

SCOPE OF ONLINE DISPUTE RESOLUTION IN INDIA: A COMPREHENSIVE ANALYSIS

Prayansh Garhwal*

ABSTRACT

Online Dispute Resolution (ODR) is often confused as it only deals with e-disputes which are peculiar to the internet but the concept of ODR also incorporates disputes that happened to be handled in traditional settings, they can be addressed with the help of information technology. These disputes may include infringement of intellectual property consisting of copyright, trademark, etc., unfair trade practices, and other grievances related to statutory laws. The growth and proficiency of ODR crucially depend on the unanimous working of the various stakeholders. The key component is collaboratively developing the framework. The concept of ODR is catching on more as private businesses are witnessing multiple tech startups leading toward many out-of-court settlements in several disputes with fair and efficient conduct. ODR leaves a positive impact on the individuals who are involved in the conflicts and on the business, atmosphere prepared for industries. Apart from all this, no matter how advancements come in the way of resolution of disputes, there is always room for improvement to make the process of resolution of disputes even more smooth and better functioned.

Journal of Legal Research and Juridical Sciences

Keywords: Disputes, Online Dispute Resolution, Advancement, Court

INTRODUCTION – THE IMPORTANCE OF ONLINE DISPUTE RESOLUTION

Online Dispute Resolution (ODR) is a smart concept in which parties convene in a digital space to resolve the dispute that arisen between them. ODR particularly involves small and medium-value cases using Information and Communication Technology tools to streamline the process of resolution of disputes without ensuring physical presence for resolution of the dispute. The usage of digital technology combined with Alternative Dispute Resolution techniques, like mediation, arbitration, and conciliation, provides a significant contribution towards the execution of Online Dispute Resolution. One of the major obstacles in the path of India's progress is the overexertion of cases in Indian Courts leading to a high number of

*BA LLB, FOURTH YEAR, MANIPAL UNIVERSITY, JAIPUR, INDIA.

unresolved conflicts and disputes. The reason for the enlargement of this obstacle is the lack of usage of conflict management platforms, especially through online means, to resolve disputes. ODR, along with the advancement of conflict management activities innovated with creativities, fastens the process of resolution as it extinguishes the need for physical presence between parties and it costs much less than the traditional system with a need for physical proximity.

In this article, I will discuss what is the scope of Online Dispute Resolution and how it can be used to resolve disputes.

EVOLUTION OF ODR

The concept of Online Dispute Resolution matches the equation of disputes with the scope of the Internet and its different use cases. The scope of the Internet is expanding at an accelerated pace with the association of unique dimensions of its uses. With the advancement of technology and the Internet, E-Commerce Websites like eBay introduced online dispute resolution for their customers leading to gaining the trust of customers through addressing the disputes in a structured and efficient manner. The platform eBay capacitated its customers to register a complaint on its website and get the ball of resolution process rolling on the online interface. Let us understand the further process after the commencement of the resolution process online. The first endeavour is to settle with the parties in the context of the complaint registered. In case, the attempt of settlement between the parties fails, the process of online mediation will begin between the parties. The platform was constructed with an advanced program that employs negotiation inhabiting works with automated understanding, followed by the process of mediation or subsequently finding its way to arbitration, depending on the nature of different disputes.

The Concept of Online Dispute Resolution has evolved with different & enhanced variations which are explored and adopted by multiple governments and diverse private businesses. This concept is not new as it was previously adopted by judicial systems of various countries like the Netherlands, Canada, Singapore, etc. Online Dispute Resolution is a smart way of making use of information technology to perform alternative dispute resolution. The advancement of technology and the internet might have helped to achieve solutions to complex problems rapidly and efficiently but there existence of a disastrous downside that can also play a destructive role in the process of resolving disputes online and that downside

involves software piracy, invasion of personal data, cyber terrorism, tampering with digital evidence, breach of e-contracts and many more.

INDIA'S CURRENT TREND OF TECHNOLOGY INVOLVEMENT IN LAW

The statistics of the *National Judicial Data Grid*¹, which is regulated by the Department of Justice of India, are astounding because as of August 2024, 4,43,05,185 cases (including civil and criminal) are pending before the courts of India. This makes the ratio of the judge to population (affected by cases pending before the court) extremely devastating because the pace at which the cases will be decided is going to be poor. This might also become one of the reasons for unexplainable delays in certain cases if this crisis is not handled properly. In addition to this, the normal course of behavioural hesitation of the parties in reaching out to alternatives, complexities in procedures required for the proper functioning of a case, extraordinarily high judicial vacancies, and other crucial factors become obstacles in the delay of dispute resolutions working through the traditional legal ecosystem.

The importance of ODR is constructive in a system of heavy paperwork which plays as one of the characteristics of the traditional legal structure of solving cases and keeping a record of it. The integration of technology with the judicial setup in India may develop a huge and impactful relief for the burden falling on a relatively smaller third pillar of democracy (keeping in mind the cases pending in India). The traditional design of the law is focused on fulfilling the purpose of resolving disputes in the traditional courtroom system.

This concept came into discussions more in recent years and we can root back its reason to the deadly pandemic – COVID-19 compelling all the people to stay in the four walls around them. The work settings in every field hurriedly moved to online workspace, and in the legal field online dispute resolution became a deal of huge importance. Although, online dispute resolution was catching up with the legal system quite decently the sudden quarantine during the period of COVID-19 stressed to propagation of the resolution method of ODR in a rapid manner. In the course of COVID-19, courts and dispute resolution centers began harnessing the video-conferencing method for hearings. According to the data of the Department of Justice, the Hon'ble Supreme Court of India handled 7,54,000+ hearings and the Hon'ble High Courts handled 87,08,727 hearings through the accessibility of video conferencing till

¹ National Judicial Data Grid' (NJDG, 16 August 2024)

< https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard > accessed 16 August 2024

June 2024.

LAWS AND JUDICIAL PRECEDENTS RELATING TO ODR AND ITS APPLICATIONS

The framework of the Indian legal ecosystem may not directly mention online dispute resolution in any statute but certainly, with a scrutinized reading of some provisions of different Indian Statutes, finds its connection with Indian regulated laws. For instance, Section 89 of the Code of Civil Procedure, 1908 discusses and encourages the use of alternative dispute resolution between parties, which is read as:

89. Settlement of disputes outside the Court. — (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for: —

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Were a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat by the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987), and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat, and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were

referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed."²

The aforementioned provision simply puts its intention upfront as to prefer the diverse options available under the umbrella of Alternative Dispute Resolution and as discussed previously execution of any method for settlement between the parties from alternative dispute resolution in an online interface, referred to as ODR. Likewise, Order X Rule 1A of the Code of Civil Procedure, 1908 assigns significance to the powers possessed by the courts to give a direction to the parties to a suit to elect any Alternative Dispute Resolution method to settle their disputes, which is read as:

1A. Direction of the court to opt for any one mode of alternative dispute resolution. —After recording the admissions and denials, the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.³

The aforementioned provision provides the authority to the court to direct the parties to the suit for choosing any mode of out-of-court settlement mentioned in the detailed provisions of section 89 mentioned above. This provision may include online dispute resolution within its ambit.

Online Dispute Resolution adheres to the Information Technology Act, 2000 as to commence the process of resolving the dispute online, the parties must unambiguously determine whether they are going to prefer resolving the dispute online in the first place. Similarly, Online Dispute Resolution also obeys the Arbitration and Conciliation Act, of 1996 because according to the provisions of the said act the decision of choosing the place to resolve the dispute rests on the discretion of the parties, this interpretation may include online in its ambit as well. In *Shakti Bhog Foods Ltd. V. Kola Shipping Ltd.*⁴ the case decided by the Supreme Court of India, the parties exchanged emails regarding the negotiations and various acknowledgments that were ongoing in their dispute, and

² Code of Civil Procedure 1908, s 89

³ Code of Civil Procedure, Order X Rule 1A

⁴ *Shakti Bhog Foods Ltd. V. Kola Shipping Ltd* [2008] SCC OnLine SC 1447

arbitration was also discussed over emails. The Hon'ble Supreme Court of India presented its stance on resolving disputes online without any hesitation in the case of *Grid Corporation of Orissa Ltd. vs. AES Corporation*⁵. They represented their intention as, if there are circumstances in which an efficient deliberation can be achieved through harnessing the useful means of electronic media and even remote conferencing, it is not essential for the parties, between whom the dispute has arisen, to perform the deliberation with each other while ensuring physical presence at one specific place unless there is a stipulation by the force of law or it is a requirement of an existing contract executed between parties.

Furthermore, in addition to the aforementioned cases, the case of *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*⁶ is of crucial importance in this regard as there is invocation of the arbitration clause through an e-mail and one another e-mail played a constructive role in the formation of the contract between the parties. The involvement of online means like emails and their contribution towards resolving the disputes in the above-mentioned cases implies symptoms of the idea concerned with online dispute resolution. Moreover, all these cases which are mentioned above are either from the year 2010 or earlier from that year, this statistic indicates that there are early attempts towards adopting concepts like online dispute resolution which are not only less expensive and feasible but also provide relaxation from traveling to different geographical locations. Hon'ble Supreme Court and various High Courts of India understood the several advancements happening in the world of technology & its highly useful applications and started adopting techniques like the use of video conferencing, digital evidence, and many more. In the context of the above understanding of online dispute resolution, it can be said that the submissions and proceedings from the parties may occur online.

NEED, CHALLENGES AND FUTURE TRENDS OF ODR

There are plenty of factors budding in the legal industry and in the world that necessitate the implementation of the method of online dispute resolution in consonance with the traditional legal ecosystem of India. The major constructive factors are as follows:

Increase In Population

As the number of advocates enrolling in the traditional legal ecosystem of India through the

⁵ *Grid Corporation of Orissa Ltd. vs. AES Corporation* [2002] SCC OnLine SC 938

⁶ *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.* [2010] SCC OnLine SC 214

Bar Council of India is rapidly increasing every year, the current legal system involving necessary physical presence inside the courtroom and other dispute resolution centers will be burdened by the abundance of cases and there would be an unsubstantial delay in hearing of certain cases after filing. If the infrastructure can be developed meticulously for the legal proceedings conducted in an online interface without any major obstacles, it would be a huge relief and a process of ease for the legal community.

Excessive Paperwork

The amount of paperwork required from the filing of the case to the actual culmination of the case in the traditional legal ecosystem is tremendously huge. This aspect not only requires a lot of labor from advocates but also requires a significant demand for paper which ultimately leads to deforestation. The method of ODR ensures absolutely zero paperwork because all the proceedings will be conducted online from the filing of the case to the hearing of the case with appropriate infrastructure.

Wastage Of Time And Expenses

Traditional legal proceedings require the need for physical proximity which leads to unsubstantial usage of time, on the other hand, if the legal proceedings are conducted online there is an accessibility of attending the hearing from any place with appropriate infrastructure. Similarly, if the normal course of legal proceedings is followed there are expenses on every juncture of the proceeding to move ahead, and in an online hearing of the case, there would be far less expenses for the legal proceedings to be completed.

Widespread Usage Of The Internet

A huge number of people of India are heavily indulged in the use of the Internet and there may be many repercussions for this activity but there are multiple benefits too. If the legal ecosystem of India is considered in the context of this fact, there should be a resourceful utilization of the fact that a party to a legal case is familiar with the Internet which leads to ease in online proceedings of the case.

The scope of the process of online dispute resolution is hindered in certain aspects due to a lack of infrastructure in villages & towns and digital illiteracy. The lack of online Infrastructure is a significant obstacle in the process of conducting online dispute resolution

in villages & towns because, for the smooth functioning of an online legal proceeding, there is a requirement for high-speed internet and good-quality cameras for ensuring fairness during the hearing of the case. There always will be places that are not equipped with high-speed internet, and good quality devices like cameras, microphones, speakers, etc and then the conduct of online proceedings in those places will not be appropriate. The concern of digital illiteracy plays a constructive role in the process of online dispute resolution because the people involved in an online legal proceeding must be digitally literate and well-familiar with the online interface for the conduct of a fair proceeding.

The aforementioned hindrances can be tackled systematically and the process of online dispute resolution becomes more well-ordered and simpler. The governmental expenditure on digital infrastructure, especially in rural areas, needs to be advocated at a higher level. Initiatives such as Bharat Net by the Government of India are proposed to bring high-speed internet access to the rural areas of the country. The government and private companies should partner in providing Subsidized Internet Services and Digital Devices in unserved areas of the country. Digital literacy programs targeting rural populations which may be run by any government agency, NGOs, or private entities, focused on the basic skills required for ODR. These methods can facilitate bridging the digital divide to a large extent and make ODR more accessible and effective in rural and semi-urban areas.

The National Internet Exchange of India has adopted the practice of online dispute resolution in context with disputes arising from conflicts relating to domain names. This practice is carried under a protocol called IN Domain Name Dispute Resolution Policy (INDRP) and works similarly as alternative dispute resolution because it is governed by the Arbitration and Conciliation Act, 1996 and the process of resolving the dispute is identical to Arbitration, the only difference is that the mode of practice is online under INDRP. This kind of action makes us believe that fortunately, the administration and legal system of India appear quite promising and concerned about the development of this process resolving the disputes efficiently through online means. As mentioned earlier, while resolving the disputes the Supreme Court and high courts of India have been stating support in various judgments that contribute to the methods which resonate with the process of resolving the dispute online like an admission of digital evidence, video conferencing to record witness statements & many more, and which may set up the foundation necessary for the integration of ODR in near future. Apart from this, in general, the judges of the Hon'ble Courts of India have

vocally opined that the judiciary acknowledges the potential of online dispute resolution.

Further, RBI has taken a digital smart step while introducing a policy concerned with ODR for payment being made digitally. The MSME sector has also begun a portal similar to ODR named as SAMADHAAN portal. Most importantly, the Department of Legal Affairs, to spread awareness about the presence of digital advancements, began the procedure of gathering scrutinized information relating to Service Providers that are providing ODR services throughout the country.

CONCLUSION

Online dispute resolution (ODR) has the potential to metamorphose the traditional legal ecosystem by making justice more accessible, efficient, and affordable. ODR can be applied to a wide array of disputes, from small-scale consumer complaints to complex commercial and international issues. The appropriate utilization of the technology can make ODR platforms accommodate and optimize various stages of dispute resolution, including negotiation, mediation, and arbitration. This adaptability ensures that the needs of different parties and the specific circumstances of each case can be addressed in a manner that is both efficient and effective. However, the growth of ODR comes with its own set of challenges. The digital divide remains a significant barrier to the widespread adoption of ODR. In many parts of the country, access to the necessary technology and reliable internet connections is limited, which can exclude vulnerable populations from benefiting from these services.

Journal of Legal Research and Juridical Sciences

The scope of online dispute resolution is monumental and transformative. It possesses the potential to empower access to justice, providing a faster, affordable, and more accessible alternative to traditional dispute resolution methods. The technology is becoming more advanced with each passing, and with that the capabilities of ODR will only expand, offering even more sophisticated solutions for resolving disputes. However, the success of ODR will depend on how well it can address the challenges it faces. The collaborative working of legal professionals, technologists, and policymakers can ensure that ODR evolves in a way that benefits all parties involved. The goal should be to create a legal ecosystem that is not only efficient but also fair in its process.