska, *Online Dispute Resolution (ODR): What is it, and is it the Way Forward?*, ADR, Arbitration, and Mediation: a collection of essays: an overview, CIARB, 309-334 (2014).

recognition of ODR in India⁵. Recently in 2021, the report of the high-level committee constituted by Niti Aayog titled “Designing the future of dispute Resolution: the ODR Policy Plan for India”, recommending the measures at three levels to tackle the challenges that obstruct the smooth adoption of ODR framework in India⁶.

When it comes to finding legitimacy for online modes of dispute resolution, there are some landmark Indian judicial pronouncements which have helped the case for ODR to be recognised better. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, the Hon’ble Supreme Court held that since parties to arbitration proceedings do not meet as much in person but rather virtually, the online arbitration agreement is the most crucial document of arbitration that clearly defines all aspects of the dispute resolution process⁷. Moreover, the Supreme Court held that online arbitration agreements were lawful as they fulfilled the essentials of a complaint under Sections 4 and 5 of the Information and Technology Act, when read with Section 65B of the Evidence Act, in *Shakti Bhog v. Kola Shipping*⁸. Furthermore, in *Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta*, the Supreme Court held that technology must be used to not only enable paperless courts, but also reduce overcrowding of courts, and a system of categorization wherein some cases can be entirely concluded online without the parties having to come to court physically⁹. So, it becomes abundantly evident that through multiple judicial pronouncements of the apex court, the existence of ODR in India is legitimised, which is a massive success for the revolutionising of ADR.

Besides, one of the fields where ODR is turning out to be the most lucrative happens to be the business industry. It is a popular saying in business that time is money. For businesses, it is important to resolve disputes as speedily as possible, without the hang up of judicial delays or even more formal methods of ADR where physical presence of both parties is a must¹⁰. ODR becomes beneficial in such a case as technology, such as video conferencing, telecommunication, or e-mails etc., facilitates two parties in reaching a settlement when their

⁵ Nandan Nilekani, Report of the High-Level Committee on Deepening of Digital Payments, 2019, 97 (April 18, 2023, 3:59pm),

<https://prsindia.org/policy/report-summaries/deepening-digital-payments>.

⁶ *Designing the future of Dispute Resolution: the ODR Policy Plan for India*, Report by NITI AAYOG, dt. 29.11.2021.

⁷ *Trimex International FZE Ltd. Dubai v. Vedanta Aluminium Ltd., India*, (2010) 3 S.C.C. 1 (India).

⁸ *Shakti Bhog Foods Ltd. v. Kola Shipping Ltd. and Anr.*, (2009) 2 S.C.C. 134 (India).

⁹ *Meters and Instruments Private. Limited. vs. Kanchan Mehta*, 2017 TaxPub(CL) 0840 (SC) (India).

¹⁰ Anurag K. Agarwal, *Is India Ready for Online Dispute Resolution?*, W.P. No.2006-10-03, INDIAN INSTITUTE OF MANAGEMENT AHMEDABAD, 6, (2006).

http://www.iimahd.ernet.in/publications/data/2006-10-03_aagarwal.pdf

physical presence is not necessary. People like ODR as a mechanism to settle disputes since it gives them the chance to get justice in a more hassle-free way, without burning their pocket paying court fees and litigation fees to lawyers (since many of these don't require being represented by a counsel), brings them justice more quickly and that too without having to be present somewhere at a place physically to get disputes resolved.

ODR – Failures in India

It would not be very fair to just look at the positives of ODR's stint in India. It has several obstacles in its path to becoming a more widely used form of Dispute Resolution as well. For starters, policy makers have unable to come up with a bill that could regulate ODR in India. At a time when the Mediation Bill itself awaits the ratification by the Upper House of the Parliament before it is passed as an Act, it is far-fetched to expect a bill on ODR this soon. This becomes the regulatory issue.

Besides that, there are several kinds of concerns revolving around the implementation of ODR. Some of them are structural. Lack of digital literacy, absence of digital infrastructure, and almost no professionals or personnel to man the ODR services hampers ODR's spread and popularity across the country¹¹. Slow internet speeds, and lack of connectivity in remote areas and the highly priced internet services does not make ODR any more attractive for people residing in more remote and/or rural areas. There is a vernacular bias as well. Most of these proceedings are carried on in Hindi or English. If the purpose is to make Dispute Resolution more accessible and speedier, being hung up on two languages will prove to be counterproductive. Besides that, a large population of the country is on the internet, it does know the proper usage of it, and this can even lead to mental barriers restricting those people from accessing justice through ODR.

Along with these, there are privacy concerns too arising out of security issues. Security issues include the risk that internet being an open source makes the data of the people prone to leaks. And in the absence of a Data Protection Act, parties can feel vulnerable to confidentiality breaches to hold dispute resolution proceedings online in a day and age where everyone wants all their information to be encrypted. Parties may even want to keep their proceedings private

¹¹ Anurag K. Agarwal, *Is India Ready for Online Dispute Resolution?*, W.P. No.2006-10-03, INDIAN INSTITUTE OF MANAGEMENT AHMEDABAD, 6, (2006).
http://www.iimahd.ernet.in/publications/data/2006-10-03_aagarwal.pdf

which may not always be the case as such proceedings can get recorded and saved on the internet for others to access¹². Besides that, ODR may not even be suitable for the resolution of all kinds of disputes. Disputes involving intricate legal complexity are best addressed and settled in Courts of law¹³.

Furthermore, there is a certain comfort in holding dispute resolution proceedings in a physical capacity. It can be mentally less taxing if one is free from thinking about data and confidentiality breaches. Many are even more comfortable having such settlements when they are face-to-face with the opposite party, making the proceeding feel more personal.

So is ODR here to stay – My take on it in India!

It is too soon to say whether ODR has completely failed or not in India. The answer, even after extensively discussing and weighing the successes and failures in, it would be wrong to completely dismiss it or to say that ODR in its present shape and form can prove to be effective and beneficial in the way one expects it to be. So, if certain things are not changed, which particularly relate to government giving importance to regulating ADR, more specifically ODR, in India, ODR is bound to doom as it would not be able to attract many people towards it.

Countries like UK have a well-established system of online dispute resolution¹⁴. It is being used by people and is very popular too. The National Centre for Technology and Dispute Resolution operates within the framework of ADR legislation, but the distinction is that ODR is attempting to deliver what ADR does on paper via the use of electronic and communications technology. India too can adopt a system like that which can govern and regulate both ADR as well as ODR.

One of the foremost requirements is for the policy makers to realise that for the effective operation of ODR in India, a legal and regulatory framework is a must, in the absence of which parties to a dispute will feel insecure to go the ODR way. Data Protection is a must for people

¹² Apoorva Dixit, Online Dispute Resolution: An Indian Perspective, 2, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, 1-6 (2018).

¹³ Anurag K. Agarwal, *Is India Ready for Online Dispute Resolution?*, W.P. No.2006-10-03, INDIAN INSTITUTE OF MANAGEMENT AHMEDABAD, 6, (2006).

¹⁴ Solution, I.L. (2018) "The need of ADR and ODR system in India with a comparative analysis with The United Kingdom.," Indian Legal Solution [Preprint]. <https://indianlegalsolution.com/the-need-of-adr-and-odr-system-in-india-with-a-comparative-analysis-with-the-united-kingdom/>.

to have faith in availing online methods of dispute resolution wherein their interests, data the dispute in question are all safe guarded from outsiders who might use such information maliciously. Moreover, there is a need to impart digital literacy and awareness amongst the general public of the nation if they are to use basic digital features for ODR. This is coupled with providing better internet connectivity and training professionals who would provide the ODR services. So, the ODR policy should focus on developing IT infrastructure. These are some things which were highlighted and emphasised upon in the Report of the NITI Aayog committee.

Some more areas to focus on in the policy could be incentivising parties to opt for ODR¹⁵. This can be done by Court's sending parties to e-mediation and refunding their court fees as a reward and additional costs can be imposed as a deterrent on those parties who do not opt for e-mediation. There are other ways too of making ODR more attractive. Parties can be convinced to attempt to reach a mutual settlement for certain disputes that are currently pending before the Courts (which are not expressly barred) so that they can be amicably resolved¹⁶. ODR will be extremely lucrative for those commercial parties who have multiple legal disputes either ongoing or in the past and they can smoothly adapt to the change as well.

But ODR in India has not just seen stories of failure but has seen some successful case studies as well. For instance, PayPal provides an online dispute resolution centre that serves as a third-party negotiator in consumer disputes and enables parties to initially resolve their differences before resorting to arbitration¹⁷. ODR can be as successful as the government, the parties and the ones facilitating the procedure make it to be.

Conclusion

The advent of technology in multiple spheres of our live have made our lives easier in many ways. Whether it is in education or banking or even in the legal domain. ADR which is already a great method of resolving disputes can be turned into something better with the help pf little bit of technology. That is why ODR is a complete game changer as it provides better and more accessible form of settling disputes to people. However, only with government and policy

¹⁵ Mokal, M.I.K. (2021) "Enabling ODR and Mediation in India," Social Science Research Network [Preprint]. <https://doi.org/10.2139/ssrn.3919621>.

¹⁶ Vidhi Centre for Legal Policy (2020) ODR: The Future of Dispute Resolution in India. <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/>.

¹⁷ *id.*

intervention can ODR be turned into something that attracts a greater number of parties. Technology is revolutionising the way in which our courts operate. It is high time that we acknowledge and appreciate the advent of technological advances in the legal sphere and take steps towards making it better for the people.