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# Channelizing Online Dispute Resolution in the Indian model of ADR

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## ABSTRACT

*Technological advancements and scientific breakthroughs have improved how people live and work. Alternate Dispute Resolution mechanisms such as mediation, arbitration and negotiation are an alternative to adversarial court litigation for a long time now. With the tech-savvy approach in the commercial world and day-to-day life, it is becoming extremely important for the legal world to take a technological ride and incorporate technology in the administration of justice. Over the last few decades, the distribution of information in India has accelerated. This has paved the way for court computerization pushing the Indian judicial system towards transparency and efficiency. India as a developing country has the full potential to become a techy country for which it requires proper physical infrastructure and adequate technological literacy. Setting up the Online Dispute Resolution Ecosystem is a step forward from the traditional Alternative Dispute Resolution System.*

**Keywords:** Access to Justice, Alternative Dispute Resolution (ADR), Artificial Intelligence (AI), Online Dispute Resolution (ODR), Technology.

## I. INTRODUCTION

The term 'ODR' stands for Online Dispute Resolution which is a step forward in the systems of e-courts and e-filing. E-courts system has now become old as opposed to Online Dispute Resolution which is a new way of resolving disputes comprising artificial intelligence and machine learning. ODR covers both traditional litigation as well as alternative dispute resolution system, which is assisted by technology. The study of human intellect in a computerized way is what artificial intelligence is all about. This encompasses both applied research (developing computer programmes capable of working as per human intellect) and foundational research.<sup>2</sup> Online alternative dispute resolution system refers to the use of technology (artificial intelligence) for the purpose of conducting proceedings of an alternative dispute resolution system which consists of various mechanisms like mediation, negotiation, conciliation, and arbitration. Facilitated negotiation is the simplest of all methods of dispute

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<sup>2</sup> A.R. Lodder & J. Zeleznikow, *Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Systems in a Three Step Mode* 10 HARVARD NEGOTIATION L. REV. 287 (2005).

resolution where the parties are given an online platform for negotiating directly with each other.<sup>3</sup> The alternative dispute resolution system is one where in case of a dispute parties instead of approaching the ordinary courts, opt for an alternate mechanism for resolving their disputes in an amicable manner without any judicial interference. There is a neutral third party who helps the disputed parties to solve their discourse by initiating a dialogue between the parties and in some cases offering them different solutions for the resolution of the matter in dispute. When the alternative dispute resolution system is combined with an online settlement of disputes, then it is found that the unbiased third person will be none other than a machine, that is, a robot.

With the advent of globalisation and liberalisation, the amicable settlement of disputes has become the need of the hour due to the rise in business transactions on a global scale. Given the significance of alternative dispute resolution mechanisms, it should not be forgotten that the world is becoming tech-savvy which makes it even more essential to move towards an online alternative dispute resolution regime. It cannot be forgotten how the COVID-19 pandemic became an undoubtedly tragic event in human history. Though, a digital world existed even before the pandemic, but with its insurgence incorporation of technology in our daily lives became even more essential. The pandemic forced a system overhaul.

The inclusion of technology is a trend that justice systems all around the globe have embraced as unavoidable. As a result, rather than a specific venue, such as the courts, justice is increasingly viewed as a service that may be provided whenever it is convenient for the participants. The already existing E-Courts system was not of much help because it can only be equated with e-filing and not those virtual hearings wherein the adjudication is done via the computer; rather, it is limited only to the extent of virtual proceedings through video conferencing.

## **II. FROM THE E-COURTS TO ONLINE DISPUTE RESOLUTION**

The concept of e-Courts is not new to India. Rather, it has been in force in India even prior to the pandemic. In India, the e-Courts mission began in the year 2005 for making access to justice more cost-effective, time-saving, and transparent. With the pandemic, it came to light that there are several Courts which lack electronic infrastructure. There are problems related to its adaptability with regard to the first-generation lawyers, the judiciary, and the litigants.<sup>4</sup>

It is not a hidden fact that the Indian Courts have a backlog of a huge number of cases. Currently,

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<sup>3</sup> Shekhar Kumar, *Virtual Venues: Improving Online Dispute Resolution as an Alternative to Cost Intensive Litigation* 27 J. MARSHALL J. COMPUTER & INFO. L. 81, 83 (2009).

<sup>4</sup> E-Committee Supreme Court of India, *Digital Courts Vision & Roadmap Phase III of the E-Courts Project*, (Issued on Nov. 26, 2022).

there are 5.96 million cases pending in the High Courts and 43.14 million in the District Courts.<sup>5</sup> Adding to it, the special Tribunals are also crippled with the burden of cases and other surrounding issues. As a result of this, there is a delay in the disposal of cases. Hence, for such delays, alternative dispute resolution mechanisms come to the rescue for speedier solutions.

It is to be noted that the COVID-19 pandemic forced all dispute resolution mechanisms to function virtually. The existing e-courts and e-filing systems did not prove to be a complete saviour for the pandemic hit India. Thus, the need of the hour is to channelize the dispute resolution ecosystem according to the dynamism that exists through the use of technology.

#### **(A) Online Dispute Resolution Framework:**

ODR is described as a process for the resolution of discourse aided by the use of technological communications.<sup>6</sup> Here, parties to a dispute submit their arguments on a platform which does not require simultaneous dialogue between either of the parties or the adjudicator. The arguments are recorded on the platform as per the parties' convenience. This is when technology comes into play and attempts to provide amicable solutions to the parties' conflict and the adjudicator's resolve, thereby acting as a neutral fourth party.<sup>7</sup> However, the question which arises is whether artificial intelligence can replace the third party so that there is no human intervention between the disputing parties.

##### **a. Artificial Intelligence And ODR**

Artificial intelligence is a unique intelligence mechanism wherein with very minimal or no human intervention at all the tasks are accomplished by use of technology or bots. It is a better alternative in terms of speed and ease of working being based upon machine learning and natural language processing. Artificial intelligence and ODR together will offer appropriate solutions to the parties to the discourse. These solutions may vary depending on the nature of the dispute; nonetheless, they will ultimately eliminate the cumbersome paperwork and make it much simpler to obtain access to the legal system. When compared to conventional bureaucratic methods, ODR with the bot system has the potential to radically alter the way conflicts are settled and make the process of dispute resolution more efficient by automating various procedures. This can be relevant to a wide range of issues, from those involving consumers to family matters and commercial disputes. When contrasted to typical litigation, the ODR

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<sup>5</sup> E-Courts Services (Dec. 22, 2023, 01:10 PM), [https://ecourts.gov.in/ecourts\\_home/](https://ecourts.gov.in/ecourts_home/).

<sup>6</sup> UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, UNCITRAL TECHNICAL NOTES ON ONLINE DISPUTE RESOLUTION 4 (United Nations, 2017).

<sup>7</sup> Ethan Katsh, *Online Dispute Resolution: Some Implications for the Emergence of Law in Cyberspace* 21 Int'L Rev. of L., Computers & Tech. 97, 100-101 (2007).

mechanism can provide a less adversarial approach thereby attaining resolution and simultaneous preservation of relationships.

There are two basic ways of using artificial intelligence in ODR:

1. As a supplement
2. As a replacement

In the former, the traditional system is followed wherein the neutral third party makes use of artificial intelligence in order to come to a solution, basically to supplement human labour.

However, in the latter case, artificial intelligence completely replaces the third party. It performs the functions of the human adjudicator by itself which comprise decision-making and inquiries. In AI-assisted online dispute resolution, the final decision is made by looking at the prior outcomes and the available data on a particular kind of dispute. If it is found that a specific line of action has produced negative outcomes, then such an approach will be discarded in case of the present dispute. On the other hand, if it is found that earlier the solution to a discourse proved to be good and satisfactory then the same solution is given as a result of the ODR. This is called case-based reasoning<sup>8</sup>. Hence, when artificial intelligence acts as the negotiator or the mediator then there is no application of mind rather, the previous database is looked at for reaching a settlement. There are certain commands which are fed into the robots due to which they act in a structured manner by the application of set principles in that regard.<sup>9</sup>

So artificial intelligence as a supplement can help in reducing time and human effort and as a substitute, it will result in a speedy online dispute resolution but there are chances of AI biases as no human mind is applied and there may be cases which may fall within the same category but may require a different approach than the previous one. But, if AI replaces the third party, it will only adopt that approach which is fed into the database, thereby resulting in wrong solutions.

### **(B) Current status of Online Dispute Resolution in India:**

The Indian Courts and the stakeholders have time and again emphasized on the need of ODR mechanisms. The process began by depending on e-filing of digital print books rather than hard copies. According to the then Chief Justice of India N.V. Ramana, various matters like family disputes, consumer and commercial issues may be successfully resolved via ODR. Prior to this,

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<sup>8</sup> Lodder A R, *ARTIFICIAL INTELLIGENCE AND ONLINE DISPUTE RESOLUTION in Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution 73-94* (Daniel Rainey, Ethan Katsh et al. eds., EIP, The Hague, The Netherlands 2012).

<sup>9</sup> Hibah Alessa, *The role of Artificial Intelligence in Online Dispute Resolution: A brief and critical overview* 31 Info. & Communications Tech. L. 319, 320-321 (2022).

the then Chief Justice S.A. Bobde also was in favour of a system of virtual hearings and the compilation of international arbitration with artificial intelligence as an alternative to the existing state of affairs.<sup>10</sup>

In the case of *Meters and Instruments Private Limited and Another v. Kanchan Mehta*<sup>11</sup>, it was observed by the Apex Court that modern technology should be explored in a way that the Courts become paperless, and overcrowding is reduced. It is required to look for cases that may be resolved on the online platform without the physical presence of the parties by streamlining processes when highly contested issues do not require adjudication.

It is pertinent to note that, from India's perspective, the Information and Technology Act, 2000 might potentially be applied to the ODR system to ensure its smooth operation. Considering that the electronic records and signatures are given a legal underpinning by sections 4 and 5 of the said Act, the Apex Court in *Shakti Bhog Foods v. Kola Shipping Ltd.*<sup>12</sup> held that the arbitral agreements made online seek their validity under sections 4 and 5 of the Act. The said provisions should be read with sections 65A and 65B of the Indian Evidence Act, 1872 which validates electronic evidence, along with the Arbitration and Conciliation Act, 1996.<sup>13</sup>

### **(C) Benefits of ODR:**

While understanding ODR, it is imperative to look into the advantages it offers. The benefits are as follows:

#### **1. Speedy Process of Dispute Resolution**

One of the greatest issues for the Indian judicial system has been the pending cases in courts around the country. The presence of vacancies in the court, adjournments on repeat and complicated processes involving various stakeholders are some of the key causes of such pending litigation.<sup>14</sup> There is no doubt that resolving disputes online is much faster than the traditional system of resolving disputes. The most attractive characteristic of ODR is that the parties can participate in the process according to their individual time frames. In the normal mediation or negotiation, which takes place in a physical environment, the disputants are bound to fix a particular date and time to meet physically unlike in the case of online negotiation or

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<sup>10</sup> Kinhal Deepika, *ODR: The Future of Dispute Resolution in India*, VIDHI CENTRE FOR LEGAL POLICY (Dec. 22, 2023, 01:49 PM), <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/>.

<sup>11</sup> *Meters and Instruments Private Limited and Another v. Kanchan Mehta* (2018) 1 SCC 560 (India).

<sup>12</sup> *Shakti Bhog Foods v. Kola Shipping Ltd.* (2009) 2 SCC 134 (India).

<sup>13</sup> SIBASHISH MISHRA & SHAMBHAVI SRIVASTAVA, *INDIA: THE ODR POLICY PLAN FOR INDIA - PAVING THE WAY TO A BRIGHTER FUTURE FOR DISPUTE RESOLUTION IN INDIA*, S & A Law Offices (DEC. 22, 2023, 01:53 PM), [HTTPS://WWW.MONDAQ.COM/INDIA/ARBITRATION-DISPUTE-RESOLUTION/1161056/THE-ODR-POLICY-PLAN-FOR-INDIA--PAVING-THE-WAY-TO-A-BRIGHTER-FUTURE-FOR-DISPUTE-RESOLUTION-IN-INDIA](https://www.mondaq.com/india/arbitration-dispute-resolution/1161056/the-odr-policy-plan-for-india--paving-the-way-to-a-brighter-future-for-dispute-resolution-in-india).

<sup>14</sup> NITI AAYOG, *DESIGNING THE FUTURE OF DISPUTE RESOLUTION: THE ODR POLICY PLAN FOR INDIA* 13 (2021).

mediation.

## 2. Cost-effective access to justice

ODR reduces the cost of resolving a disagreement, providing traditionally disadvantaged groups access to the legal system. There is also a rather considerable cost difference between using online conflict resolution and traditional alternative dispute resolution mechanisms. The expenses which are saved are often related to the expense of travel and venue reservations, which are necessary for the traditional system unlike in the case of ODR.<sup>15</sup> The ODR system is cost-effective in all terms, thereby reducing the monetary burden on the parties which acts as a hindrance in accessing justice for the common man. Both direct and indirect costs are saved. The fee of the legal counsel is not required to be paid in ODR and in fact, it helps in maintaining the confidence of investors in businesses.<sup>16</sup>

## 3. Narrowed approach to prejudices

There is considerably less human bias present in the case of the online dispute resolution system. In the traditional setting, there are always chances of caste prejudices and gender discrimination. However, ODR does not drive the third party to deliver such a decision which is influenced by the notions as to what community the party belongs to. Rather, it is a neutral process wherein the disputes are resolved amicably on the basis of the claims of the disputants and not on the basis of their roots. ODR advocates more concentration on the substantive issue than the feelings. However, with ODR, the threat of participating in dispute resolution posed by the difference in the socio-economic status of the two parties is reduced.<sup>17</sup>

### **(D) Barriers to Online Dispute Resolution:**

There are certain challenges that come to light in the setting up of an online dispute resolution system. They are as follows:

#### 1. Algorithmic bias

The data itself is the root cause of bias. Algorithmic outcomes are a direct reflection of what their makers and society as a whole instruct. It has been asserted that more diversity and inclusion of people belonging to different cultures and worldviews will ensure that the recorded data is more inclusive; nevertheless, it is difficult to ascertain that how much variety is required for achieving the said goal. Moreover, the individuals who are directly impacted by the algorithm may be unable to participate in the data collection and are therefore not represented

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<sup>15</sup> Kumar, *supra* note 2 at 85.

<sup>16</sup> Kumar, *supra* note 2 at 87.

<sup>17</sup> *ibid.*

in the data sets.<sup>18</sup> So, the problem with ODR based on artificial intelligence is that of biases that it may produce. Without any human intervention, the ODR setting may not work well in all respects and if it has to then the database has to be made much stronger with the capacity to respond to all kinds of issues and sub-issues individualistically.

## 2. Concerns regarding procedural and substantive fairness

There are certain due process requirements that need to be followed while resolving a dispute and certain constitutional principles like equity, reasonableness and fairness which are the basis of any dispute resolution. However, there is a missing link to such principles in the case of ODR. In this particular setting, there is no recourse to appeals or judicial review which makes online dispute resolution very authoritarian. There is no scope for questioning parties face-to-face to create effective communication between the parties and the third party if any.

## 3. Technological illiteracy

Given the illiteracy in India, the technology-based nature of ODR may discourage individuals from opting for the same as they may not have as much knowledge as required for such a system. The impoverished groups who will be benefitted from the cost-effectiveness associated with an ODR system may have trouble using such a system because they do not have much exposure to technology in comparison to the others. Furthermore, they may lack access to the technology like a computer or an internet connection which required for online conflict resolution.<sup>19</sup> This will result in discrimination based on the economic status of the parties and can be a major impediment to having easy access to justice through artificial intelligence-assisted dispute resolution.

### III. RECOMMENDATION AND CONCLUSION

India has a long way to build a structured ODR ecosystem. Along with the pendency of lawsuits, small claims in special tribunals also take a very long time to be settled. India requires specific legislation to deal with the online dispute resolution system- for setting up a legal framework as to what disputes can be settled through online alternative dispute resolution processes according to the domestic needs with the adequate rules and procedures of its usage. Most importantly, an ODR platform has to be set up through which individuals can have access to online justice. For instance, in Europe, all traders functioning online are required to provide the

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<sup>18</sup> *Algorithmic bias in the courtroom: how to fight it?* LEXIS NEXIS (Dec. 22, 2023, 02:00 PM), <https://www.lexisnexis.com.au/en/insights-and-analysis/rule-of-law/2019/algorithmic-bias-in-the-courtroom-how-to-fight-it>.

<sup>19</sup> Kumar, *supra* note 2 at 88.



consumers a direct link to an ‘online dispute resolution platform’ on their websites, so that it becomes easy for the customers to file their complaints.<sup>20</sup> In a similar manner, India can impose such compulsions. An ODR Centre may be constructed that can act as a link between various other online dispute resolution platforms. The procedural law should be formulated keeping in mind the downtrodden, language barriers and cultural diversity. Specific provisions as to the finality and binding nature of the online awards and settlement agreements must be incorporated in the legislation. Adding to it, the Courts and the Tribunals should be imposed with the duty to refer the parties to online alternative dispute resolution rather than the traditional alternative dispute resolution in the cases where the parties first approach the Courts. Special training centres need to be established for increasing digital literacy among all stakeholders. Trust in online dispute resolution system must be instilled in the end-users and it can only be built by the cooperation of all the stakeholders- the lawyers, judiciary, individual disputants, companies and businesses.

Looking at the concept of ODR as an alternative, it can be concluded that ODR may without a doubt, serve as a supplement to and in some situations, a replacement for more conventional means of resolving disputes. ODR can be beneficial in discussions and negotiations at the preliminary stage of formal proceedings while acting as a supplement. Parties can work out their differences via online mediation and communication before taking formal legal action. As a replacement, ODR system can provide a more private and regulated setting than public court procedures for sensitive conflicts like in case of family affairs or confidential business communications. It must be noted that all disputes are not amenable to the ODR platform. Traditional legal procedures may still be necessary in cases with complex legal issues and those requiring extensive pieces of evidence. Therefore, with proper scrutiny and strategic approach, it has to be decided as to which all disputes can be resolved via ODR acting as a supplement and as a replacement respectively. It is crucial to understand that ODR may exist alongside traditional approaches, giving parties a variety of alternatives for the resolution of disputes and not absolutely taking over the conventional system in all areas. The need of the hour is to create a supportive environment for the effective implementation of the online dispute resolution setting. Access to technology is required to be strengthened in terms of infrastructural access and digital knowledge. All parties must undertake coordinated and structured initiatives.

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<sup>20</sup> Kinhal, *supra* note 9.