

## ADOPTION: A COMPARATIVE STUDY OF MUSLIM AND HINDU LAW

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### INTRODUCTION

The development of technology has permeated into our daily lives.<sup>11</sup> Over the past decade, we have experienced explosive growth in computer usage. Online dispute resolution employs information and communication technologies to resolve conflicts between involved parties. This technology is especially beneficial for facilitating negotiation, mediation, arbitration, or a blend of these methods. ODR primarily focused on resolving disputes within e-commerce, which is unsurprising given that these conflicts typically originate online. With the growing prevalence of online communication, it has become increasingly apparent that resolving disputes using online platforms is the norm.

### STATEMENT OF PROBLEM

In today's partnerships and collaborations, handling rules and solving problems often involve old-fashioned paper methods. But as our society becomes more connected digitally, there's a big need to update these systems with new technologies. The issue is that using paper causes things to be slow, mistakes happen, and it's hard to keep up with fast-paced partnerships.

### HYPOTHESIS

Shifting from conventional paper-based methods of governance and dispute resolution to digital platforms within partnerships is expected to improve adherence to legal regulations, streamline processes, and bolster the efficacy of contract creation, understanding, and enforcement.

### METHODOLOGY

The research shall be done using relevant articles and books, and analysis will be done using case laws and other relevant literature.

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## BEYOND PAPER CUTS: DIGITIZING GOVERNANCE AND DISPUTE RESOLUTION IN MODERN PARTNERSHIPS

The Internet, a 21st-century medium, has revolutionised numerous aspects of life, serving as a key source of information, a tool for communication, and a global platform for trade. It has introduced modern technological solutions to various fields. The Internet's rapid expansion has brought about positive changes, such as the computerisation of legal administration. This adoption of technology has become prevalent in our professional environments, too<sup>1</sup>. Email is now a standard form of communication in the workplace, and computer programs are regularly utilised to create various documents. With these tools, drafts can be shared with multiple individuals simultaneously, allowing them to make edits, leave comments, adjust formatting, and respond, all without needing to leave their desks. However, it has also revealed shortcomings in the legal framework, particularly in areas like intellectual property rights. The global nature of the Internet has altered approaches to information access, impacting copyright and press laws. The lack of territorial limitations has exposed outdated provisions in private international law. The rise of electronic commerce has necessitated the introduction of new regulations to address these challenges<sup>2</sup>.

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When these forms of ADR are combined with ICT, the result is ODR. It should be noted that some courts have also started to gradually incorporate advanced technology into the context of Online Dispute Resolution<sup>3</sup> (ODR); technology serves as a medium to address issues. ODR methods can vary, ranging from online and in-person interactions to fully online processes. These methods typically employ mediation, negotiation, arbitration, or a blend of these approaches<sup>4</sup>. However, challenges arise when parties involved in a dispute hail from different countries. They must determine which laws apply to them, often with the assistance of a neutral third party<sup>5</sup>. In such cases, there is a desire for a dispute resolution mechanism that is efficient

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<sup>1</sup> Tzipora Goodfriend-Gelernter, How to Avoid the Death of Your Case by Two Billion Paper Cuts: Encouraging Arbitration as an Alternative Way to Resolve Costly Discovery Disputes <<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1244&context=drlj>>, last accessed on June 25, 11:30 pm

<sup>2</sup> Mania, K. (2015) 'Online dispute resolution: The Future of Justice', *International Comparative Jurisprudence*, 1(1), pp. 76–86. doi:10.1016/j.icj.2015.10.006.

<sup>3</sup> Maria Mercedes Albornoz and Nuria González Martín Feasibility Analysis of Online Dispute Resolution in Developing Countries, University of Miami American Law review <[https://repository.law.miami.edu/cgi/viewcontent.cgi?params=/context/umialr/article/1110/&path\\_info=UMILR\\_20vol\\_2044\\_20no\\_201\\_20Albornoz.pdf](https://repository.law.miami.edu/cgi/viewcontent.cgi?params=/context/umialr/article/1110/&path_info=UMILR_20vol_2044_20no_201_20Albornoz.pdf)> last accessed on 25<sup>th</sup> June 11:45 am

<sup>4</sup> Sriram Panchu *Mediation Practice and Law - The Path to Successful Dispute Resolution*, Mediation Practice and Law - The Path to Successful Dispute Resolution, Volume 1, 2021

<sup>5</sup> Jeffrey M. Aresty, *The Internet and ADR: Educating Lawyers about Online Dispute Resolution*, American Bar Association, Vol. 23.

in terms of time and cost, especially for international disputes involving parties from different countries.

Currently, there are two main types of Online Dispute Resolution (ODR) systems. The first type is supported by private entities, while the second type is supported by Court Annexed systems. Private ODR platforms, such as Smartsettle<sup>6</sup>, Cybersettle, and the Mediation Room, have their regulations and offer online mediation and resolution services for commercial disputes on a global scale.

### **ONLINE DISPUTE RESOLUTION IN INDIA**

In India, Madhya Pradesh State Legal Services Authority (MPSLSA) recently launched an Online Dispute Resolution Platform as a pilot project in three districts: Gwalior, Jabalpur, and Bhopal. Madhya Pradesh was the first state to implement such a platform. Section 10A of the ITA 2000 validates contracts formed through electronic means. It is recognised as a valid contract. In the case of Grid Corporation of Orissa Ltd. vs. AES Corporation<sup>7</sup>, the Supreme Court stated that when effective consultation can be achieved through electronic media and remote conferencing, it is not mandatory for the individuals involved to sit together physically in one place. This is unless such physical presence is required by law or by the existing contract between the parties involved.

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There are other cases like Shakti Bhog Foods Ltd. V. Kola Shipping Ltd<sup>8</sup> and Trimex International FZE Ltd. v. Vedanta Aluminium Ltd<sup>9</sup>. Again, arbitration as a mode was agreed upon through email. Sending private notices via email can be considered valid if they meet the requirements of the Information Technology Act of 2000, even though it is not mandatory to notify the other party before filing a lawsuit unless required by law. There has been recognition of the IT Act for signatures and electronic records that can be used as evidence. This has got legal recognition, i.e. in the case of the State of Maharashtra vs. Dr Praful B. Desai.<sup>10</sup> The court held that video conferences can be used as a mode of taking evidence and that submission and proceedings can take place online.

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<sup>6</sup> Nikam RJ and Singh NB, 'Legal Validity of Online Dispute Resolution (ODR) System in India and Indonesia' (2022) 14 Passagens: Revista Internacional de História Política e Cultura Jurídica 531

<sup>7</sup> Grid Corporation of Orissa Ltd. vs. AES Corporation (2002) 7 SCC 736 23, 24

<sup>8</sup> Shakti Bhog Foods Ltd. V. Kola Shipping Ltd AIR 2009 SC 12 77,79

<sup>9</sup> Trimex International FZE Ltd. v. Vedanta Aluminium Ltd (2002) 7 SCC 736 16,17

<sup>10</sup> State of Maharashtra vs. Dr. Praful B. Desai 2003 4 SCC 601 22,23

The importance of online media was proven during the time of the COVID-19 pandemic when countries went into complete lockdown and had to resort to all these mediums for their survival. The Supreme Court, in the case of Indian Bank Association & Ors vs Union Of India & Anr<sup>11</sup>, allows the service of legal documents through emails.

Legal notices sent by email are considered valid if the corresponding contracts expressly allow for email notices and if they meet the requirements of the Information Technology Act, 2000 (ITA 2000). Under the Insolvency and Bankruptcy Code, 2016, Rule 5(2) permits the delivery of demand notices by electronic mail service. Similarly, for notices under Section 138 of the Negotiable Instruments Act of 1881, sending a demand notice via email is considered effective if it meets the requirements of the ITA 2000.

In arbitration proceedings, various documents and communications, including the request for arbitration, appointment of the tribunal, statement of claim, and responses, can all be served electronically. The Arbitration and Conciliation Act, 1996, particularly Sections 24 and 29B(3)(a), allows arbitral tribunals to decide disputes based solely on pleadings, documents, and submissions without oral hearings. Section 7(4)(b) of the Arbitration and Conciliation Act, 1996 considers electronic communication of an arbitration agreement as an arbitration agreement in writing.

### **CHALLENGES TO ODR**

The challenges that this system suffers are mainly authenticity, privacy<sup>12</sup>, confidentiality, and lack of a coordinated framework. Online Dispute Resolution (ODR) is closely linked to the judiciary, and its growth must align with the objectives of judicial bodies worldwide to achieve widespread adoption. ODR is a crucial aspect of e-policy for advancing the Internet economy. It goes beyond being solely the judiciary's concern for managing rights, whether physical or digital and becomes a global concern for the cyber-judiciary community. The primary goal should be to reduce barriers and enhance access to justice. Therefore, the development of ODR is crucial for expanding the knowledge-based economy, which, in turn, can influence the digital

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<sup>11</sup> WRIT PETITION (CIVIL) NO.18 OF 2013

<sup>12</sup> Jeffrey M. Aresty The Internet and ADR: Educating Lawyers about Online Dispute Resolution, GPSolo , JANUARY/FEBRUARY 2006, Vol. 23, No. 1, Cyber-Law: Uncharted Waters (JANUARY/FEBRUARY 2006), pp. 30-35, last accessed on July 26 10:30 pm

and justice divide. Also, there are countries where there is no connectivity or the internet, and they won't be able to access this mechanism.<sup>13</sup>

## **PARTNERSHIP**

A partnership is a legal relationship where two or more individuals or entities join forces to operate a business and share its profits and losses. In this arrangement, each partner contributes resources such as capital, labour, skills, or experience to the business. Partnerships can take different forms, with the most common being general partnerships (GP) and limited partnerships (LP). In a general partnership, all partners are actively involved in managing the business and share full responsibility for its debts and obligations. Limited partnerships have both general partners who manage the business and limited partners who are passive investors with limited liability. Partnerships can be created without a formal written agreement, but it is advisable to have one to outline the terms and conditions of the partnership<sup>14</sup>. In the case of *Laxmi Narain Modi v. Commissioner of Income Tax*<sup>15</sup>, the Supreme Court ruled that a partnership is a relationship where individuals agree to share the profits of a business conducted by any or all of them on behalf of the group. This agreement can be explicit or implied and can be determined from the behaviour of the parties involved.

This agreement typically covers the purpose of the partnership, the roles and responsibilities of each partner, the division of profits and losses, and the procedures for decision-making and dispute resolution. Partnerships are required to file tax returns, but they do not pay taxes themselves. Instead, profits and losses are passed through to the partners, who are then responsible for reporting their share of the partnership income on their tax returns. Overall, partnerships offer a flexible and collaborative way to conduct business, allowing partners to combine their resources and expertise for mutual benefit. However, partners need to understand the legal and financial implications of this business structure before entering into a partnership agreement. In the case of *Bagree Textile Corporation v. Additional Commissioner of Income Tax*<sup>16</sup>, the Supreme Court ruled that a partnership is a contractual relationship between partners

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<sup>13</sup> Maria Mercedes Albornoz and Nuria González Martín Feasibility Analysis of Online Dispute Resolution in Developing Countries, University of Miami American Law review <[https://repository.law.miami.edu/cgi/viewcontent.cgi?params=/context/umialr/article/1110/&path\\_info=UMILR\\_20vol\\_2044\\_20no\\_201\\_20Albornoz.pdf](https://repository.law.miami.edu/cgi/viewcontent.cgi?params=/context/umialr/article/1110/&path_info=UMILR_20vol_2044_20no_201_20Albornoz.pdf)> last accessed on 25th June 11:45 am

<sup>14</sup> Partnership' (Corporate Finance Institute, 15 October 2023) <<https://corporatefinanceinstitute.com/resources/management/partnership/>> accessed 27 June 2024

<sup>15</sup> *Laxmi Narain Modi v. Commissioner of Income Tax* [1959]36ITR147(P&H) pg 1 and 2

<sup>16</sup> *Bagree Textile Corporation v. Additional Commissioner of Income Tax* (2008)216CTR(MP)153 26

that is founded on mutual trust and confidence. It clarified that a partnership firm does not have a distinct legal existence apart from its partners, and the partners are collectively and individually liable for the debts of the firm. In the past, partnership agreements and records were typically kept in physical form, which had drawbacks such as inefficiencies and risks. However, the emergence of digital technologies has allowed partnerships to streamline their governance processes and improve dispute resolution.

Digitising governance offers several advantages, one of which is the centralisation and standardisation of documentation. Partners can now access important documents like partnership agreements, financial records, and meeting minutes from anywhere, at any time, using digital platforms. This not only enhances transparency and accountability but also improves the efficiency of managing partnership documents. Digital tools also enhance decision-making within partnerships. Partners can now collaborate in real-time, share insights, and make informed decisions more quickly and effectively through digital platforms. This can lead to improved decision outcomes and faster progress for the partnership. Overall, digitising governance in partnerships provides benefits such as enhanced transparency, efficiency, and decision-making. It allows partnerships to adapt to the digital age and improve their overall operations and effectiveness. Additionally, digitisation can result in cost savings for partnerships, as it reduces the need for physical storage and printing. However, stakeholders may also have concerns about data security and the need for training to effectively use digital tools. Addressing these concerns and ensuring a smooth transition to digital processes is crucial for partnerships looking to leverage the benefits of digitisation.

## **CHALLENGES**

Online dispute resolution (ODR) may not always be suitable for resolving all types of disputes, especially those involving complex legal issues or where a formal legal decision is required. Partnerships often involve intricate relationships and legal considerations that may not be effectively addressed through online platforms alone. For partnerships, disputes can arise over various matters such as profit sharing, management decisions, breach of partnership agreements, or dissolution of the partnership. While ODR can be useful for resolving certain disputes, such as disagreements over minor issues or misunderstandings, more complex disputes may require the expertise of legal professionals and traditional dispute resolution methods like mediation, arbitration, or litigation. Partnerships are governed by specific laws and regulations, and resolving disputes within a partnership framework often requires a



nuanced understanding of these legal aspects. In complex partnership disputes, legal principles and precedents may need to be carefully considered, which might be challenging to achieve through ODR platforms that are designed for more straightforward disputes. In cases where a partnership involves individuals from different backgrounds or jurisdictions, the approach to dealing with breaches of agreement can vary depending on the specifics of their arrangement. The complexity and uncertainty surrounding how breaches are handled can raise doubts about the enforceability of the partnership agreement. Alternative Dispute Resolution (ADR) is a popular method used worldwide to settle disputes among private entities. It includes methods like mediation and conciliation, which are preferred by major corporations and multinational companies because they help maintain confidentiality and protect their reputation. ADR is known for being efficient in terms of time and cost.

Transitioning ADR to an online platform could further enhance its accessibility and effectiveness. Many people may find it challenging to afford the expenses associated with travelling and accommodation for in-person dispute resolution processes. Online ADR can bridge this gap, allowing individuals and businesses to seek justice without the burden of additional costs. This mode of dispute resolution can be particularly beneficial in cases where parties are located in different geographical locations or when travel is difficult or restricted. Overall, online ADR has the potential to make dispute resolution more accessible, efficient, and cost-effective for a wider range of people.

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In India, with the Supreme Court of India and several High Courts implementing measures like video conferencing for urgent hearings and e-filings due to the COVID-19 pandemic, there's a shift towards digitisation in the judiciary. The e-courts mission, developed over the last decade, has paved the way for initiatives like virtual courts, e-filing, and online case status updates. There are even plans to use advanced technologies like artificial intelligence, machine learning, and blockchain for judicial processes. The pandemic has accelerated the need for online dispute resolution (ODR) or "contact-free dispute resolution"<sup>17</sup>. Online dispute resolution (ODR) has had a positive impact on various stakeholders involved in dispute resolution processes, including corporations, legal professionals, ombudsmen, regulators, and courts of law. For corporates, ODR provides a faster and more cost-effective way to resolve disputes with customers, business partners, vendors, and competitors, thereby avoiding expensive litigation

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<sup>17</sup> Shah B, 'Online Dispute Resolution: Validity of "service" through Emails, Whatsapp and Messaging Applications' (Live Law, 31 March 2020) <<https://www.livelaw.in/law-firms/articles/online-dispute-resolution-validity-of-service-through-emails-whatsapp-and-messaging-applications-154596>> accessed 27 June 2024

and protecting their reputation. Legal professionals specialising in dispute resolution benefit from ODR as it enhances their efficiency in handling cases, leading to greater client satisfaction. Ombudsmen and regulators, who often face a high volume of inquiries and complaints, find ODR helpful in providing quick resolutions within timelines. The use of ODR has also lightened the load on courtrooms and the judiciary, making dispute resolution more efficient. Users and disputed parties appreciate the faster resolution provided by ODR, although there is room for further investment and development to make ODR more accessible and effective for all users. One critical aspect of ODR is the legal validity of documents served through emails and messaging apps like WhatsApp<sup>18</sup>. Courts are now considering the validity of such methods, given their potential to reduce delays in the legal process.

In the case of *Kross Television India Pvt Ltd & Anr Vs. Vikhyat Chitra Production & Ors*<sup>19</sup>, the court ruled that the main objective of serving legal documents is to inform the other party. If an alternative method, such as email or WhatsApp, is used and it can be proven that the notice was sent and acknowledged, it cannot be argued that the party was not informed.

India has made significant strides in the field of Information Technology (IT), and its legal framework, including the Information Technology Act, supports the adoption of Online Dispute Resolution (ODR). By interpreting the provisions of the Information Technology Act and other relevant legislation liberally, Indian courts can facilitate the implementation of ODR. However, certain questions need to be addressed, such as whether Indian courts will enforce foreign awards issued online and whether online judgments can be considered as "original awards or copies thereof." These issues should be resolved thoughtfully, considering the potential of ODR in shaping the future of dispute resolution.

In conclusion, the integration of Online Dispute Resolution (ODR) into legal systems worldwide has brought about significant benefits, such as efficiency, cost-effectiveness, and accessibility. The COVID-19 pandemic has accelerated the adoption of ODR, highlighting its importance in maintaining access to justice during challenging times. ODR has proven to be particularly useful for corporates, legal professionals, ombudsmen, regulators, and courts, offering a faster and more efficient way to resolve disputes. However, challenges such as authenticity, privacy, confidentiality, and the need for a coordinated framework remain. As

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<sup>18</sup> Shah B, 'Online Dispute Resolution: Validity of "service" through Emails, Whatsapp and Messaging Applications' (Live Law, 31 March 2020) <<https://www.livelaw.in/law-firms/articles/online-dispute-resolution-validity-of-service-through-emails-whatsapp-and-messaging-applications-154596>> accessed 27 June 2024

<sup>19</sup> *Kross Television India Pvt Ltd & Anr Vs. Vikhyat Chitra Production & Ors* 2017 SCC OnLine Bom 1433



technology continues to advance, it is essential to address these challenges and further develop ODR to ensure its effectiveness and accessibility for all parties involved in dispute resolution.



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