

Can ODR be the Game Changer for the Digital Economy?

Recommendations to Empower
the Digital Nagriks

January 2024



ODR



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Foreword



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In the transformative era of digitisation, where the intersections of technology, commerce, and consumer rights are increasingly complex, the Department of Consumer Affairs, under the Government of India, recognizes the imperative need for an evolved dispute resolution mechanism. This report by Primus Partners is a credible effort towards that.

As the Secretary of the Department, I have witnessed firsthand the rapid growth of e-commerce and digital services in India, a trend that has significantly altered the landscape of consumer transactions. With India's digital economy sector poised to reach new heights, ensuring that the digital consumer is protected and empowered becomes crucial. Online Dispute Resolution (ODR) emerges as an essential tool in this context, offering a seamless, efficient, and accessible means of resolving disputes, particularly those arising from cross-border e-commerce transactions.

The Department has actively engaged in dialogues and conferences with various stakeholders to frame a global ODR platform, focusing on the disposal of cross-border consumer e-commerce disputes in the pre-litigation stage. Our efforts aim to create an ODR mechanism that is more than just a legal formality; it is envisioned as a dynamic tool capable of adapting to the evolving nature of digital transactions. This report encapsulates our vision and the collective insights from different stakeholders.

I am happy that Primus Partners has proposed a comprehensive roadmap for establishing a robust ODR framework. The recommendations highlight the necessity of integrating advanced technologies like AI speech technology for multilingual support, ensuring the platform is accessible and user-friendly. Furthermore, the report emphasises the need to address critical challenges such as cross-border jurisdictional issues, the enforceability of agreements, and privacy concerns.

The Department of Consumer Affairs is committed to ensuring that the ODR mechanism is not just a legal formality but a dynamic and effective tool for resolving disputes. We are laying the foundation for a trustworthy and resilient digital economy consumption ecosystem by strengthening this mechanism. This report is a crucial step towards realizing that vision, providing a blueprint for a future where technology and justice work in tandem to protect and empower the Indian consumer. As we progress, some of the recommendations will be considered for broader consultations.


(Rohit Kumar Singh)
12 January 2024



TABLE OF CONTENTS

Executive Summary

07

1

INTRODUCTION

11

1.1

The Digital Leap

12

1.2

The Need for Effective ODR

13

1.3

India's Policy Stand

14

2

OPPORTUNITIES AND CHALLENGES WITH ODR IN INDIA

15

2.1

Opportunities

16

2.2

Challenges

20

3

GOVERNMENT-LED INNOVATIONS IN ODR: RECENT INITIATIVES

23

4

BENCHMARKING SUCCESS: INTERNATIONAL BEST PRACTICES ON ODR

29

4.1	European Union (EU)	30
4.2	South Korea	31
4.3	ASEAN ODR Regional Network	32

5

ODR EVOLUTION: CRAFTING THE ROADMAP FOR TOMORROW'S DISPUTE RESOLUTION

33

5.1	Developing a Common Language or Taxonomy for ODR	34
5.2	Adequate Empanelment/Entry Conditions of Mediators and ODR Platforms	36
5.3	Need for Transparent, Non-Discriminatory, and Inter-Operable Guidelines/SOPs	38
5.4	Building Demand-Side Awareness and Educating Consumers About Their Rights	40
5.5	Tech Acting as an Enabler, Not a Barrier for Consumers	41
5.6	Scaling the Use of Emerging Technologies for Dispute Resolution	44
5.7	Need to move beyond 'High Volume Low Value' approach	46
5.8	Capacity Building for Mediators - A need of the hour	46
5.9	Role of India International Arbitration Centre	47
5.10	Conclusion	49



Executive Summary

India's digital economy is undergoing a transformation, characterized by exponential growth in internet penetration, which is projected to reach around 900 million by 2025, a growing start-up ecosystem, and a fast-changing consumer trend. This transformation has redefined consumer-market interactions, necessitating an evolution in dispute resolution mechanisms. The traditional legal framework, burdened by delays and procedural complexities, is often ill-equipped to handle the rising volume of digital economy disputes vis-à-vis consumer grievances, thus underscoring the need for an efficient Online Dispute Resolution (ODR) system and empowering India's *Digital Nagriks*.



The Imperative for ODR

The current legal framework is inadequate to handle the volume and nature of disputes generated by this digital shift. This scenario underscores the importance of establishing a strong Online Dispute Resolution (ODR) system, which offers a quicker, more efficient, and accessible solution for resolving disputes. Such a system is crucial for maintaining consumer trust and ensuring the smooth operation of the digital marketplace.

The report also touches upon India's policy approach towards ODR. It highlights the legal groundwork established by the Information Technology Act 2000 and the Indian Evidence Act, which acknowledge electronic records and signatures.

Additionally, the judiciary is increasingly recognizing ODR methods, and there is a move towards adopting more technologically advanced dispute resolution mechanisms, including artificial intelligence.

Other key steps taken towards formalizing ODR in India include recommendations for ODR platforms by the Nilekani panel, the Consumer Protection Act (E-Commerce) Rules 2020, which mandates internal grievance mechanisms for e-commerce companies, and the NITI Ayog's report on ODR policy. The Mediation Act 2023, which encourages mediation as a dispute resolution method and aims for timely resolution, is also mentioned.



Overcoming Challenges in Implementation

While acknowledging the potential of ODR, the report also focuses on the unique opportunities that ODR presents, and the challenges that face ODR for its effective implementation.

The traditional legal system in India faces a daunting backlog, with over 5 lakh cases pending at the National Consumer Dispute Redressal Commission and a rising number of complaints received by the National Consumer Helpline. This backlog highlights the inadequacy of the current grievance redressal system. In contrast, ODR offers a more efficient and accessible solution, reducing the need for physical travel and allowing asynchronous communication, which is particularly beneficial for resolving disputes arising from the digital economy.

Sector-specific increases in disputes are noted, particularly in areas like e-commerce, banking, finance, online gaming, and advertising. For instance, the e-commerce sector saw a 40% rise in complaints over recent years. This rise underlines the urgency for effective alternate dispute resolution in the digital economy.

Cross-border transactions and e-disputes also pose challenges. The growth in digital transactions and cross-border services has led to diverse e-disputes, such as issues related to payments and deliveries. The Department of Consumer Affairs' consultation in October 2023 marks a positive step towards addressing these challenges.

Key challenges for the adoption of ODR in India include:



Structural challenges - a lack of awareness and adaptability, and digital infrastructure limitations. For instance, only 38% of Indian households are digitally literate, with a significant urban-rural divide in internet usage. The document suggests launching broader adaptability campaigns, enhancing industry participation in education, and collaborations between civil society and educational institutions to raise awareness about ODR.



Operational and implementation challenges, such as the need for strong cybersecurity measures in ODR platforms, are also highlighted. The '4 Es of Highway development approach' (Engineering, Education, Enforcement, and Emergency Response) is proposed as a comprehensive strategy to bolster cybersecurity in ODR platforms.

The report also emphasizes the importance of trust and accountability in ODR platforms. Clear ethical guidelines for ODR providers and a robust regulatory framework are essential to ensure professionalism, ethical conduct, and safeguarding all parties' interests in the dispute resolution process.





Government Initiatives

The report discusses recent government initiatives integrating Online Dispute Resolution (ODR) and technology to improve consumer experience and dispute resolution processes:

- ▶ **E-Daakhil Online Case Filing System:** Enables online complaint filing with consumer commissions, payment, and case tracking. Launched for the NCDRC on September 7, 2020, and expanded to 23 States/Union Territories.
- ▶ **INGRAM Portal:** A central registry for consumer grievances, uniting consumers, government agencies, private companies, and others for awareness and grievance redressal.
- ▶ **Online Conciliation and Mediation Centre (OCMC):** Promotes online mediation for consumer disputes, offering a platform for swift and secure resolution, hosted at the National Law School of India University.
- ▶ It also notes the progressive incorporation of artificial intelligence in legal processes, signifying a forward-thinking approach to dispute resolution



International Benchmarks

The report explores some internationally recognised best practices in the ODR ecosystem. It details the European Union's comprehensive ODR platform for consumer disputes, South Korea's Electronic Commerce Mediation Committee offering cost-effective e-commerce dispute resolution, and ASEAN's cross-border ODR focus with guidelines for member states to establish or improve national ODR systems. These international examples highlight the adaptability and potential of ODR, providing valuable insights for countries like India to refine, emulate and adapt to its unique context.



Recommendations for Strengthening ODR

The report proposes several other recommendations to enhance India's ODR ecosystem. It emphasizes the need for a **standardized ODR language** to unify and streamline practices, alongside setting adequate **qualifications and empanelment criteria for ODR mediators** to ensure quality and reliability. **Ethical standards and accessibility are crucial pillars**, calling for establishing **transparent, non-discriminatory guidelines** to govern ODR practices. The importance of **raising consumer awareness and education** about ODR is also underscored, highlighting the need for proactive **measures to familiarize users** with the system.

Additionally, the document stresses the significant role of technology in enhancing ODR, advocating for **user-friendly platform designs and infrastructure for navigating ODR as a pre-requisite**. The integration of **emerging technologies like AI to refine the legal and redressal processes is detailed, and the shortcomings of the technology are also discussed**. **Capacity building**, especially through institutionalised approaches will also be key. These recommendations collectively aim to refine India's ODR system, enhancing its efficiency, accessibility, and alignment with international best practices.



In Conclusion

The report concludes with an emphasis on the crucial juncture at which India stands. It highlights the opportunity to pioneer an innovative, technology-driven dispute resolution paradigm that addresses the current challenges and sets a global standard. The report advocates for a balanced approach that synergizes technological advancements with the essential human aspects of justice and fairness.



5,00,000+
Pending Cases

ODR can help solve a major portion of the 5,00,000+ pending consumer cases in India, depending on case complexity, specific ODR platform or mechanism used, etc.



36,00,000+
Cases Resolved

More than 3,600,000 cases (including and thus not exclusive to consumer cases) in India have been resolved through Online Dispute Resolution (ODR) since 2020.



US\$26.5B
Worth of annual benefits

Expanding use of ODR in India has the potential to generate annual economic benefits of US\$ 26.5 Bn.



70 to 80%
Lesser resolution time

Online Dispute Resolution has the potential to reduce the time taken to dispute resolution by 70 to 80%.

1



Introduction

India's economy has witnessed a significant transformation in recent years, pivoting robustly towards a digital frontier. This has been driven by rapid technological advancements, increasing internet penetration, and a tech-savvy young population that has reshaped the Indian consumption ecosystem. The emergence of e-commerce platforms, digital payment systems, and a wide range of online services has not only revolutionized how consumers interact with markets but also brought forth unique challenges requiring innovative solutions, particularly in the realm of dispute resolution.



1.1 The Digital Leap

In Q3-Q4 FY23, private consumption in India dipped to \$2.2 trillion but is expected to surpass \$2.4 trillion in Q4 FY24.¹ Despite past turbulence, India's internet economy is projected to grow at an acceptable rate between now and 2027, recording compound annual growth of 9.6 per cent². This will act as a major contributor to the recovery.

Several key developments mark India's journey towards a digital consumption economy. The widespread adoption of smartphones, affordable internet services, and a policy environment encouraging digital initiatives have been pivotal. India boasts over 759 million active internet users, a number that is rapidly increasing and is expected to reach 900 million by 2025³, making it one of the world's largest digital markets.

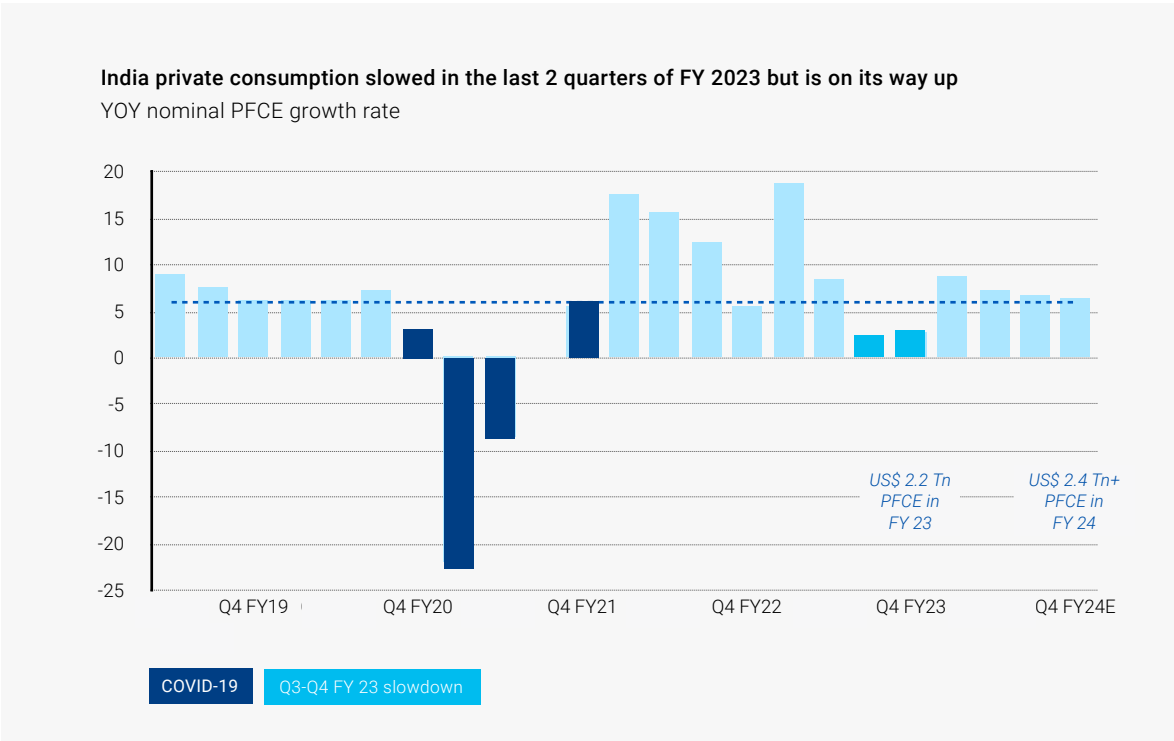
This digital accessibility has led to a surge in online consumerism. E-commerce giants and a plethora of homegrown startups have tapped into this potential, offering a diverse range of products and services that cater to the nuanced needs of Indian consumers.

The digital shift has also altered consumer behaviours significantly. More Indians are now comfortable making online transactions, driven by the convenience, variety, and competitive pricing available on digital platforms.

In the Digital Commerce market, the number of users is expected to amount to 1.1bn users by 2027, resulting in a projected total amount of US\$263.40bn.⁴

Figure 1

Source: RedSeer



¹ <https://yourstory.com/2023/07/india-internet-economy-set-for-accelerated-growth>
² <https://omdia.tech.informa.com/campaign/ft-digital-index-2023>
³ https://www.iamai.in/sites/default/files/research/Internet%20in%20India%202022_Print%20version.pdf
⁴ <https://www.statista.com/outlook/dmo/fintech/digital-payments/digital-commerce/india>



1.2 The Need for Effective ODR

However, expanding the digital economy brings its own challenges, particularly in dispute resolution. The traditional legal framework, often bogged down by delays and procedural complexities, is overburdened and not equipped enough to handle the high volume and nature of digital economy-related disputes.

This gap necessitates the development of a robust Online Dispute Resolution (ODR) mechanism, tailored to address the unique challenges of the digital consumption ecosystem. ODR offers a faster, more efficient, and accessible means of resolving disputes, which is crucial in maintaining consumer trust and ensuring the smooth functioning of the digital market.

UNCITRAL Technical Notes on Online Dispute Resolution ⁵ defines Online dispute resolution, or "ODR" as a "mechanism for resolving disputes through the use of electronic communications and other information and communication technology". The process may be implemented differently by different administrators of the process, and may evolve over time.

ODR (and ODR based platforms*) fall into two broad approaches. The first type involves technology as a facilitator, where human involvement is paramount in dispute resolution through video calls or text messaging. In the second type, technology takes a more dominant position. Here, intelligent systems play a key role, functioning in administrative capacities, representing the involved parties, and even functioning as impartial mediators in the disputes.



* The mention of "ODR platforms" in this report indicates in-house ODR mechanisms of private entities/ companies, third party platforms or independent private ODR service providers, online third party mediators.

⁵ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf



1.3 India's Policy Stand

Online Dispute Resolution (ODR) in India has evolved in recent years, the foundation of which is primarily driven by the Information Technology Act, 2000 (Electronic records and signatures are recognized by section 4 and 5 of the enactment), and its associated rules. It is further substantiated by the Indian Evidence Act, which recognises electronic evidence and virtual hearings.

Recently, there has been a growing recognition among the judiciary for implementing Online Dispute Resolution (ODR) methods in court processes. During the COVID-19 pandemic, the then Chief Justice, Justice Bobde, emphasized and advocated for the enforcement of mediation agreements and acknowledged the advantages of alternate and digitisation based dispute resolution methods. Justice Bobde also supported adopting international arbitration and using artificial intelligence (AI) in legal processes, indicating a shift towards more technologically advanced dispute resolution mechanisms.⁶

Moreover, the dialogue around formalizing ODR in India gained momentum when the Nilekani panel, in 2019, proposed the establishment of ODR platforms for addressing grievances related to digital transactions.⁷

The panel's recommendation included creating a two-tiered ODR system, comprising automated and human elements, with options for appealing decisions. As a consequence, the RBI introduced ODR to resolve customer disputes and grievances pertaining to digital payments using a system-driven and rule-based mechanism with zero or minimal manual intervention.⁸

Further, the Consumer Protection Act (E-Commerce) Rules, 2020,⁹ had set the foundation of ODR by mandating e-commerce entities to develop internal grievance redressal mechanisms. NITI Ayog under the chairmanship of Justice (Retd.) A.K. Sikri released its report titled 'Designing the Future of Dispute Resolution - The ODR Policy Plan for India'¹⁰ in November 2021. The report made an attempt to develop an action plan to cater dispute resolution process in India online by adapting dispute avoidance, dispute containment, and dispute resolution. The potential for further strengthening ODR in India remains vast.

The Mediation Act, 2023 promotes mediation as a mode of dispute resolution. The Mediation Act aims "to promote and facilitate mediation" with a special focus on institutional mediation, online mediation, and community mediation, in order to facilitate resolution of disputes in a time bound manner. The Mediation Act also provides for enforcement of mediated settlement agreements and establishment of a regulatory body for registration of mediators and institutions. This is touted as a positive step, as third party mediators and ODR platforms will have structured legitimisation to serve the consumers better.

With the digital landscape evolving and e-commerce gaining more prominence, ODR stands as an efficient and accessible mechanism for resolving disputes and grievances arising from online transactions, thereby alleviating the burden on traditional courts. ODR also holds promise on its potential to resolve a significant portion of the 5.27 lakh cases pending in consumer courts at district, state and national levels.¹¹

⁶ <https://www.theweek.in/news/india/2020/02/08/cji-bobde-bats-for-law-containing-compulsory-pre-litigation-mediation.html>

⁷ <https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/CDDP03062019634B0EEF3F7144C3B65360B280E420AC.PDF>

⁸ https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=50176

⁹ <https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf>

¹⁰ <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf>

¹¹ [Grievance redressal of e-commerce cos not up to mark: Consumer Affairs Secy Rohit Singh, ET Government \(indiatimes.com\)](https://www.bhaskar.com/article/GRIEVANCE-REDRESSAL-OF-E-COMMERCE-COS-NOT-UP-TO-MARK-Consumer-Affairs-Secy-Rohit-Singh-ET-Government-(indiatimes.com))

2



Opportunities and Challenges with ODR in India

The current state of dispute resolution in India is underscored by a daunting backlog in traditional legal systems and a notable rise in sector-specific disputes in areas like e-commerce, banking, and finance. The intricate issues surrounding cross-border transactions and e-disputes, highlights the need for a robust, adaptable, and efficient ODR system. Understanding the positives that ODR provides, taking cues from international based guidelines, and analysing the structural and implementation challenges inherent in the Indian context becomes an important exercise.



2.1 Opportunities

Legal and Policy Opportunities

The current traditional scenario offers an opportunity for ODR based mechanisms to come and fill in the lacunas and roadblocks. Expanding the use of online dispute resolution (ODR) in India has the potential to generate annual economic benefits worth US\$26.5 billion.¹²



Solution to Pending Cases

The National Consumer Dispute Redressal Commission highlights a daunting backlog of over 5 lakh cases.¹³ Moreover, the number of complaints received by the National Consumer Helpline have also been increasing. The rising volume emphasizes the inadequacy of present grievance redressal system. Alternative Dispute Resolution (ADR) mechanisms, namely arbitration, mediation, conciliation and *Lok Adalats*, seen as solution to the problems plaguing India's traditional courts and redressal processes, though successful in parts, have also failed to take off at a larger scale. ODR can help to alleviate this burden by providing a faster and more efficient way to resolve disputes. ODR eliminates the need for travel and synchronisation of schedules. This reliance on asynchronous communication, allows parties to submit their arguments intermittently, or follow a 'documents-only' process. In a nutshell, early resolution and deterrence through negotiation and mediation, helps reduce the number of cases that escalate to adjudication or similar escalation. As a welcoming figure, more than 3,600,000 cases (including and thus not exclusive to consumer cases) in India have been resolved through ODR since 2020.¹⁴



Faster Resolution

Synonymous to the previous point is the time factor. ODR mechanisms, like platforms, provide a centralized process for filing, tracking, and resolving complaints, eliminating cumbersome paperwork and manual procedures. This can reduce resolution time by 60-80% compared to traditional courts or consumer forums.¹⁵

ODR carries the potential and can effectively reduce the time to dispute resolution by 70-80%.¹⁶ Quoting an international observation, ODR led to a 97% quicker resolution of disputes in the EU compared to traditional processes. Additionally, 70% of EU consumers are content with the resolution of consumer complaints via ODR, a significant difference from the 45% satisfaction rate for court and other conventional resolutions.¹⁷

Moreover, ODR platforms operate 24/7, allowing consumers to file and track complaints at their convenience, irrespective of geographical location. This can improve accessibility, especially for rural or remote consumers.

¹² <https://dalberg.com/our-ideas/accelerating-the-adoption-of-odr-in-india-could-transform-how-disputes-are-resolved-in-an-overburdened-system/>

¹³ <https://brandequity.economictimes.indiatimes.com/news/digital/grievance-redressal-mechanism-of-e-commerce-players-not-up-to-mark-consumer-affairs-secy/103810352>

¹⁴ <https://www.policycircle.org/industry/online-dispute-resolution/#~:text=According%20to%20the%20latest%20data,to%20arbitrators%2C%20mediators%20and%20advocates>
(Data by National Centre for Technology and Dispute Resolution)

¹⁵ <https://www.oecd.org/ctp/dispute/>

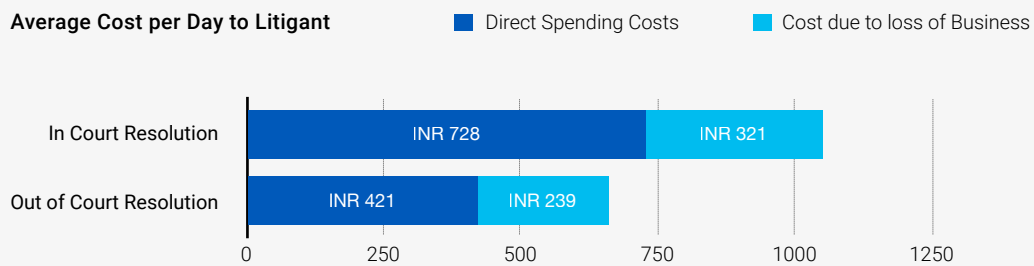
¹⁶ <https://www.omidyarnetwork.in/blog/justice-as-a-service-indias-online-dispute-resolution-movement-at-an-inflection-point>

¹⁷ Joint study by Agami, Omidyar Network, NITI Aayog, ICICI, Trilegal, Ashoka, Dvara Research, NIPFP



A Case Study to highlight the Cost Efficiency of Dispute Resolution:

A survey conducted by DAKSH in 2017 found that on an average a litigant incurred a cost of Rs. 1049 per day while engaging with courts and traditional methods of dispute resolution and grievance redressal, with Rs. 728 per day on average as direct spending and Rs. 321 per day due to the loss of business. On the other hand, the litigants who have opted for out of court resolution of dispute have incurred 37 percent less cost per day during the dispute resolution process.



Source: https://dakshindia.org/Daksh_Justice_in_India/12_chapter_02.xhtml



Sector-Specific Rise in Cases

There has been a noticeable rise in disputes from sectors like e-commerce, banking and finance, online gaming, and advertisements. This is due to a number of factors, including the increasing popularity of online shopping, the growing number of online gamers, and the increasing use of digital services like fintech platforms and online ads. E-commerce sector, for example, saw a rise of 40% of the total share of complaints over the last few years.¹⁸

In fact, in the FY 2020-21, the other sectors for which grievances were registered, in order of counts after e-commerce were Banking and other BFSI services, Telecom, Electronic Products, Digital Payment Modes, Broadband & Internet.¹⁹ This highlights the need for an effective alternate dispute resolution in the digital economy sphere.



The online gaming industry relies on constant virtual engagement with the user and entails a high volume of micro and small transactions. Thus, given the nature of the industry, ODR seems to be the most appropriate mechanism that provides a quick, virtual, efficient, and cost-effective mechanism of dispute resolution.



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¹⁸ <https://brandequity.economictimes.indiatimes.com/news/digital/grievance-redressal-mechanism-of-e-commerce-players-not-up-to-mark-consumer-affairs-secy/103810352>

¹⁹ <https://consumerhelpline.gov.in/assets/annual-reports/Annual%20Report%202020-21.pdf>



Cross-Border Transactions & E-Disputes

The growth in digital transactions and cross-border service offerings has led to an increase in diverse e-disputes (e.g., payments, deliveries, quality). This can become a potential challenge in front of authorities if an adequate set of standards and mechanisms are not put in place. Given the lack of a clear legal framework and awareness among various stakeholders of avenues for resolving such disputes, ODR can become a convenient and effective solution. The Department of Consumer Affairs' stakeholder consultation in October 2023 ²⁰ provides a welcoming step towards this approach.

Major challenges in framing the global cross-border ODR platform like cross-border jurisdictional issue, enforceability of settlement agreements, language, technology supports, privacy and data protection, funding, cost sharing, awareness, and training, will have to be checked and addressed.



Some international guidelines and roadmaps for Cross border e-disputes resolution via ODR, that India can internalise, are as follows::

- ▶ The **ASEAN Guidelines** on ODR emphasizes the importance of ODR in resolving e-disputes arising from cross-border e-commerce transactions. ²¹ The priority is to create cost-efficient and convenient mechanisms that employ digital technologies to expand and expedite consumer access to redress, particularly with respect to low-value or smaller claims.
- ▶ **European Union's ODR Platform** ²²: Established by the European Commission, this platform aids consumers and traders in resolving online disputes without going to court. The ODR platform is primarily geared towards cross-border consumer disputes arising from online transactions within the EU.
- ▶ **UNCITRAL Technical Notes on ODR** ²³: The United Nations Commission on International Trade Law (UNCITRAL) has developed technical notes to guide countries in establishing and understanding ODR mechanisms. They emphasize using technology-neutral methods, ensuring procedural fairness, accessibility, and transparency, while aiming to harmonize practices and standards in the global digital marketplace.
- ▶ Under **the APEC ODR Collaborative Framework** ²⁴, APEC partners with ODR providers located in APEC economies that have opted-in to the APEC ODR Collaborative Framework. The APEC Economic Committee promotes ODR providers on its website and encourages small businesses to use them to resolve commercial cross-border disputes.

²⁰ <https://government.economictimes.indiatimes.com/news/digital-india/online-dispute-resolution-effective-solution-to-address-cross-border-e-commerce-disputes-consumer-affairs-secretary/104782931>

²¹ <https://asean.org/wp-content/uploads/2022/04/ASEAN-ODR-Guidelines-FINAL.pdf>

²² <https://ec.europa.eu/consumers/odr/main/?event=main.trader.register#~:text=The%20European%20Online%20Dispute%20Resolution,to%20quality%20dispute%20resolution%20tools>

²³ https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

²⁴ http://mddb.apec.org/Documents/2019/EC/EC2/19_ec2_022.pdf



Case Study

Presolv360's Cross-Border Mediation Success in E-commerce

Presolv360, an Online Dispute Resolution (ODR) platform, specializes in resolving disputes through online arbitration, mediation, and negotiation. It focuses on enabling participation from remote locations and diverse socio-economic backgrounds.

The case in point involves a cross-border dispute between a Taiwanese company and an Indian company based in Mumbai. The Taiwanese company, after placing an order and paying an advance, sought a refund due to apprehensions, which the Indian company resisted due to incurred expenses.

The business interactions and dispute resolution between these parties were conducted online, without physical meetings. The Bombay High Court referred their case to Presolv360 for mediation. The challenges included the logistical and financial implications of physical mediation between parties in Taiwan and Mumbai, differing expectations and psychology of the parties, and the need to preserve their future business relationship. Trust in the mediator and the ODR institution was crucial.

Presolv360's approach included appointing a former High Court judge with extensive mediation experience. They maintained regular contact with both parties, handling administrative aspects and scheduling virtual sittings. The platform's technology automated documentation processes, saving time and effort. The mediator conducted four sessions over five weeks, involving the parties in active participation and cooperation towards resolution.



The outcome was a settlement within 60 days, illustrating the efficiency of online mediation. The process ensured that all parties felt equally valued despite being in different countries. The psychological impact of participating in fair and efficient proceedings from one's own space was significant.

Key insights and best practices include the importance of institutional support in managing logistical and administrative aspects of dispute resolution. The case demonstrates the potential of virtual dispute resolution in efficiently handling business-related disputes in a world increasingly characterized by remote interactions. This success story reflects Presolv360's effective strategies in ODR, particularly in cross-border contexts within the digital economy.





2.2 Challenges

Structural Challenges

There are a few structural challenges that ODR's effective implementation will need to consider. These challenges will require necessary introspection for a widespread adoption and efficacy of ODR based mechanisms in India.



ODR Awareness and Adaptability

A significant portion of the Indian population remains unaware or are sceptical of ODR. This is a major challenge to the adoption of ODR in India. It is thus important to launch broader adaptability campaigns to raise awareness about ODR and its benefits. The government, industry, and civil society organizations can all play a role in these campaigns. Furthermore, industry players should actively participate in educating their employees and customers about ODR's advantages, emphasizing its cost-effectiveness, efficiency, and accessibility. Collaborations between civil society organizations and educational institutions can also help in spreading awareness, conducting workshops, and providing resources to the general population. Ultimately, by working together, India can build a more ODR-aware and adaptable society, unlocking the full potential of this innovative approach to dispute resolution.



Digital Infrastructure

The digital infrastructure challenge can be understood from two perspectives: the lack of widespread physical infrastructure facilitating the use of internet, and secondly, the lack of digital literacy.

In many regions, especially rural and remote areas, there is inadequate or no access to reliable internet connectivity and digital infrastructure. Limited access to electricity and the absence of necessary digital hardware like computers and smartphones further exacerbate the problem. This decelerates the growth of ODR implementation in the country.

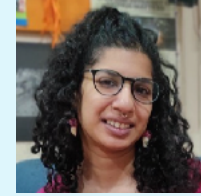
On literacy, 38% of households in the country are digitally literate. Additionally, only 31 percent of the rural population uses the internet as compared to 67 percent of the urban population.²⁵



²⁵ <https://www.oxfamindia.org/knowledgehub/workingpaper/india-inequality-report-2022-digital-divide>



In February 2022, the government revealed a stark digital divide in India: while 25,067 villages lacked mobile and internet connectivity, disparities in digital access were evident across economic strata. Only 2.7% of the poorest households had a computer, compared to 27.6% among the richest. This gap extends to internet facilities as well, with 8.9% access in the poorest segment versus 50.5% in the wealthiest. This uneven digital landscape raises critical questions: Can foundational services like justice depend on such fragmented infrastructure? The focus often lies on physical digital assets, neglecting the human element essential for servicing remote areas. Online dispute resolutions, primarily script-based, risk excluding those with limited literacy. Moreover, the predominantly bilingual nature of tutorial videos in consumer commissions alienates non-Hindi/English speakers, underscoring the need for diverse, inclusive technological development protocols.



Jenny Sulfath

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Operational and Implementation Challenges

When the structural procedures are in place, there is subsequently also a need to reform and address some of the operational and implementation challenges that ODR based mechanisms and ODR platforms face.



Cybersecurity and Privacy in the ODR Framework

ODR platforms and mechanisms are vulnerable to cybersecurity threats, such as data breaches and hacking. There are likely to be a number of disputes involving sensitive information which are resolved through ODR. It is important to incorporate robust cybersecurity and privacy measures into the ODR framework to protect user data and ensure the integrity of the ODR process. Despite having laws and guidelines in place, like the Information Technology Act 2000 or the CERT-In Directives, which has provisions for data breach and security breaching, a proactive step will be requisite for strengthening online dispute resolutions.

The 4 Es of Highway development ²² approach becomes

an essential practice here. *Engineering, Education, Enforcement, and Emergency response* - can be used to bolster cybersecurity measures in ODR. For example, ODR platforms should implement strong technical safeguards, educate users about cybersecurity best practices, enforce cybersecurity policies, and have a plan in place to respond to cybersecurity incidents.

Digital signatures, and encryption of documents to maintain confidentiality becomes two relevant applications. Moreover, the Digital Personal Data Protection Act's obligations on data fiduciaries ²³ can be read syn-onymous with ODR based platforms, putting additional tasks vis-a-vis compliance fulfilment for maintaining confidentiality.

²² <https://pib.gov.in/newsite/PrintRelease.aspx?relid=176964#:~:text=The%20Ministry%20has%20formulated%20a,%2C%20Enforcement%20and%20Emergency%20Care>

²³ <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>



Trust and Accountability

To further emphasize the importance of integrity and transparency in ODR platforms, it is crucial to recognize that these qualities foster trust among stakeholders and promote fairness and efficiency in resolving disputes. Stakeholders involved in a dispute resolution process – be it the mediators, arbitrators, or the parties involved – are all privy to the traditional sources of grievance redressals and settlements. Trust, other than practice becomes a challenge for such unintentional bias. Clear ethical guidelines for ODR providers serve as a compass, guiding them in upholding the highest standards of professionalism and ethical conduct while handling cases. Simultaneously, a robust regulatory framework for the ODR sector ensures that the industry adheres to established norms, safeguarding the interests of all parties involved. By maintaining these principles, ODR platforms can continue to evolve as reliable and impartial tools for dispute resolution, ultimately benefiting society as a whole.



Challenges in Enforcement of ODR Outcome

There is a general scepticism about technology and doubts regarding the enforceability of ODR outcomes. Additionally, mutual consent of the parties involved is essential for initiating the ODR process. Without this mutual agreement, the decisions made may not be legally binding, thus raising questions about the legitimacy of the process.

Issues such as online impersonation, unauthorized circulation of documents, and tampering of digital evidence are potential risks that need to be addressed in a post-resolution scenario.

Moreover, the enforcement of arbitral awards, a key outcome of the ODR process, is complex and burdensome in India. It involves navigating through various legal requirements such as stamp duties, which add to the complexity of the process.



3



Government-led Innovations in ODR: Recent Initiatives

While a brief on India's current policy stand is already stated in Chapter 1, the government is also actively looking at different ODR based mechanisms to streamline dispute resolution. The following examples of recent government initiatives indicate the need for ODR to become a norm across departments. While technologies like AI have their own shortcomings, their responsible use in governance is a welcoming step.



The E-Daakhil Online Case Filing System ²⁸

In light of the Consumer Protection Act 2019 and the challenges posed by the Covid-19 pandemic, it was recognized that there was a need to facilitate online filing options for consumers to address the ongoing situation. This is crucial because, through this portal, all consumers who have been disadvantaged or aggrieved can now file their complaints with the consumer commissions online, from anywhere, and at their own convenience.

They can also make complaint fee payments and monitor the status of their cases online. The eDaakhil portal was initially launched for the National Consumer Disputes Redressal Commission (NCDRC) on September 7, 2020. Subsequently, this facility was extended to 23 States/Union Territories for their respective State Commissions and District Commissions. Any consumer or advocate can register themselves on the eDaakhil software.



INGRAM ²⁹

This portal was launched by the Department of Consumer Affairs to create awareness, advise and redress consumer grievances and act as a central registry for lodging consumer grievances. The Department launched this portal for bringing all Stakeholders such as Consumers, Central and State Government Agencies, Private Companies, Regulators, Ombudsmen and call centres etc. onto a single platform.

The portal will also help in creating awareness among consumers to protect their rights and inform them of their responsibilities. Consumers can register online their grievances through this portal. In case, the consumer is not satisfied, he/she can approach the appropriate Consumer Commission/Fora.

²⁸ https://edaakhil.nic.in/edaakhil_hand_book.pdf

²⁹ <https://consumerhelpline.gov.in/about-portal.php>



While introduced in 2016, the Online Conciliation and Mediation Centre (OCMC) is a noteworthy initiative. Launched in 2016, it is a first of its kind academia-government collaboration aimed at cutting-edge research and effective implementation of ODR in India. It was established at the National Law School of India University, by and under the aegis of Ministry of Consumer Affairs, with an aim to propel online mediation as a first choice for resolving consumer disputes.

The Mediation Centre has introduced a unique online mediation platform, enhancing consumers' access to justice by offering a swift, secure, and straightforward solution for resolving both new and ongoing consumer disputes. This initiative has also presented businesses with a chance to uphold positive customer relationships.



Use of Artificial Intelligence

- ▶ Indian consumers will be able to register their complaints on the National Consumer Helpline (NCH) with the help of a ChatGPT-powered mechanism. The Department of Consumer Affairs is currently developing the feature.
- ▶ The Department of Consumer Affairs is also working on using artificial intelligence (AI) to reduce the pendency of cases in various consumer courts in the country. It will help summarise disputes; and will entail a legal database.
- ▶ The Artificial Intelligence (AI) driven Grievance Monitoring System, the IGMS 2.0 Public Grievance portal, developed in collaboration with IIT Kanpur under an MoU with Department of Administrative Reforms and Public Grievances (DARPG), leverages AI capabilities to streamline the grievance redressal process. It offers real-time tabular analysis of filed and disposed grievances, categorized by state, district, and ministry. This powerful tool also assists in identifying the root causes of grievances, a crucial step in addressing citizen concerns effectively. ³⁰



³⁰ <https://pib.gov.in/PressReleaseframePage.aspx?PRID=1962142>



Grievance Appellate Committees (GAC)

An online dispute resolution mechanism established under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ["IT Rules"],³⁷ and made under the Information Technology Act, 2000. The IT Rules and GAC aim to ensure a Safe & Trusted and Accountable Internet for Indian users.

The GAC deals with the appeals of users (Digital Nagriks) aggrieved by decisions of Grievance Officers of social media intermediaries and other intermediaries on complaints of users or victims against violation of the IT Rules and any other matters pertaining to the computer resources made available by the intermediaries. The entire appeal process, from filing to decision, is in digital mode. GAC endeavours to resolve appeals within 30 days. As a suggestive step, MeitY can also look at the use of ODR for specifically data protection related grievances of consumers.



Appellant Login (File appeal / View status)

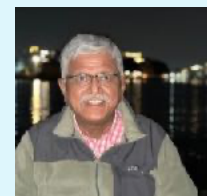
Enter Mobile Number*

Captcha*



In India's dynamic consumption landscape, Online Dispute Resolution of Meity stands as a beacon of modernization and efficiency. By integrating digital technology with traditional dispute resolution techniques, ODR offers a streamlined, accessible path for Digital Nagriks to address their grievances expeditiously with Social Media Intermediaries. This approach not only enhances trust of the social media users but also results in quicker online resolution of their grievances and making internet safer.

Our commitment is to continuously evolve and strengthen these mechanisms, ensuring they are equitable for disputes in a timebound manner with Social Media Intermediaries. The evolution of ODR represents a pivotal step in democratizing and decentralizing the justice delivery system, offering a robust alternative to the conventional methods and reinforcing India's position as a frontrunner in digital empowerment of internet users.



Ashutosh Shukla

(Retd.) IPS, and Current Member, Grievance Appellate Committee (GAC), Ministry of Electronics & IT (MeitY)



³⁷ <https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf>



Thought Leadership

The Government continues to take steps to create awareness about Alternative Dispute Resolution mechanisms. In this regard, a book titled as “A guide to Alternative Dispute Resolution” has been released by the Department of Legal Affairs, Ministry of Law & Justice, on 26.11.2023, during the celebrations of the Constitution Day. ³² The book aims to enable the common citizens (vis-à-vis consumers) of the country to understand the framework of arbitration and mediation existing in India. It is a publication which would be a ready reckoner for comprehending the benefits and advantages of these mechanisms for timely, cost effective and efficacious dispute resolution.



The Micro and Small Enterprises Scheme on Online Dispute Resolution for Delayed Payments

Announced in December 2023, the scheme represents a pioneering initiative. It combines legal assistance with advanced information technology and Artificial Intelligence to tackle the issue of late payments faced by Micro and Small Enterprises.

By doing so, the scheme introduces a more efficient and technologically-driven method to resolve financial disputes. It marks a significant step towards integrating technology in legal processes, specifically designed to support small businesses in recovering their dues promptly. ³³



³² <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1980028>

³³ <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1988800#~:text=The%20MSE%20Scheme%20on%20Online,for%20Micro%20and%20Small%20Enterprises>



Case Study

Webnyay's Digital Transformation in Resolving Unsecured Debt Disputes for NBFCs



Webnyay, a leading technology platform for grievance redressal and online dispute resolution (ODR), has made notable strides in resolving disputes online, especially for financial institutions like NBFCs. They facilitate dispute resolution at a low cost, bringing all stakeholders together without the need for physical presence. Their clientele includes major financial institutions and technology companies, highlighting their credibility and reach.

In a case involving an NBFC, a prominent financial services company in India, Webnyay played a crucial role. The NBFC, specializing in loans and financial solutions for individuals and SMEs, faced challenges with unsecured debt disputes. These disputes, lacking collateral, presented unique challenges in recovery and resolution.



The NBFC turned to Webnyay for an efficient and effective solution that aligned with their digital transformation goals. They used Webnyay's end-to-end technology solution and panel of experts to resolve a dispute involving approximately Rs 12 crores with two MSMEs. The process involved online arbitration, where Webnyay facilitated consent from all parties and appointed independent and neutral arbitrators. The arbitration was concluded in just 12 weeks, with the arbitral award accepted by all parties, who were satisfied with both the outcome and the process.

The implementation of Webnyay's ODR system resulted in a streamlined, efficient, and cost-effective resolution of the dispute. The costs incurred were significantly lower than traditional court litigation, providing financial relief to all involved parties. This outcome has increased trust and credibility in Webnyay's platform.

The case underscores the importance of technology in transforming legal processes, demonstrating how digital tools can enhance accessibility, efficiency, and cost-effectiveness in legal disputes. Key insights include the role of consent and cooperation from all parties, the importance of selecting neutral and independent arbitrators, and the potential of using emerging technology like AI to transform traditional processes. This collaboration exemplifies a successful model of ODR in the financial sector, showcasing the potential for such models to be replicated and scaled in various sectors globally.

4



Benchmarking Success: International Best Practices on ODR

From the European Union's comprehensive ODR platform to South Korea's e-commerce focused approach, and ASEAN's regional network for cross-border dispute resolution, the diverse array of strategies and solutions serves not only as a testament to the adaptability and potential of ODR in different contexts but also as a source of potential learning for other nations striving to enhance their own ODR frameworks, including an emerging economy like India.



4.1 European Union (EU)

Making Public-Private Partnership Work for Ensuring Accessibility and Equitable Opportunities for Dispute Redressal

The European Union has established the European ODR Platform specifically to address consumer disputes, especially those arising from online transactions involving buyers and sellers from different EU member states. This platform takes the shape of an interactive website, accessible in all official EU languages, providing a free electronic avenue for grievance redressal.

EU regulations mandate that EU-based traders and marketplaces engaging in online sales or service contracts with consumers must include an easily accessible link on their websites to the EU ODR platform. Thus, when a dispute emerges, consumers can initiate the process by completing an online complaint form available in all official EU languages on the ODR platform's website.

Upon receiving a notification via email within ten days, the trader faces three choices: engage in direct negotiation with the customer, settle the dispute through the

the ODR platform, or opt not to respond, resulting in the automatic closure of the complaint after 30 days. In the latter case, the consumer can then pursue traditional dispute resolution methods.

Moreover, the EU ODR platform hosts certified dispute resolution bodies on its website, offering out-of-court settlement procedures. These bodies adhere to quality standards regarding fairness, efficiency, and accessibility, each with its own set of rules and procedures. The European Union has partnered with over 750 ODR service providers across Europe, accredited and recognized by sector-specific regulators of EU member countries. These service providers undergo yearly audits and publish annual reports.

Essentially, the EU ODR Platform serves as a one-stop-shop of dispute resolution tools for consumers, featuring seven tools, including a "Find a Lawyer" function to locate registered lawyers within the EU. ³⁴



³⁴ <https://ec.europa.eu/consumers/odr/main/?event=main.home2.show>



Figure 2: A snapshot of EU's ODR "portal"

The following is a list of Consumer Dispute Resolution Tools from the European Union's ODR Portal:

	<p>ODR Platform</p> <p>Free web tool to contact the trader for problems related to online shopping or send to ADR</p>		<p>European Consumer Centres</p> <p>Advice and assistance with cross-border complaints</p>
	<p>Dispute Resolution Bodies</p> <p>Find a neutral third party to resolve your online or offline consumer dispute</p>		<p>FIN-NET</p> <p>Get help with your dispute that is against a financial service provider in another EU country</p>
	<p>National Consumer Bodies</p> <p>Information and help to enforce your rights</p>		<p>Legal Actions</p> <p>Small Claims Procedure, European Payment Order, court</p>

4.2

South Korea E-Commerce focused ODR mechanism

The Electronic Commerce Mediation Committee provides an efficient alternative to the lengthy and costly civil litigation process for resolving e-commerce disputes.

This system, which involves a panel of experts including lawyers, patent attorneys, specialists, and professors, is designed to handle disputes with flexibility and professional insight, often resulting in solutions through mutual concessions. The process is not only time-efficient but also cost-effective, making it a convenient option for consumers.

Mediation can be conducted either in person or electronically, through online chat or video conferencing, connecting parties with the Cyber Mediation Centre. Applications for mediation can be submitted online, by email, fax, or mail, although physical evidence must be provided. The Committee must present a mediation proposal within 45 days of receiving an application, and the parties have 15 days to respond. If accepted, the mediation document holds the same legal effect as a court-ordered composition under the Civil Procedure Act. ³⁵

³⁵ <https://www.ecmc.or.kr/ecmceng/subIndex/233.do>



4.3 ASEAN ODR Regional Network

A focus on regional cross border dispute resolution via ODR

In October 2021, the ASEAN Alternative Dispute Resolution (ADR) Guidelines for Consumer Protection ³⁶ were launched. These guidelines were developed in response to the increasing cross-border trade within ASEAN, necessitating a harmonized approach to ADR.

They aim to evaluate different ADR approaches, their implementation across ASEAN Member States, and the steps required to effectively apply these mechanisms.

The ADR guidelines encompass a broad range of areas, including the development of national policies for ADR of consumer disputes, access to justice, expertise, independence, impartiality, transparency, effectiveness, fairness, due process, legality, efficiency, partial autonomy, and enforcement. These guidelines underscore the development of common approaches to ADR, including mechanisms for resolving consumer complaints through consumer groups.

Furthermore, in April 2022, the ASEAN Committee on Consumer Protection (ACCP) introduced the ASEAN Guidelines on Online Dispute Resolution (ODR) ³⁷. These guidelines are designed to assist ASEAN Member States in establishing or improving their national ODR systems, particularly for e-commerce transactions.

They cover various aspects such as the design criteria of a national ODR system, IT requirements for interoperability, data security, privacy, legal and procedural requirements, and regional and international cooperation.

Notably, Indonesia, the Philippines, and Thailand have already implemented national ODR systems. The goal is to create a unified ASEAN ODR Network, with interlinked national ODR systems facilitating efficient and cost-effective settlement of cross-border disputes.



³⁶ <http://aadcp2.org/wp-content/uploads/ASEAN-ADR-guidelines-2021.pdf>

³⁷ <https://asean.org/wp-content/uploads/2022/04/ASEAN-ODR-Guidelines-FINAL.pdf>

5



ODR Evolution: Crafting the Roadmap for Tomorrow's Dispute Resolution

Few more actionable strategies and forward-thinking approaches needed to enhance India's Online Dispute Resolution (ODR) framework were gathered from the collective wisdom of the experts who were part of the roundtable discussion. Emphasizing the importance of collaborative efforts, these tailored recommendations seek to address the nuanced challenges and untapped opportunities within the ODR landscape, aiming to propel a more robust and responsive mechanism for dispute resolution in the digital age.



5.1 Developing a common language or taxonomy for ODR

Developing a common language or taxonomy for Online Dispute Resolution (ODR) is a critical step towards standardizing and improving the effectiveness of this increasingly important field. The current landscape of ODR is marked by a diverse range of practices, terminologies, and approaches, which can lead to confusion and inefficiencies. A unified lexicon would address several key issues and bring numerous benefits.



Clarification of Concepts

ODR, like any specialized field, is replete with jargon and technical terms. A common taxonomy would clarify these concepts, making them more accessible to all stakeholders, including lawyers, mediators, disputants, and policymakers. This clarity is crucial for effective communication and understanding of processes and options available in ODR.



Standardization of Procedures

Different ODR platforms and services often use varying terminologies for similar processes. A unified lexicon would help in standardizing these procedures, ensuring consistency across platforms. This standardization is not just about language; it extends to the processes themselves, making them more predictable and reliable.



Enhanced Training and Education

For professionals entering the ODR field, a common language would simplify training and education. It would provide a structured framework for learning, ensuring that all practitioners have a consistent knowledge base. This consistency is essential for maintaining high standards of practice in ODR.



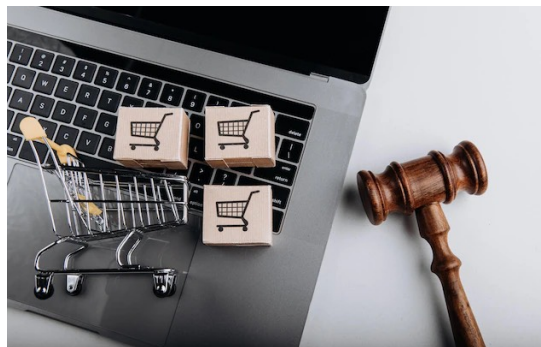
Facilitating Cross-Border Dispute Resolution

ODR is particularly useful for resolving disputes that cross geographical and jurisdictional boundaries. A common taxonomy would facilitate this by providing a universal language that transcends local legal jargon, making international collaboration and resolution more feasible.



Improving Technology Development

Technology is a cornerstone of ODR, and a common language would aid in the development of more standardized and interoperable ODR technologies. This standardization is critical for the integration of different systems and platforms, enhancing the overall efficiency of the ODR process.





Developing such a taxonomy should involve a collaborative effort among various stakeholders in the ODR ecosystem. This includes not only experts and practitioners but also representatives from different legal cultures and jurisdictions, to ensure that the taxonomy is inclusive and applicable globally. The involvement of academic institutions can also provide a theoretical foundation and rigor to this development process.

The development of a common language or taxonomy for ODR is not just a logistical step but a strategic move towards enhancing the effectiveness, accessibility, and global reach of online dispute resolution. It is a foundation upon which the future of ODR can be built, ensuring that it remains a relevant and powerful tool in the resolution of disputes in our increasingly digital world.

Figure 3: Key Parameters for Common Taxonomy Structure





5.2 Adequate empanelment/entry conditions of mediators and ODR platforms

Instituting strict qualifications for ODR mediators and arbitrators for their respective legitimacy should be a mandate. While the Ministry of Corporate Affairs had released the Companies (Mediation and Conciliation) Rules, 2016³⁸ for regulating the empanelment of mediators and prescribing the procedure for the mediation proceedings, third party mediators and ODR platforms were mostly left out of the rules' mandate. The Mediation Act 2023 however provides an institutional legitimacy to online mediation and vis-à-vis the stated platforms. Going forward, certain principles should be in place to further ensure the quality of dispute resolution.



Qualification and Training

Mandating specific educational and professional qualifications for mediators and arbitrators. Putting requirements of continuous training in areas such as negotiation, conflict resolution, legal aspects of mediation, and technology used in ODR.



Ethical Standards and Code of Conduct

Developing and enforcing a comprehensive code of conduct for mediators, including impartiality, integrity, fairness, and respect for diversity. Regularly review and update the code to reflect evolving standards and practices should be a requisite process.



Accreditation and Certification

Establishing a robust accreditation system for mediators and ODR platforms, ensuring adherence to high standards of practice and ethics. Mandating a regular renewal of accreditation based on performance and adherence to updated standards should be mandatory. Having a standardised certification process can also be a consideration, that will help industry-wide acceptance of online mediators and arbitrators. Standardized certification for online mediators and arbitrators enhances their credibility by indicating that they have met specific qualifications, as reviewed by neutral professionals and in accordance with standards set by courts and professional organizations. Such certification establishes a standard of professionalism, offering consumers an additional criterion to gauge the qualifications of conflict management practitioners. Such preconditions for certification can be similar to SEBI's Independent Financial Advisor's (IFA) certification process. It is important to note that the Mediation Act only legitimises the online mediators, and does not delve into the contours of certification.



Technology and Accessibility

Ensuring that ODR platforms are user-friendly, accessible to all, including people with disabilities, and adaptable to various technological proficiencies. Regularly update platforms to incorporate advanced technologies and security features



Quality Assurance and Improvement

Implement quality control measures, including regular audits of ODR processes and outcomes. Encourage continuous improvement based on feedback, research, and changes in the legal and technological landscape.

³⁸ https://www.mca.gov.in/Ministry/pdf/CompaniesMediationandConciliationRules_10092016.pdf



Case Study

CORD's Ethical and Efficient ODR Practices in Finance and Financial Technologies



CORD (Centre for Online Resolution of Disputes), established in 2019, is an ISO 27001 and ISO 9001 certified online arbitration institution, driven by the motto 'fair, fast, and accessible.' It has been instrumental in leveraging technology to reduce dispute resolution costs and improve effectiveness, while adhering to strict data security and privacy norms.

During the COVID-19 pandemic, the rapid growth of Fintechs and NBFCs, especially those offering online loans, led to a surge in defaults. This situation prompted many such entities to incorporate arbitration clauses in their contracts, turning to ODR for resolution. CORD's approach to these challenges emphasizes the adoption of ethical practices in dispute resolution, aiming for efficiency, effectiveness, and impartiality. This involves ensuring document compliance, KYC adherence, clear terms and conditions, and transparent record-keeping.

CORD's strategy includes providing a three-way communication channel between arbitrators, claimants, and respondents; bridging information gaps; ensuring fair hearings; aiding arbitrators with up-to-date case information; and appointing neutral arbitrators with relevant expertise and soft skills. They also emphasize non-interference in the arbitrator's decision-making process.

In terms of approach and implementation, CORD is careful in case intake based on arbitrator capacity, considering factors like domain expertise, language proficiency, work ethic, and responsiveness. The institution follows a policy against automated award generation, preferring to use technology as a facilitative tool while retaining the essential human element in dispute resolution.

The innovative practices adopted include regular communication to bridge information gaps and empathetically understanding the pressures on neutrals, emphasizing adherence to ethical conduct. The outcomes from CORD's initiatives have been positive, with a balance in decisions for and against NBFCs. This has led to a greater focus on standardized processes and compliance, benefiting both CORD and the involved parties by enhancing transparency and confidence in the dispute resolution process.

Key insights and best practices highlighted include the importance of maintaining a document checklist to ensure compliance and transparency. This approach not only instils borrower confidence in NBFCs but also promotes ease of business and faster dispute resolution. This case study underscores the effectiveness of CORD's methods in the realm of ODR, particularly in the context of the digital economy and its associated challenges.



5.3 Need for transparent, non-discriminatory, and interoperable guidelines/SOPs

Taking cues from standards such as the International Council for Online Dispute Resolution (ICODR) ³⁹ help provide a guidance for ethical principles, training components, video mediation and arbitration, and payment standards in ODR. Setting voluntary clear and publicly accessible Standard Operating Procedures (SOPs) or voluntary set of principles by ODR institutions and platforms will guide practitioners and help consumers streamline the dispute resolution process.



Interoperability

Interoperability will enable ODR platforms to collaborate with various judicial bodies such as civil courts, tribunals, and consumer courts, ensuring secure, efficient, and continuous interaction between these entities, as well as a synchronized utilization of data. It will also ensure that their independently created modules can communicate and work with both internal and external systems, networks, and organizations, and possess the capacity for integration with both legacy and emerging technologies. The interoperable design of software, tools, and platforms could enable them to connect with other platforms and to interface with associated judicial systems like those in the eCourts Project. ⁴⁰

For instance, if platforms handling e-commerce disputes are aware of and can align with the data management practices and applications used by Consumer Commissions, it will streamline the aggregation and sharing of data. This will, in turn, support a systematic method for future legal and policy amendments.



Transparency

ODR platforms must prioritize transparency and accountability to all stakeholders, ensuring their design allows visibility into the procedures followed and the decisions reached. The platforms should grant end users access to both procedural details and resolution results. Additionally, the use of artificial intelligence by these platforms should be disclosed in easily understandable language, without technical jargon, to ensure users are fully aware of how AI influences the process and outcomes.

Furthermore, these platforms need to openly reveal their financial backing, any affiliations they might have, and comprehensively outline the privacy and security protocols in place. Such disclosures should be straightforward and designed to instil confidence in users that their data is handled with the utmost care and integrity, and that the platform's operations are not unduly influenced by external entities. Transparent reporting on these elements not only strengthens user trust but also underpins the legitimacy and reliability of the ODR process.

³⁹ <https://icodr.org/standards/>, <https://icodr.org/files/paymentsodr.pdf>, <https://icodr.org/guides/videoarb.pdf>, <https://icodr.org/guides/videoemed.pdf>

⁴⁰ <https://ecommitteesci.gov.in/project/brief-overview-of-e-courts-project/>



Non-Discriminatory

Platforms and institutions must accommodate the varied needs of users, including those with disabilities and from diverse communities, socioeconomic statuses, and cultural backgrounds. They should be inclusive, offering support across various languages, contexts, and technological capabilities, such as device types and internet connectivity. The design should incorporate specific features and resources to assist users with special needs. Moreover, the platforms must strive to provide an equitable experience, ensuring that the inequalities and biases that exist in offline settings do not transfer into the digital dispute resolution arena. This involves creating an ODR environment that levels the playing field, offering equal access and opportunities to all users, irrespective of their offline circumstances.



She suggested the digital economy-based platforms to "Onboard Online Dispute Resolution (ODR) mechanisms to facilitate online mediation for all consumer disputes, and ensure that data systems are interoperable between ODR platforms and consumer forums."



Deepika Kinhal

Senior Resident
Fellow, Vidhi Centre
for Legal Research

VIDHI Centre for
Legal Policy



Fairness and Neutrality

Platforms and third party mediators should uphold their commitment to due process, actively addressing and correcting any biases that may emerge, whether they are implicit or explicit, and regardless of whether they originate from human input or algorithmic calculations. These platforms must be adaptable, with a structure that permits prompt updates to address and integrate feedback from the communities and stakeholders they serve, ensuring that the platforms remain sensitive to the evolving needs and concerns of their users.



Consent and Protection of Sensitive Information

As also mentioned in Chapter 2, the Digital Personal Data Protection Act's (DPDP) obligations towards data fiduciaries becomes relevant for ODR platforms and third party online mediators.

One of the key obligations under the Act is the requirement of consent. The organisations must ensure that explicit and informed consent is obtained from involved parties before their personal data, in this case, confidential commercial and private data, is collected and processed. Consent mechanisms should be transparent, straightforward, and allow individuals the freedom to grant or withdraw their consent at any point.

There is also an added emphasis on the protection of children's personal information, which requires the consent of a parent or guardian. These must be duly adopted and put into practice.

While the counter argument to the above adoption is the already "prevailing" agreement between the parties involved in the online mediation and arbitration process, and thus should have acted as a deemed consent for using of such sensitive data. However, DPDP's enactment will require separate consent(s).



5.4

Building demand-side awareness and educating consumers about their rights

To effectively raise awareness and educate consumers about ODR, a multi-pronged approach is essential. Public awareness campaigns, spearheaded by governments, consumer protection organizations, and businesses, can effectively disseminate information about ODR and its benefits to a broad audience. Educational initiatives, including workshops, seminars, and online tutorials, can provide consumers with in-depth knowledge of ODR processes, empowering them to utilize this mechanism confidently.

Targeted outreach to vulnerable groups, such as seniors and low-income individuals, is crucial to ensure that all segments of society have access to information about ODR. These groups may face additional barriers in accessing traditional legal services, making ODR an even more valuable resource for resolving their disputes.

Sharing case studies and success stories of ODR can serve as powerful testimonials to its effectiveness, building consumer trust and encouraging wider adoption.

Highlighting positive outcomes and demonstrating the fairness and impartiality of ODR can alleviate concerns and encourage consumers to consider this option for resolving their disputes.

The government should focus on expanding the availability of Online Dispute Resolution (ODR) in Tier II and below areas. This can be achieved by enhancing awareness through initiatives like the National Digital Literacy Mission and launching informative campaigns at the local administrative bodies and Nagar Panch-ayats with the assistance of paralegal volunteers. Collaborating with the private sector and start-up ecosystem can be a strategic move to develop content for these campaigns. It's important, however, that the awareness raised is not merely a highlight of ODR's advantages. Instead, it should be an honest presentation of both its benefits and challenges, allowing individuals to make well-informed decisions about how ODR can be beneficial to them. This approach will also serve to curb potential misuse by untrustworthy service providers.





5.5 Tech acting as an enabler, not a barrier for consumers

In the evolving landscape of ODR in India, the pivotal role of technology cannot be overstated. It is imperative to ensure that technological advancements serve as facilitators, not impediments, in the dispute resolution process. This recommendation focuses on the design and implementation of user interfaces that are both intuitive and accessible, catering to a diverse demographic, including those not well-versed in technology.



Intuitive Interface Design

The core of an effective ODR system lies in its ability to present a user interface that is straightforward and easy to navigate. This involves the creation of a design that is self-explanatory and requires minimal external guidance. The utilization of common symbols, simple language, and clear instructions is essential.



Accessibility for the Non-Tech-Savvy

A significant portion of the Indian populace may not be adept at navigating complex digital platforms. Therefore, it is crucial to develop interfaces that are accommodating to all users, regardless of their technological proficiency. This could be achieved through simplified processes, step-by-step guides, and readily available assistance.



Adaptable UI/UX Design

The user interface (UI) and user experience (UX) design must be flexible and adaptive, catering to various user needs and preferences. This adaptability includes but is not limited to compatibility with different devices, screen-readers for the visually impaired, and language options to bridge linguistic barriers.





Regular User Feedback and Updates

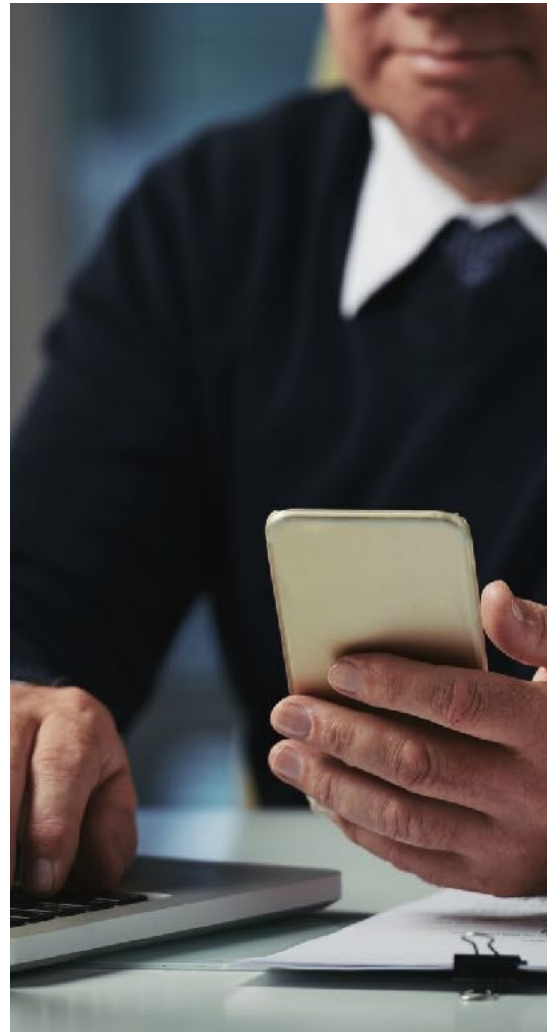
To continuously enhance the user interface, regular feedback from a diverse range of users should be sought. This feedback will inform necessary updates and modifications, ensuring the system remains user-friendly and up-to-date with technological advancements.



Empathy in Design

An ODR system should be empathetic to the emotional and psychological state of its users. Disputes can be stressful, and a system that acknowledges this through empathetic design can greatly assist users. This could include features like reassuring language and supportive messaging.

Moreover, the redressal process itself can be more humane. The system could also offer options for users to seek emotional support or guidance, acknowledging the human aspect of disputes and not just the procedural one.



Managing assistance for the consumers before dispute resolution:

It is very vital to have managing assistance for the consumers before dispute resolution for developing constructive consumer relationships and also to prevent the avoidable acceleration of disputes.

Assessable communication channels, creating adequate consumer education program and resources, quick and responsive customer support, proactive outreach and clearly defined escalation channels for handling unresolved issues would surely help mitigate in this regard.



Dr. Rohit Moonka
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Case Study

SAMA's Human-Centric Approach to Disputes

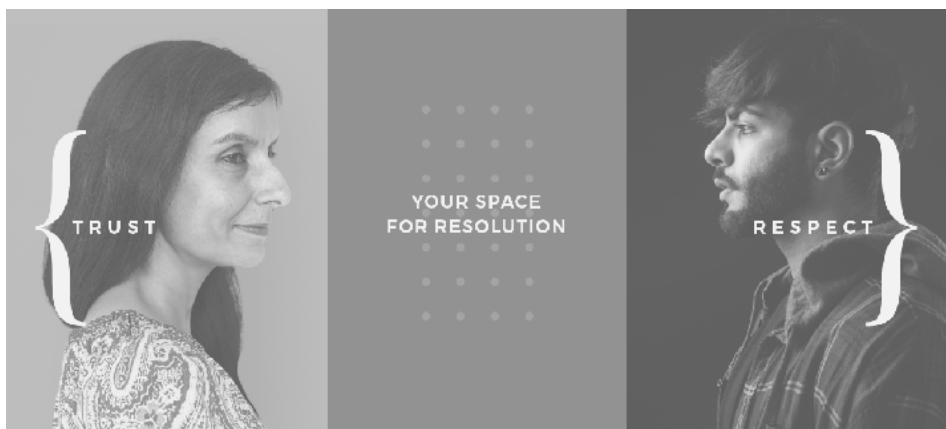


SAMA, an innovative platform for Online Dispute Resolution (ODR), has significantly contributed to resolving disputes efficiently and amicably. With a particular focus on e-commerce and family disputes, SAMA utilizes technology to facilitate effective dispute resolution, prioritizing a humane approach and practical solutions without the complexities of traditional litigation. In e-commerce specifically, Sama helps solve a variety of disputes quickly and effectively through its interactive digital platform by creating the desired space for customers to be heard and to explore creative solutions needed for such resolution.

In a significant case involving a banking transaction, a client had failed to pay the full instalments on a loan. The matter, unresolved for some time, was brought to SAMA, where it was efficiently settled through online mediation.

The borrower initially offered to pay a part of the settlement but eventually agreed to pay a higher amount, illustrating SAMA's effectiveness in facilitating mutual agreement and understanding between parties.

These cases underscore SAMA's commitment to resolving disputes with a human touch, leveraging technology to bridge gaps and promote understanding. The platform's approach emphasizes empathy, flexibility, and the efficient use of technology, resulting in satisfactory resolutions that not only address immediate concerns but also pave the way for future harmonious interactions, whether in personal or commercial contexts. SAMA's success stories reflect its adept handling of diverse disputes, establishing that a reliable and innovative ODR platform also encompasses principles of just human values.





5.6

Scaling the use of Emerging Technologies for Dispute Resolution

In the realm of AI integration within Online Dispute Resolution (ODR) and other dispute resolution mechanisms, AI technologies are primarily utilized in two distinct ways: as supportive tools or in a substitutive role.

To understand these applications, it's helpful to compare them to conventional dispute resolution methods, which typically involve negotiations between two or more parties facilitated by a mediator, arbitrator, or a similar third-party figure. In a supportive role, AI acts as an auxiliary tool for the third-party facilitator, enhancing their ability to achieve objectives.⁴¹ This means that the mediator or arbitrator's work is augmented by AI, rather than replaced by it. Technically, this could involve AI-driven analytics, data processing, or decision-support systems that provide insights or suggestions based on vast amounts of data, ultimately aiding in more informed decision-making.

Conversely, when AI is used in a substitutive capacity, it takes over some core functions traditionally handled by the third-party. This doesn't necessarily imply a complete replacement of human mediators with AI entities like androids.

Rather, it could mean that the AI system undertakes certain aspects of the mediator's role.⁴² This can range from making preliminary inquiries to actually determining resolutions or compensation levels. For instance, an AI system in an industrial arbitration context might calculate appropriate compensation levels, acting as a supportive tool if it's a spreadsheet used by an arbitrator.

However, if the same system is capable of proposing more complex solutions, like structuring trade deals favouring the winning party, it moves into a substitutive role.

“

The integration of AI and emerging technologies in ODR offers both unparalleled benefits and inherent challenges. The efficiency gains from automated processes and data analytics enhance the speed and accuracy of dispute resolution, significantly reducing backlog. The challenge lies in balancing the power of AI and the preservation of human-centric values, such as fairness and ethical considerations. Only then it can serve, as a facilitator of efficient, accessible, just, and humanised dispute resolution.



Dr Srinath Sridharan

Columnist and
Corporate Strategy Advisor

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⁴¹ <https://link.springer.com/article/10.1007/s10462-011-9305-z>

⁴² <https://link.springer.com/article/10.1007/s10462-011-9305-z>



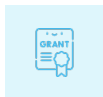
To enhance and scale the use of AI in Online Dispute Resolution (ODR) in India, the following two specific policy initiatives can be considered:



National AI-ODR Platform

Ministry of Electronics and IT should develop a centralized AI-ODR platform that serves as a one-stop solution for various types of disputes. This platform could integrate AI tools for case analysis, dispute resolution recommendations, and digital mediation services. It would provide a standardized, yet customizable, approach to dispute resolution across the country.

The platform can also encompass a dedicated AI Ethics Committee within the legal framework to oversee the ethical aspects of AI in ODR. This committee would be responsible for ensuring that AI applications in ODR adhere to ethical standards, are free from biases, and respect the diverse socio-cultural fabric of India.



AI-ODR Innovation Grants

The Ministry of Commerce under its Startup India scheme should introduce a dedicated grant to incentivize startups and tech companies to develop innovative AI solutions for ODR.

These grants could focus on areas such as natural language processing for local languages, AI-driven negotiation algorithms, and blockchain for secure and transparent record-keeping.

Similarly to AI, other advanced and emerging technologies like big data, machine learning (ML) and blockchain can also be increasingly embedded in the legal processes,⁴³ including in ODR mechanisms. Technology's capabilities can be effectively utilized in blockchain-based arbitration for smart contracts.⁴⁴

These contracts, written in computer code, enable automated enforcement by managing the transfer of rights and obligations. As a result, resolutions can be conducted through blockchain arbitration, relying on these smart contracts.

Fault lines to be kept in consideration while integrating AI and dispute resolution:

- ▶ The introduction of AI expert systems or decision support systems in legal practices can pose a threat to small-scale lawyers. The rise in online dispute resolution (ODR) will likely decrease the number of cases reaching courts, potentially impacting the lawyers in local courts.
- ▶ AI's lack of emotional understanding could be particularly problematic in disputes. The absence of a human touch in AI-mediated resolutions is a drawback, as human communication extends beyond words to include tone and facial expressions.
- ▶ Additionally, AI faces challenges in understanding diverse and colloquial languages. Issues with accents, dialects, or a blend of languages, like a mix of Hindi with local dialects creating a unique colloquial language, complicate AI's comprehension. Adapting AI to these linguistic variations would further escalate development costs.

⁴³ <https://www.telegraphindia.com/india/cji-bobdefocuses-on-speedy-end-to-litigation/cid/1725051>
and
<https://www.thehindu.com/education/how-introducing-blockchain-technology-in-law-can-revolutionise-legal-procedures/article32190200.ece>

⁴⁴ <https://corpgov.law.harvard.edu/2018/05/26/an-in-troduction-to-smart-contracts-and-their-potential-and-inherent-limitations/>



5.7 Need to move beyond 'High Volume Low Value' approach

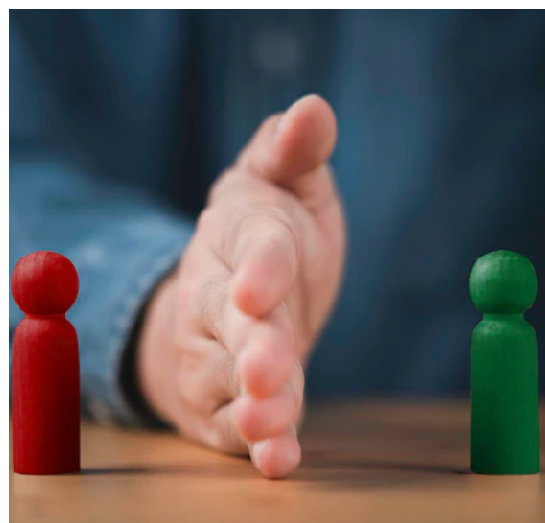
There is a strong need for shifting the focus of ODR in India from just (high volume and) lower value transactions and disputes to a scenario where it accommodates and subsequently facilitates other approaches as well, including (low volume and) high value cases. Such a holistic approach would position India as a leader in leveraging technology for legal dispute resolution, aligning with global standards and practices.

High-value disputes often involve complex legal and technical issues, requiring a sophisticated and robust ODR system capable of handling such intricacies. To make this transition, India needs to invest in advanced ODR platforms, trained mediators, arbitrators, and legal experts who are adept in handling high-stake disputes online. This shift would not only help in decongesting the courts but also offer a faster, cost-effective, and accessible avenue for resolving high-value disputes.



5.8 Capacity Building for Mediators - A need of the hour

Capacity building of mediators and arbitrators for adopting and using ODR can be approached through several focused strategies. Firstly, integrating ODR training into existing legal and arbitration education programs can provide a foundational understanding. Secondly, partnerships with technology firms and ODR platforms can offer hands-on training in using specific tools and software. Thirdly, continuous professional development programs, including workshops, seminars, and webinars conducted by legal bodies, dispute resolution forums, and policy platforms, can ensure that practitioners stay updated with the latest ODR technologies and practices. Lastly, creating a network of experienced ODR practitioners can facilitate knowledge sharing and mentorship, fostering a community of practice within the country.



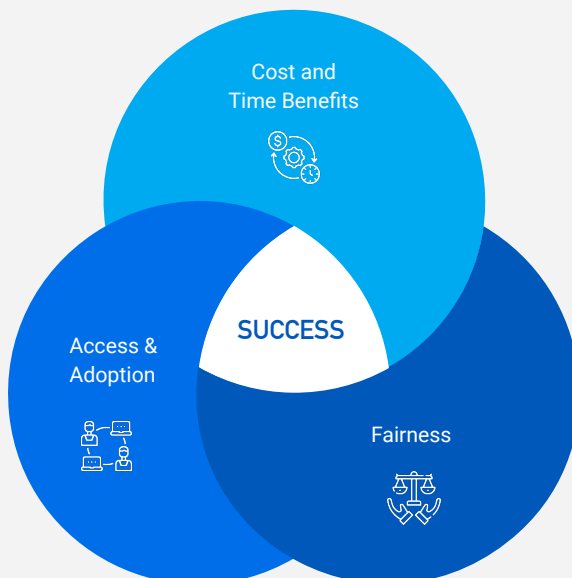


5.9 Role of India International Arbitration Centre

The India International Arbitration Centre Act of 2019 ⁴⁵ was enacted to establish Centre, aimed at creating a world-class, independent, and autonomous organization to facilitate institutional arbitration. Recognized as an institution of national importance, the Centre is now operational with the necessary infrastructure and skilled management. It offers high-quality legal and administrative services and includes a panel of esteemed arbitrators for overseeing arbitration. The Centre is committed to delivering top-tier arbitration services for both national and international commercial disputes at an affordable cost, including necessary administrative assistance for the efficient management of arbitration proceedings.

To accelerate Online Dispute Resolution (ODR) in India, the India International Arbitration Centre can integrate advanced digital platforms for case handling, offer specialized training in ODR techniques, and standardize online arbitration procedures. Collaborating with tech companies to develop tailored ODR tools, advocating for legal reforms to recognize and enforce ODR outcomes, and raising public awareness about the benefits of ODR can be key. Additionally, ensuring accessibility and affordability, especially for remote and under-resourced communities, is essential for widespread adoption and effective implementation of ODR mechanisms in India.

ODR Success Venn



- 1 **CORE BENEFITS**
Tangible outcomes that the consumers can gain, such as cost as well as time efficiency

- 2 **IMPLEMENTATION**
Both consumers should be able to 'access', and practicing mediators need to 'adopt'.

- 3 **VALUES**
Principles of fairness and being just are very important components of ODR.

⁴⁵ <https://legallaffairs.gov.in/sites/default/files/The%20New%20Delhi%20International%20Arbitration%20Centre%20Act%2C%202019.pdf>



5.10 Conclusion

The evolution of India's digital economy, marked by its rapid expansion and increasing complexity, necessitates a robust and responsive Online Dispute Resolution (ODR) mechanism. This report has critically analysed the current ODR landscape in India, highlighting operational, structural, and legal challenges while also exploring the vast opportunities that technology offers in enhancing the efficacy of dispute resolution.

A key finding of this report is the pressing need for a harmonised approach that balances technological advancement with the human element of justice delivery. The insights gleaned from international best practices underscore the potential for India to not only adapt but also innovate in its ODR framework. The collaborative efforts of government agencies, legal entities, and technology experts are imperative in this journey.

Recommendations put forth in this report, such as the development of a common ODR language, stringent empanelment criteria for mediators, and the establishment of transparent, non-discriminatory guidelines, pave the way for a more equitable and efficient dispute

resolution mechanism. Additionally, consumer education, awareness, data reforms, and cybersecurity measures are vital to bolster consumer confidence in the ODR system.

The report emphasizes the significant role of AI and emerging technologies in revolutionizing the ODR landscape. However, it is crucial that these technologies act as facilitators, not barriers, to justice. Ensuring accessibility and user-friendly interfaces, particularly for those at the digital divide, is as important as the sophisticated algorithms driving these platforms.

In conclusion, India stands at a pivotal juncture where the digital consumption economy can leapfrog into a new era of dispute resolution, one that is efficient, equitable, and empathetic. The roadmap laid out in this report, drawing from a rich tapestry of discussion, expert opinions and subsequent analysis, aims to guide stakeholders in actualising an ODR ecosystem that not only addresses today's challenges but is also resilient and adaptable to the demands of tomorrow's digital landscape.





Acknowledgements

Primus Partners thanks the experts and organisations who were a part of the discussions, and who provided their thoughtful quotes. It also expresses its deepest gratitude to the esteemed organisations and professionals who were a part of the reviewing process of the report.

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