
CRITICAL ANALYSIS OF THE CODE OF CIVIL PROCEDURE IN RELATION WITH ONLINE DISPUTE RESOLUTION (ODR)

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ABSTRACT

Information is the power in this digital era. The digitalisation and extend of Artificial Intelligence in the sectors of tech have made a growth not only in marketing or corporate sector but also in delivering of Justice in India. The technology is a component of the legal system gives rise to unboxing an idea of having Online Dispute resolution (ODR) in India. ODR is an advanced digital tool-based dispute settlement technique used in India. This paper is focusing on the critical review of online dispute resolution system, government initiatives and the challenges and obstacles in ODR in context of Code of Civil Procedure (CPC). For the purpose of the study multiples research papers, CPC regulations, government policies for ODR, and information laws in India to make the justice system in the digitalisation in significant laws has been reviewed. Furthermore, the present practices used by various corporate and government regularities which are using and promoting ODR in resolving disputes, it have made a greater impact on the faster and quality justice also has been reviewed. The study found that the Indian government's financial aid, information campaigns, regulatory frameworks, and incentives have all led to the widespread implementation of ODR. Finally, the study recommends that enhancing digital literacy, connection, and specialized ODR platforms are among the suggested areas for improvement.

Keywords: Code of Civil Procedure (CPC), Online dispute resolution (ODR), digitalization

I. INTRODUCTION

A method of resolving conflicts without going to court is through online dispute resolution (ODR). It's a part of alternative dispute resolution (ADR) that can be applied to disagreements over internet purchases and other issues. Tools for obtaining legal data, considering choices, and managing a case may be included in ODR. It is no more hidden about the phase of digitalization in every other field, similarly in the legal field we have online dispute resolution platform, whose judgement matters the same as the physical courts of India does. Before it, it is known about the burdens courts have to solve the disputes we have the mechanism of ADR (Alternative Dispute Resolution) which to improve the mechanism with speedy justice with accuracy and transparency we now have ODR (Online Dispute Resolution). When the University of Massachusetts and the University of Maryland started their first ODR programs in the 1990s, ODR officially became a reality in the country. Since then, ODR's use by numerous businesses and agencies has increased¹.

What actually ODR means? Online dispute resolution (ODR) is an advanced digital tool-based dispute settlement technique used in India. ODR is applied in India in many different contexts, let's take an example of Market for securities: An ODR platform named SMART ODR has been launched by the Securities and Exchange Board of India (SEBI) to assist in resolving disputes in the Indian securities market. Investors and other market participants can use the platform to register grievances and disagreements, which are then settled by online arbitration and conciliation. Online mediation is included in the Government of India's Mediation Bill, 2021, which acknowledges the value of out-of-court resolution (ODR). The purpose of the bill is to break down barriers of distance for the parties to the dispute.

II. ASSOCIATION OF ODR WITH CPC

Online Dispute Resolution (ODR) is a new field that uses technology to resolve conflicts without a party having to appear in person in court. It is becoming more accepted in the Indian legal system, and it is crucial to understand how it relates to the Code of Civil Procedure, 1908 (CPC), especially in light of civil litigation and alternative dispute resolution (ADR) methods. Section 89 of the CPC encourages out-of-court conflict resolution through mediation, arbitration, and conciliation, permitting specific ADR procedures. ODR, which uses

¹ M.P. Jain, The Code of Civil Procedure (8th ed., LexisNexis 2022).

technology to resolve disputes in a digital setting, is comparable to ADR and saves time and money by promoting alternatives to traditional litigation.

The introduction of ODR changes the guidelines for holding hearings and trials by moving proceedings online. Orders X (Examination of Parties by the Court) and XVIII (Hearing of the Suit and Examination of Witnesses) need to be changed to allow for online evidence presentation and virtual hearings. The Information Technology Act of 2000 and Section 65B of the Indian Evidence Act of 1872 permit the admission of electronic evidence, which is vital for ODR.

Case administration and filing can be simplified through digital document management, electronic notices, and e-filing systems. Some Indian courts are already using e-filing and video conferencing as a first step towards full-scale ODR integration under the CPC. However, integrating ODR with the conventional CPC framework can be difficult, particularly in rural areas where access to the internet and digital literacy may be scarce.

III. PROGRESSION OF ODR

The in-depth analysis of the evolution of ODR was started with the first instance was in year 1990, where the internet grew with a great popularity and so did the number of transactions make the online transformation a revolution. Broadly, ODR's development across the world can be divided into three phases, with each phase benefiting from the subsequent innovations in Information Communication and Technology (ICT). The three phases are:

Phase One: eBay is the first to try this out: The first ODR project initiatives were launched in 1996 by the Universities of Massachusetts and Maryland. Due to the rise of e-commerce, conducting business online calls for a reliable infrastructure. ODR offered a solution to this problem. In order to provide online dispute resolution services for disputes arising between buyers and sellers utilising its marketplace, eBay initiated a test project in 1999. By 2010, over sixty million complaints a year were handled by eBay's ODR system².

Phase two: The ODR startup explosion. The popularity of ODR and the expansion of ODR platforms were fuelled by the success of this model and the internet's rapid growth. Twenty-one new ODR programs were introduced in 1999. A few well-managed platforms, like Cyber

² Poorvi Bhati, ADR and Section 89 of CPC, Via Mediation Centre.

settle, Smart settle, and Mediation Room, have had a big impact on the dispute resolution market.

Phase Three: Executive and Judicial Adoption, the success of a few of the private ODR platforms has piqued the government's interest in this new addition to the dispute resolution ecosystem³.

IV. REVOLUTIONIZING INDIAN JUSTICE: THE ODR PARADIGM

India is being using the technology is being used by Indian courts to enhance the country's system for resolving disputes between parties. One component of the Indian government's plan to computerise district and subordinate courts is the "E-Courts Mission Mode Project," which was started with the goal of enhancing access to justice via the use of technology. But as our constitution states, we must enhance the system to make it easier for everyone to use the legal system. Committees within the government are developing a new system that resolves issues without the need for legal action.

Technology is used to sort cases in the courts from offline to online, particularly during a pandemic. The old method of hearing trials in packed courtrooms has altered, with courts now hearing cases virtually. This technology isn't limited to courts; it can also be used for online Lok Adalat, or E-Lok Adalat. This approach to technology facilitates cheaper, easier, and quicker court access as well as dispute resolution. Maybe in the future, individuals will be able to access justice with the aid of even more useful and sophisticated technologies. Online dispute resolution is one of these novel approaches that is discussed in this article. In a court of conflict settlement, physical presence is not required.

Time-saving blockchain-driven arbitration procedures for smart contracts are a significant illustration of technology's potential. By transferring rights and obligations, computer code-drafted smart contracts can employ technology to automatically enforce their enforceability. This suggests that smart contracts built on blockchain technology can be used as the basis for resolution in blockchain arbitration. A self-executing program that directs the necessary activity required under a contract or agreement is known as a smart contract. It is traceable and

³ Rahul Kumar Gaur, Tech-Driven Justice: Unravelling the Dynamics Of Online Dispute Resolution, LiveLaw, (2024).

irrevocable once finished. Meanwhile, blockchain technology is regarded as Bitcoin's cornerstone⁴.

V. GOVERNMENT INITIATIVES AND MEASURES

1. Present the E-Committee: To organise the adoption of information and communication technologies in the court, the Supreme Court formed the E-Committee in 2005. Before the COVID-19 epidemic struck, ODR progress was sluggish; yet, the court gave the field's advancement first priority.
2. Open Centre for OCMC: After 2006, the ODR saw little progress as a few key government ministries and departments pushed for the system's integration. One such step was the Ministry of Consumer Affairs' 2016 opening of the online consumer mediation centre (OCMC) at the National Law School of India University in Bengaluru.
3. SAMADHAAN site launched: In 2018, the Ministry of MSME launched the SAMADHAAN portal to address payment dispute delays involving micro and small businesses. That can eliminate the delay issue, save time, and lower the cost.
4. Introduce the Digital India effort: The Indian government started this effort in 2015 to focus on industries that were digitalising sooner, such as banking, finance, tourism and travel, and education. Bypassing the issue of the physical world, the digital world connects in a way that was before unattainable.
5. Introduced E-ADR: In 2019, E-Alternate dispute resolution, or E-ADR, was introduced with the assistance of legal professionals, as well as social and commercial leaders. This idea aims to join the legal space and create an ADR platform that uses cutting-edge technology to settle conflicts. The company has begun creating an IDR start-up ecosystem across the nation and works for an igniting agent.
6. Introduced vivaad se vishwas: The Indian government introduced the VIVAAD SE VISHWAS program in February 2020 to effectively settle tax issues through out-of-court settlements. By ODR, it settles disagreements quickly. The court system was already overburdened with cases

⁴ Bhavya Singh, T SEBI Introduces Online Dispute Resolution In Indian Securities Market, LiveLaw, (2023)

during COVID-19, and the limits made matters worse. Nevertheless, the ODRs proved to be successful throughout COVID 19.

7. NITI AAYOG policy plan: Following the Supreme Court's creation of an e-committee, NITI AAYOG pushed for the introduction of "The ODR policy plan for India" in 2021. Other government agencies that support the use of ODR disputes resolution systems include the Reserve Bank of India (RBI), Security and Exchange Board of India (SEBI), and others.

VI. CHALLENGES FACES FOR INCLUDING ODR IN THE SYSTEM

The improvement of the judiciary is not the only goal of ODR integration. Along with the benefits come drawbacks and difficulties, like the need for dependable technological tools, digital infrastructure, collaboration from the legal system and courts, and political backing⁵.

Digital Infrastructure: In order to use ODR successfully, we need technology all over the nation. This means that everyone should have unhindered access to digital devices like computers, smartphones, and reliable internet. Unfortunately, not everyone has easy access to these technological resources. The government needs to focus on our digital infrastructure in order to improve this. In 2018, the government launched a digital communication policy with the goal of bolstering the system of communication and providing dependable internet access. By 2022, we want to guarantee that every village has access to broadband⁶.

Digital literacy: It goes beyond simply improving internet infrastructure globally. Individuals are able to use it. The knowledge and usage of digital tools among Indians can differ according to factors including age, education level, and place of residence. To ensure that the ODR system is beneficial to all, the government needs to close this digital divide. This entails starting a program to provide rural areas with internet access and making sure that everyone is aware of it and the fundamentals. For rural communities to gain the knowledge and resources necessary for accessing justice through ODR, a program such as Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA) is required.

Lack of trust in ODR service: Because they don't fully understand online dispute resolution

⁵ Suman Jain Advocate, Section 89, Civil Procedure Code, 1908: A Critical Analysis, 2024 Law Finder Live.

⁶ Mokhinur Bakhranova, ODR (Online Dispute Resolution) System as a Modern Conflict Resolution: Necessity and Significance, European Multidisciplinary Journal Of Modern Science (2022).

(ODR), many users are hesitant to use these services⁷. Some dispute the technology itself; others wonder if the results of ODR can be enforced, particularly in light of the effectiveness of the process in the absence of human contact or the use of new technology, and they worry about data security.

Privacy concern: The use of technology in dispute settlement reduces in-person interactions and raises privacy and confidentiality issues. Online fraud, the possibility of tampering with digital evidence, and the unauthorised sharing of documents and data are among the concerns. The ODR service provider needs to give framework maintenance and data storage top priority in order to fix issue. It is crucial to implement security measures like document encryption and digital signatures.

VII. RECOMMENDATION

- The government has initiated several initiatives to improve digital infrastructure in urban and rural areas, including the Bharat Net program, which aims to provide broadband connection to 2.5 lakh gram panchayats. This initiative has been executed by Bharat Broadband Network Limited (BBNL) and has connected 210100-gram panchayats, laid 677546 km of optical fiber (OFC), and installed 104675 Wi-Fi hotspots⁸.
- Digital education is essential for developing online dispute resolution (ODR). The government has developed digital literacy programs such as Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA) to make the rural population digitally literate. Collaboration with the private sector can help resolve cases during pandemics like COVID-19 by introducing an ODR scheme that includes negotiation, mediation, arbitration within a specific time limit, creating a legal help desk available 24/7 for commercial and employment disputes, and reducing legal costs for those who cannot afford it.
- Building trust and spreading knowledge about ODR requires efforts from the government, ODR institutions, lawyers, ODR platforms, and the judiciary. The government recognizes ADR and ODR service providers and provides clean information about their services. The

⁷ Catherine Rogers, Is International Arbitration in a Race to the Top?, Kluwer Arbitration Blog (March 15, 2018)

⁸ Rishi Sharma, Navigating Disputes Beyond the Courtroom: An Examination of ADR Mechanisms and the Civil Procedure Code (CPC) in India, SSRN, 11 March 2024.

government also makes certain mandates, such as requiring certain cases to go from the ODR before going to court, to decrease court workload.

- The government should run an awareness campaign in urban and rural areas about ODR processes and platforms using media platforms, government websites, and social media to enhance knowledge about the service provided by ODR and highlight its benefits⁹.
- Online Dispute Resolution (ODR) offers faster, more efficient, and more accessible mechanisms for resolving disputes in India. Technology integration shows positive results, and the future looks bright with continued advancement and adoption. By providing a digital platform, ODR enables parties to engage in dispute resolution processes without the need for a physical presence, reducing travel costs and time. ODR platforms can provide quicker resolution through streamlined procedures and real-time communication, reducing the burden on courts and reducing the financial burden on individuals and businesses.
- The Indian government has recognized the potential of ODR and made several steps to promote its adoption, modernizing the legal system, improving efficiency, and making justice more accessible to all citizens. The private sector has played a significant role in developing innovative ODR platforms using advanced technologies such as artificial intelligence and blockchain.

VIII. CONCLUSION

ODR has revolutionized conflict management by providing convenience and efficiency. It has shown immense success in India and has, today, become an important tool in managing consumer complaints. Indian government incentives, financial support, regulatory frameworks, and awareness programs have helped increase the use of ODR extensively. Recommendations for improvement include upgrading digital literacy, connectivity, and specialist platforms for ODR. Now, SEBI has smoothened the process of conflict resolution in the financial sector by instilling trust and reliability among the stakeholders involved. Continued support and innovation will be very important in helping to fully realize the potential of ODR. Its immediate potential is that ODR has the capability to reduce challenges and leverage emerging technologies to be more effective and accessible.

⁹ C.K. Takwani, *Civil Procedure* (9th ed., Eastern Book Company 2023).