

# Resolving Disputes in the Digital Era: A Study of Online Dispute Resolution in India

Lubaina Sutarwala\*

## Introduction

Online Dispute Resolution (“ODR”) has been defined as “a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties,” primarily involving “negotiation, mediation or arbitration, or a combination of all three.”<sup>1</sup> As a result, it is often viewed as “the online equivalent of ADR.”<sup>2</sup> Originating in the 1990s, ODR went through several phases.<sup>3</sup> The initial phase, spanning from 1990 to 1996, was an experimental stage involving electronic solutions.<sup>4</sup> Subsequently, between 1997 to 1998, ODR experienced dynamic growth, marked by the establishment of the first commercial web portals providing services in this domain.<sup>5</sup> This was followed by the ‘business phase’ from 1999 to 2000, during which numerous companies began undertaking electronic dispute resolution projects amid a favourable economic climate, with the proliferation of IT services.<sup>6</sup> Thus, by 2001, a new phase of institutionalising ODR commenced.<sup>7</sup> ODR techniques were implemented by various institutions, especially by courts and administrative authorities, and they have not looked back since.

Countries across the globe are steadily developing an ODR system to make justice more accessible, cost-effective, and efficient. India’s progress, however, is slow-paced. A shift in the mindset of Indian courts and citizens alike is required to ensure that the turn towards adopting ODR is faster and smoother. The Chief Justice of India, at an event held by the National Institute for Transforming India (“NITI Aayog”) last year, recognised this and went on to state that “above all, there needs to be a fundamental change in the mindset: look upon dispute

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<sup>1</sup> Arthur M. Monty Ahalt, ‘What You Should Know About Online Dispute Resolution’ (2009) Practical Litigator 22.

<sup>2</sup> *ibid.*

<sup>3</sup> Karolina Mania, ‘Online Dispute Resolution: The Future of Justice’ (2015) 1(1) International Journal of Comparative Jurisprudence <<https://doi.org/10.1016/j.ijc.2015.10.006>> accessed 15 March 2024.

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

resolution not as relatable to a place, namely a court where justice is ‘administered’, but as a service that is availed of.”<sup>8</sup>

### ODR in India

One significant adaptation by the Indian judiciary during the pandemic was the increased integration of technology into its system, ensuring that courts could continue functioning and proceedings did not come to a halt. Courts were forced to adapt to this ‘new normal,’ and so, proceedings took place online, pleadings were filed online, and digital accessibility increased significantly, enabling individuals from all over the country to access courts from their homes. In the post-pandemic era, India has the opportunity to continue using ODR and strengthen the system further. Yet, despite receiving generous funding for an elaborate technology set up during the pandemic, as soon as courts returned to physical hearings, the virtual systems were disabled.<sup>9</sup>

Last year, a plea was filed before the Indian Supreme Court because a video conferencing facility before a high court where the litigant’s case was being heard, though set up, was not being put to use.<sup>10</sup> The Supreme Court took cognizance of the matter and sought affidavits from the Registrars of all the high courts and several tribunals in the country to ascertain whether video conferencing facilities were being made available to litigants. The statistical results, the Supreme Court observed, were “abysmal”.<sup>11</sup> The absence of a unified standard operating procedure, amongst other things, was cited as a roadblock to making use of online systems. Other key problem areas that were identified were poor internet connectivity, the failure to publish links to the video conference meetings on the cause list, and the fact that many courts have not yet introduced an online filing system to aid the online set-up.<sup>12</sup>

In response to this discovery, the Supreme Court ordered that hybrid hearing facilities should be made available to all litigants and members of the Bar within two weeks from the date of

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<sup>8</sup> Mehal Jain, ‘Online Dispute Resolution: Justice Chandrachud Advocates for ODR in Virtual Hearings’ (*Live Law*, 11 April 2021) < <https://www.livelaw.in/top-stories/online-dispute-resolution-odr-justice-chandrachud-virtual-hearing-niti-ayog-172444> > accessed 15 March 2024.

<sup>9</sup> The Wire Staff, ‘Judges Have to Adapt to Technology, Says Supreme Court’ (*The Wire*, 7 October 2021) < <https://thewire.in/law/judges-have-to-adap-to-technology-says-supreme-court> >.

<sup>10</sup> *Sarvesh Mathur v High Court of Punjab & Haryana* (2023) SCC Online SC 1293.

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

the order. The Court also addressed funding apprehensions by instructing all state governments to ensure adequate funds were allotted for these purposes, in compliance with the timeframe set out.<sup>13</sup> It was only after this that high courts across the country promptly made necessary arrangements and streamlined their standard operating procedure. However, notably, certain tribunals across the country continued to provide a hybrid hearing option to litigants and lawyers alike after the lockdown guidelines were relaxed, even though the high courts failed to do so.

In addition to the Supreme Court's efforts, the NITI Aayog has been at the forefront of India's quest for an ODR mechanism. At the NITI Aayog event, the Chief Justice of India identified the "fear of the unknown" as a key reason for the hesitation in adopting an ODR framework. He emphasised the importance of reevaluating any preconceived biases against fully implementing ODR. Further, the NITI Aayog launched its Online Dispute Resolution Handbook ("the report") at the event, which has helped promote the use of ODR.<sup>14</sup>

The report is a result of meticulous research and analysis by the committee led by Retd. Justice AK Sikri. It lays down the path ahead for India as a country to adopt an ODR framework. The report reverberates the sentiments of the Chief Justice of India, in its acknowledgement of the fact that it is the judiciary that is leading the way in strengthening India's ODR mechanism.<sup>15</sup> It also recognises the role of various stakeholders in setting up a successful ODR mechanism.<sup>16</sup> While the diverse stakeholders mentioned in the report are the Government and its various departments, individual tribunals constituted under statutes and courts should be included as well. It is these tribunals that, as mentioned earlier, continued to provide an online alternative long after the pandemic ended. Furthermore, improving the system on the tribunal level has far-reaching benefits for pendency and efficiency in appellate forums such as the high court as a majority of the references before the high courts and the apex court arise from decisions of tribunals and lower courts. Only with these stakeholders coming together will an effective change occur through the guidelines and recommendations. The Securities and Exchange Board of India seems to have taken the cue and has released a master circular to establish a common ODR portal to facilitate ODR for disputes that pertain to the securities market in

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<sup>13</sup> *Sarvesh Mathur* (n 10).

<sup>14</sup> Niti Aayog Expert Committee on ODR, 'Designing the Future of Dispute Resolution: The ODR Policy Plan for India' (*NITI Aayog*, October 2021) <> accessed 15 March 2024.

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid.*

India.<sup>17</sup> This circular, with detailed instructions and a step-by-step guide for grievance redressal, also provides for the appointment of a conciliator or an arbitrator to aid resolution.<sup>18</sup> If all Tribunals in the country were to adopt this approach, not only would the process become streamlined, but also the benefits of the ODR mechanism would be widespread and could cover a variety of disputes.

The report also provides a series of recommendations with the aim that their implementation would eventually result in a legal framework to further ODR in India. The recommendations include increasing access to digital infrastructure, spreading awareness and digital literacy, building trust in ODR, and suitably regulating the ODR system.<sup>19</sup> The final recommendation is to incrementally implement ODR in phases and ensure that all aspects of the aforementioned recommendations are covered.

The initial phase focuses on maximising the use of the existing capacity and capabilities of the ODR mechanism.<sup>20</sup> A detailed plan has been provided laying down measures that various bodies such as the Government of India, the Judicial Academies and Legal Services Authorities, and the Ministry of Law and Justice can take in order to encourage the use of ODR in the government sector. The second phase pertains to mainstreaming ODR.<sup>21</sup> This could be achieved through governmental initiatives or efforts, including modifying laws, providing training, and improving digital infrastructure.

The third and final phase would be to make ODR a primary mode of dispute resolution by recommending that the Government build a national ODR platform of their own.<sup>22</sup> Given that the report is modelled on the historical development of ODR globally and the various phases under which it came into existence, it concludes with a recommendation to implement India's ODR framework in a phased manner as well, keeping in mind the learnings from the earlier phases to ensure that the objectives of dispute avoidance, legal health, dispute containment and dispute resolution are fulfilled.

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<sup>17</sup> Securities and Exchange Board of India (SEBI), 'Master Circular for Online Dispute Resolution' (*SEBI*, 31 July 2023), <[https://www.sebi.gov.in/legal/circulars/jul-2023/online-resolution-of-disputes-in-the-indian-securities-market\\_74794.html](https://www.sebi.gov.in/legal/circulars/jul-2023/online-resolution-of-disputes-in-the-indian-securities-market_74794.html)> accessed 15 March 2024.

<sup>18</sup> *ibid.*

<sup>19</sup> NITI Aayog Expert Committee on ODR (n 13).

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

<sup>22</sup> NITI Aayog Expert Committee on ODR (n 13).

However, despite the initial efforts, the Government of India has not taken further steps to advance the ODR agenda. During a 2023 parliamentary session, when asked about plans to promote and implement ODR services, the Minister of Law and Justice stated that ODR in India is still in its early stages. He stated that awareness measures would be implemented once the legal framework for ODR is adopted, which contradicts the proposed phase-driven implementation plan.<sup>23</sup>

Unfortunately, the Government's response inspires no confidence that a legal framework for ODR will be implemented in the near future. The Minister in turn relied upon Section 30 of the Mediation Bill, introduced in December 2021, which provides for ODR. This, however, is inadequate. Mediation is only one of the many forms of dispute resolution prevalent in the country today and while various courts and statutes must recognise ODR, a cohesive legal framework for ODR is required if it is to be effectively availed of. The pandemic brought the use of ODR to the fore of the Indian legal system. In the post-pandemic era, therefore, it can hardly be said that ODR is still in its nascent stage. The real challenge to ODR in India is not its infancy in the country, but rather the lack of a comprehensive unified framework to further its use and development.

### **The Benefits of ODR in India**

Some key factors that make ODR essential for a more progressive justice system are the access to justice it provides its ability to overcome geographical constraints, its time-saving and money-saving function, and the flexibility it offers. While ODR is accompanied by its own set of cons that a state may have to combat initially, the main concern being a lack of digital literacy and awareness coupled with technological challenges, its advantages outweigh its disadvantages. Several cases are currently pending in India and the burden on the courts is increasing. Conducting certain proceedings in an ODR setting will reduce the burden on the courts and in turn lead to speedier disposal of the references made to them. India's biggest strength lies in the fact that its statutory remedies provide for a tribunal and/or forum for adjudicating disputes arising from statutes as a first step. If ODR is successfully implemented, these tribunals and forums will become better equipped to deal with a larger number of cases, providing relief to scores of litigants. The added benefit of this is that more judicial time will

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<sup>23</sup> Rajya Sabha, Deb., Unstarred Q. No. 1701, 3rd Aug. 2023.

be spent in administrating justice. For instance, in bail matters, often accused persons spend the entirety of their sentence as undertrial prisoners because their application was not heard and decided in time.

Studies have indicated that while dispute resolution in the formal legal system can take up to 1825 days to conclude, litigants can have their disputes resolved in 45-90 days on average when implementing ODR.<sup>24</sup> Another benefit is the cost involved. While litigating in court can cost nearly 30% of the claim value, ODR costs less than 1% of the claim value.<sup>25</sup> Further, most individuals are deterred by the time and cost involved in litigation and therefore are willing to give up their rights or claims. ODR's efficiency and cost-saving function, therefore, is also an effective way of maintaining/ restoring public faith in the judiciary. If the public realises that ODR can ensure that their claims are decided efficiently, litigants and individuals will be encouraged to file complaints and seek justice.

### ODR across the Globe

India can draw inspiration from other jurisdictions that have embraced ODR and implemented a legal framework for ODR. China's plans for smart courts were announced as early as 2015 and have been in action since 2017<sup>26</sup> when it launched a cyber court to handle internet disputes.<sup>27</sup> In 2019, a report on the 'internet judiciary' was released. An example of this is the Hangzhou Internet Court which conducts the entire dispute resolution process online: from filings to issuing verdicts/rulings.<sup>28</sup> In addition to the Court at Hangzhou, Internet Courts have also been set up in other major cities of Beijing and Guangzhou.<sup>29</sup> The ODR system in China

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<sup>24</sup> Aditi Singh et. al, 'Accelerating the Adoption of ODR in India Could Transform How Disputes Are Resolved in an Overburdened System' (*Dalberg Advisors*, 8 April 2021) <<https://dalberg.com/our-ideas/accelerating-the-adoption-of-odr-in-india-could-transform-how-disputes-are-resolved-in-an-overburdened-system/>> accessed 15 March 2024.

<sup>25</sup> *ibid.*

<sup>26</sup> Meirong Guo, 'Internet Court's Challenges and Future in China' (2021) 40(1) *Computer Law & Security Review* 1 <<https://doi.org/10.1016/j.clsr.2020.105522>> accessed 15 March 2024.

<sup>27</sup> Dani Deahl, 'China's first 'cyber-court' is now in session,' (*THE VERGE*, 19 August 2017) <<https://www.theverge.com/tech/2017/8/18/16167836/china-cyber-court-hangzhou-internet-disputes>> accessed 15 March 2024.

<sup>28</sup> Amy J. Schmitz, 'Expanding Access to Remedies through E-Court Initiatives' (2019) 67(1) *Buffalo Law Review* 89 <<https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=4724&context=buffalolawreview>>.

<sup>29</sup> Laney Zhang, 'China: Supreme Court Issues Rules on Internet Courts, Allowing for Blockchain Evidence' (*Library of Congress*, September 2018) <<https://www.loc.gov/item/global-legal-monitor/2018-09-21/china-supreme-court-issues-rules-on-internet-courts-allowing-for-blockchain-evidence/>> accessed 15 March 2024.

was further strengthened during the pandemic when the focus shifted from just internet disputes to mediation, arbitration, and conciliation on virtual platforms as well.<sup>30</sup>

While courts in India have now developed an e-filing system allowing parties to file pleadings online, it is optional. The rest of the process, including the method of hearing and issuing a verdict, remains unchanged except for virtual hearings if required. The transition to an ODR system in India will only occur when its use is mandated. Presently, parties are at liberty to use the e-filing mechanism and to appear before the court online. However, no stringent guidelines or rules are in place. For certain kinds of disputes, just like China, India too can adopt a resolution system that is conducted online entirely from start to finish. Not only does this save the time of all parties involved, but it also cuts down the cost of litigation significantly and can lead to a drastic drop in pendency.

Another noteworthy example is in effect in Canada. Its first online court, the Civil Resolution Tribunal, was founded after a Bill to this effect was passed in 2012. In 2017, it was the only country in the world with an ODR system that was fully integrated into its justice system.<sup>31</sup> The primary focus of this was to reduce the skyrocketing cost of litigation in Canada and promote speedy dispute resolution. In the post-pandemic era, this ODR set-up is only becoming stronger and more efficient. Considering that on average, a litigant in India spends Rs. 1039 per case per day litigating, India can certainly benefit from the creation of an online court of this scale.<sup>32</sup>

## Conclusion

In conclusion, the ODR's journey in India is a work in progress. While global momentum towards ODR gains traction, India faces the challenge of aligning mindsets within its legal system and society. The judiciary's adaptation to technology during the pandemic showcased the potential benefits of ODR, making justice more accessible. However, the path to a

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<sup>30</sup> Vincent Chow, 'China Pushes for Increase in Online Dispute Resolution as It Reboots Economy' (*Law.com International*, 19 March 2020) <<https://www.law.com/international-edition/2020/03/19/china-pushes-for-increase-in-online-dispute-resolution-as-it-reboots-economy/>> accessed 15 March 2024.

<sup>31</sup> Shannon Salter, 'Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal,' (2017) 34(1) *Windsor Y.B. Access Just.* 112 <<https://canlii.ca/t/77k>> accessed 15 March 2024.

<sup>32</sup> Shruthi Naik, 'The Cost of Litigation – What Alternatives Do We Have?' (*Daksh*, 16 November 2017) <<https://www.dakshindia.org/cost-litigation-alternatives/>> accessed 15 March 2024.

comprehensive ODR framework still encounters obstacles such as the lack of unified procedures and inadequate digital infrastructure.

NITI Aayog's proactive role in promoting ODR through its handbook signifies a positive step, emphasizing the need for a fundamental shift in perspective. The phased approach recommended by the ODR handbook, from optimizing existing capabilities to mainstreaming ODR, and eventually making it the primary mode of dispute resolution, offers a strategic roadmap for India's ODR future. In navigating the phases laid out, it is clear that collaboration among diverse stakeholders, including Government bodies, Tribunals, and Courts, plays a crucial role in ensuring the successful implementation of ODR in the country. The experiences of other nations, particularly China and Canada, demonstrate the transformative impact of integrating ODR into their justice systems.

Despite the launch of the draft framework, the government's progress in implementing ODR has been slow. The Government's acknowledgement of ODR's nascent stage indicates a need for increased awareness and a comprehensive legal framework. The potential for a national ODR platform holds promise, emphasising dispute avoidance, legal health, and efficient dispute resolution. In the post-pandemic era, the time is ripe for India to embrace ODR fully. By addressing challenges, fostering awareness, and implementing a cohesive legal framework, India can harness the transformative power of ODR, ensuring justice is not only dispensed in physical courtrooms but also becomes a service accessible to all, regardless of geographic location or economic circumstance. As the Chief Justice while ushering in this new era remarked "The time for a change to ODR has come. And it is here to stay".<sup>33</sup>

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Lubaina Sutarwala is a final-year law student at Government Law College, Mumbai (India). She is set to graduate in 2025.

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<sup>33</sup> Mania (n 3).