



Online mediation and arbitration: Reimagining adr in the digital age

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Abstract

Technological innovations have transformed virtually every aspect of human interaction, including the justice system which helped in providing justice to those corners of the country where people could not reach to seek their share of justice. With the hit of the pandemic Covid-19 in the Technology further proved that the future of justice was not limited to the court room as it pushed us to make changes and pressured us to proliferate. With the advent of Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) platforms, access to justice has expanded beyond traditional courtroom settings, offering efficient, cost-effective, and user-friendly mechanisms to resolve disputes. This paper examines the impact of technological innovations on access to justice through a focused case study on ADR and ODR platforms. It highlights how these platforms leverage technology to address barriers to justice, explores their advantages and challenges, and evaluates their potential to bridge the justice gap globally. This paper further throws light on how nowadays technology has become one of the parts of their justice system as courts are hearing cases virtually and the traditional way of hearing cases in crowded courtrooms have changed.

The traditional justice system has long been criticized for being slow, expensive, and inaccessible to marginalized populations. ADR mechanisms, such as mediation, arbitration, and negotiation, emerged as alternatives to mitigate these limitations. The government has taken steps to adopt alternative dispute resolution (ADR) in some departments and ministries. With the integration of technology, these methods evolved into ODR platforms, enabling dispute resolution through online channels which indeed marks a remarkable milestone in reshaping how disputes are resolved, impacting the quality of life for individuals and the business environment for industries. This transformation has redefined the principles of accessibility, efficiency, and fairness in the delivery of justice.

ODR platforms harness digital tools such as artificial intelligence, blockchain, and video conferencing to streamline the resolution process. These platforms reduce geographical barriers, offer flexible scheduling, enabling parties to participate at their convenience. One of the most significant contributions of technological innovations in ADR and ODR is the reduction in costs associated with dispute resolution. Traditional litigation often involves substantial legal fees, court costs, and expenses related to travel and accommodation. ODR platforms minimize these expenditures by digitizing processes such as case filing, evidence submission, and communication between parties.

Platforms such as eBay's ODR system for buyer-seller disputes, India's Lok Adalats (People's Courts) transitioning to virtual formats, and international arbitration institutions adopting online hearings exemplify the diverse applications of ODR. These developments underscore the potential of ODR to complement traditional justice systems and provide alternative pathways for resolving disputes.

However, the adoption of ADR and ODR platforms is not without challenges. One major concern is the digital divide, which disproportionately affects individuals in rural areas, low-income groups, and older populations. Limited access to technology and internet connectivity can exclude these groups from benefiting fully from ODR platforms. Furthermore, there are concerns about data privacy and security, as the sensitive nature of dispute resolution requires robust safeguards to protect user information.

This paper further offers several recommendations to reform and enhance ADR and ODR systems, ensuring their inclusivity, efficiency, and alignment with principles of justice. Firstly, addressing the digital divide is crucial. Governments and private stakeholders should invest in expanding internet connectivity, particularly in rural and underserved areas, and provide affordable access to digital devices. Alongside this, targeted digital literacy programs should be introduced to equip individuals, especially those from marginalized communities, with the skills to navigate ODR platforms effectively. Secondly, data privacy and security frameworks must be strengthened to ensure user trust. Comprehensive regulations, secure encryption standards, and regular audits should be mandated to protect sensitive information shared during dispute resolution processes. Additionally, creating user-centric interfaces, training to mediators and arbitrators to work effectively in virtual environments and handle technology-enabled tools, raising public awareness about the benefits of ADR and ODR.

Keywords: Online dispute resolution, (ODR) alternative dispute resolution, (ADR) technological innovations, access to justice digital divide

Introduction

Access to justice is a cornerstone of any democratic society. However, in India, the traditional justice system faces significant challenges, including backlogged cases, high costs, and delays. To address these, Alternative Dispute

Resolution (ADR) mechanisms like mediation and arbitration were introduced as faster, less expensive alternatives. Despite their benefits, ADR methods have limitations in scalability and accessibility, particularly for marginalized communities.

The integration of technology into ADR led to the rise of Online Dispute Resolution (ODR), combining ADR principles with digital tools such as artificial intelligence (AI), blockchain, and video conferencing. ODR allows disputes to be resolved remotely, overcoming geographical barriers, and reducing costs. This shift aligns with global trends, with platforms like eBay's dispute resolution system resolving millions of cases annually, showcasing scalability and efficiency.

The urgency of adopting ODR in India became evident during the COVID-19 pandemic when courts transitioned to virtual hearings, and stakeholders recognized ODR's potential to address long-standing justice system challenges. This momentum was further supported by a NITI Aayog-led virtual meeting in June 2020, which included Supreme Court judges, industry leaders, and legal experts to advance ODR in India. As a result, a comprehensive ODR handbook was released in April 2021, offering a roadmap for nationwide implementation.

Technology has become a powerful enabler in the justice system, extending access to remote areas and ensuring that even those who previously struggled to seek legal recourse can now access justice. While disruptive, the COVID-19 pandemic acted as a catalyst for change, pushing the justice system to embrace technology on an unprecedented scale. The idea of virtual courts and online dispute resolution, once unimaginable, is now becoming the norm, marking a significant shift in how justice is delivered.

Evolution of Adr And Odr Platforms

The concept of Online Dispute Resolution (ODR) emerged alongside the internet's growth in the 1990s, which led to a surge in online transactions and corresponding disputes. The global development of ODR can be categorized into three distinct phases, each marked by advancements in information and communication technology (ICT).

First Phase: eBay's experiment leads the way

By the late 1990s, the rapid growth of the internet and the rise of e-commerce created a pressing need for a reliable system to resolve disputes arising from online commercial activities. Online Dispute Resolution (ODR) emerged as an effective solution to address these challenges. During this period, a few early e-commerce platforms began to experiment with ODR.

In 1999, eBay launched a pilot project offering online mediation services to resolve disputes between buyers and sellers on its platform. Within two weeks, the project successfully handled 200 disputes, the largest number of cases ever resolved online at the time. This success encouraged eBay to formally integrate dispute resolution as an option for failed transactions. Initially, the company outsourced the process to SquareTrade, a startup specializing in internet-based dispute resolution, but eventually took full control of the system.

Over the following decade, eBay ODR platform saw remarkable growth. By 2010, it was resolving more than 60 million disputes annually, setting a global standard for efficiency and scalability in online dispute resolution.

Second Phase: Growth of ODR start-ups

The success of this model, combined with the rapid expansion of the internet, marked the beginning of ODR's evolution and the subsequent surge in ODR platforms. In 1999 alone, 21 new ODR programs were launched, a significant increase from just nine in the previous year. By

2004, this number had grown to 115. However, many of these initiatives were short-lived, with only a few platforms, such as Cybersettle, Smartsettle, and the Mediation Room, managing to establish a notable presence and significantly influence the dispute resolution landscape.

Third Phase: Adoption by the Government and judiciary

The success of a few private ODR platforms piqued the interest of governments, prompting them to explore this emerging innovation in dispute resolution. A significant milestone came in 2004 when the City of New York implemented an ODR system developed by Cybersettle to address backlogs and accelerate the resolution of personal injury claims. This initiative resulted in an 85% reduction in settlement times and an impressive 66% settlement rate within 30 days of dispute submission.

Recognizing the efficiency of ODR, several governments began integrating it into their judicial frameworks. The global adoption and successful implementation of ODR have led to the development of distinct models, which continue to operate in parallel worldwide:

1. In-house private ODR platforms managed by individual businesses.
2. Independent private ODR platforms catering to diverse dispute categories and offering various resolution methods.
3. Government-run or state-sponsored ODR programs and platforms.
4. Court-annexed ODR systems integrated into formal judicial structures.

Advantages of Online Dispute Resolution (Odr)

The integration of Information and Communication Technology (ICT) into dispute resolution has transformed traditional processes, addressing challenges associated with both courts and Alternative Dispute Resolution (ADR) mechanisms. Below are the key advantages of ODR:

1. Cost-Effective

ODR significantly reduces the economic burden of dispute resolution. By eliminating the need for physical travel, venue rentals, and lengthy legal proceedings, it lowers direct costs for both parties and mediators. The streamlined resolution process also cuts legal fees and minimizes the time required to settle disputes. For businesses, ODR mitigates indirect costs such as productivity losses, reduced investor confidence, and slower economic growth caused by prolonged litigation. Although not all these challenges are completely addressed by ODR, the system helps reduce their impact, making it an economically viable alternative.

2. Convenient and Quick

The pendency of cases in Indian courts has long been a challenge, with delays caused by procedural complexities, staff shortages, and excessive adjournments. ODR provides a faster, more efficient alternative by enabling asynchronous communication and eliminating the need for physical presence. Disputants can resolve cases through document-based processes or virtual interactions, which is especially beneficial in cross-border disputes. Platforms like those used in e-commerce allow consumers to resolve conflicts seamlessly, offering convenience and time savings.

3. Customizable Processes

ODR platforms can integrate hybrid models such as med-arb or arb-med-arb, expanding beyond traditional ADR

methods. These systems can be tailored to suit specific categories of disputes, making resolution processes more flexible and user-friendly. The use of artificial intelligence further enables customized workflows, streamlining resolutions for diverse cases and enhancing user satisfaction.

4. Encourages Dispute Resolution

By addressing barriers such as access to physical courts, high costs, and disabilities, ODR promotes greater participation in formal dispute resolution mechanisms. Online tools, such as negotiation and mediation, make the process less adversarial and more accessible. Users can engage in the comfort of their own homes, which reduces intimidation and encourages disputants to assert their rights. This improved experience increases trust in the system and boosts participation rates.

5. Reduces Implicit Bias

ODR platforms, particularly text-based systems, help minimize biases stemming from race, caste, gender, or social status by removing audio-visual cues. The decision-making process focuses purely on the evidence and claims presented, rather than the identity of the parties involved. However, while ODR reduces biases inherent in human interactions, it must address potential biases introduced through AI algorithms to ensure fairness.

6. Long-Term Benefits

ODR's cost efficiency, convenience, and inclusivity contribute to broader societal benefits. By making justice more accessible, ODR fosters awareness of legal rights and promotes a healthier legal culture where individuals and businesses can enforce contracts effectively. For instance, the European Union mandates that merchants inform consumers about ODR availability, improving contract enforcement and the business environment. Such initiatives can enhance India's global standing on parameters like 'Ease of Doing Business,' particularly in contract enforcement, attracting greater investments to the country.

7. Transformation of Legal Paradigms

The adoption of ODR and virtual courts has the potential to democratize justice delivery. Everyday technologies, such as mobile phones and video conferencing, can transform how cases are filed, heard, and resolved. Digital documents and virtual hearings are altering traditional legal processes, paving the way for a more efficient and inclusive justice system.

Challenges Faced in The Adoption of Odr Platforms

While Online Dispute Resolution (ODR) offers significant potential to revolutionize dispute resolution processes, its integration into the mainstream justice system presents several challenges. These obstacles span structural, behavioural, and operational dimensions, and addressing them is essential for the successful adoption of ODR in India.

Structural Challenges

1. Digital Infrastructure

A robust technology infrastructure is a prerequisite for the effective implementation of ODR. This includes access to computers, smartphones, and reliable, high-speed internet, which are essential for conducting virtual hearings. However, in India, a significant digital divide persists,

particularly in rural areas, where internet penetration remains low. While initiatives like the National Broadband Mission aim to address this gap, the lack of sufficient infrastructure currently limits equitable access to ODR platforms.

2. Digital Literacy

Digital literacy is critical for the widespread adoption of ODR, yet it varies significantly across age, geography, and socioeconomic status. In rural India, internet penetration is just 32.24%, compared to 99.12% in urban areas, leaving many individuals without the skills or resources to access ODR services. Programs like the Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA) are steps in the right direction but need to be scaled up to ensure inclusivity.

3. Access to Technology

The digital divide extends beyond geography, with disparities based on gender, class, and age. Women make up only one-third of internet users in India, and the proportion is even lower in rural areas. Similarly, individuals over 40 years of age represent just 15% of internet users. These gaps exacerbate inequalities in accessing justice through ODR and must be bridged through targeted interventions.

Behavioural Challenges

1. Lack of Awareness

ODR is still in its nascent stages in India, and many litigants, businesses, and even legal professionals are unfamiliar with its potential. The lack of awareness about ODR's benefits, such as efficiency and cost savings, results in limited trust and confidence in the system. Systematic awareness campaigns and increased exposure to ODR processes are necessary to build familiarity and encourage adoption.

2. Trust Deficit

Scepticism about the effectiveness of ODR, concerns over data security, and the absence of face-to-face interactions contribute to a lack of trust in the platform. Questions regarding the enforceability of ODR outcomes further hinder its acceptance. Establishing governance frameworks and ethical standards for ODR providers is critical to addressing these concerns and building trust among users.

3. Legal Culture

In India, there is a strong reliance on courts for dispute resolution, and ADR mechanisms have not fully permeated the legal culture. This reluctance to embrace alternatives poses a challenge to ODR adoption. Strengthening ADR mechanisms and demonstrating their effectiveness can serve as a stepping stone for transitioning to ODR.

4. Government and PSU Engagement

The government and public sector undertakings (PSUs) are among the largest litigants in India. Their participation in ODR processes is crucial for establishing trust and credibility. However, this requires training government officials and PSU representatives to effectively utilize ODR platforms.

Operational Challenges

1. Privacy and Confidentiality

The digital nature of ODR introduces risks such as online impersonation, data breaches, and tampering with digital evidence. Ensuring robust data security measures, such as

encryption and digital signatures, is essential to safeguard confidentiality and maintain the integrity of ODR processes.

2. Availability of Neutrals

ODR will create a high demand for neutrals—mediators and arbitrators—who are proficient in using technology. Developing a comprehensive training and certification ecosystem for ADR/ODR professionals is critical to meet this demand and ensure the quality of dispute resolution.

3. Archaic Legal Processes

India's legal framework includes outdated processes that hinder end-to-end online dispute resolution. For instance, the requirement for physical notarization of documents and the cumbersome enforcement of arbitral awards create barriers to seamless ODR adoption. Modernizing these processes through digitization is necessary to align them with ODR's objectives.

4. Enforcement of ODR Outcomes

The uncertainty surrounding the enforcement of ODR outcomes, such as mediation settlements and arbitral awards, undermines user confidence. Simplifying the enforcement process and addressing legal ambiguities will be crucial to ensuring the credibility of ODR platforms.

Recommendations for Overcoming Challenges in The Odr System And Enhancing Effectiveness

To address the multifaceted challenges faced in implementing Online Dispute Resolution (ODR) systems in India, coordinated efforts are required from the government, judiciary, private sector, and other stakeholders. Below are detailed recommendations categorized into strategic areas to enable the effective integration and expansion of ODR platforms:

Increasing Access to Digital Infrastructure

1. Enhance Physical Infrastructure

- **Leverage Existing Government Programs:** Accelerate initiatives like the National Broadband Mission, BharatNet, and PM WANI to expand internet connectivity and digital access across rural and underserved areas.
- **Set Up ODR Kiosks:** Establish kiosks in rural areas equipped with ODR facilities, staffed by trained paralegal volunteers to assist users.
- **Expand Tele-Law Services:** Utilize the capabilities of the Tele-Law program under the Department of Justice to provide ODR support to remote populations.
- **Public-Private Collaboration:** Partner with private service providers to develop pilot projects and scalable ODR solutions tailored to local needs.

2. Promote Digital Literacy

- **Scale Up PMGDISHA:** Enhance the Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA) to include training on ODR tools and platforms, such as audio, video, and text-based communication.
- **Incorporate ODR Training:** Introduce basic ODR education modules in digital literacy programs to familiarize users with online dispute resolution processes.

3. Bridge the Digital Divide

- **Mobile-Friendly Platforms:** Ensure ODR platforms are optimized for mobile devices, as 99% of internet users in India rely on smartphones.
- **Accessible Interfaces:** Develop solutions based on voice prompts and regional language support to make ODR accessible to the differently-abled and those with limited digital skills.
- **Empower Marginalized Groups:** Conduct campaigns targeting women, the elderly, and underprivileged communities to encourage the adoption of ODR tools.

Building Capacity Among Professionals and Institutions

1. Training and Certification

- **Uniform Standards:** Establish national standards for ODR training and certification through a dedicated regulatory body, such as the proposed Mediation Council of India.
- **Expand Training Scope:** Include professionals like retired bankers, accountants, and domain experts as mediators and arbitrators, with focused training on ODR-specific requirements.
- **Remote Learning:** Encourage judicial academies and Bar Councils to offer remote ODR training courses via platforms like SWAYAM, ensuring multilingual accessibility.

2. Institutional Support

- **Court-Annexed ADR Centers:** Equip court-annexed ADR centers with ODR tools and integrate them into Phase III of the eCourts Mission Mode Project.
- **Practical Training:** Facilitate mentorship and observation programs for aspiring ODR professionals at court-annexed centers and private ADR organizations.
- **ODR in Legal Education:** Make ODR a part of legal education curricula, emphasizing simulations and case studies to prepare future professionals.

Enhancing Trust and Awareness

1. Awareness Campaigns

- **Public Outreach:** Conduct systematic awareness campaigns highlighting the benefits of ODR, targeting litigants, businesses, and government departments.
- **Demonstration Projects:** Showcase pilot projects to demonstrate the efficiency and effectiveness of ODR platforms, building confidence among stakeholders.

2. Addressing Trust Deficits

- **Transparent Governance:** Implement a governance framework with clear ethical standards for ODR service providers to ensure accountability and data security.
- **Stakeholder Engagement:** Involve the judiciary, legal professionals, and PSUs in ODR adoption to increase credibility and promote widespread acceptance.

Strengthening Legal and Operational Frameworks

1. Streamline Legal Processes

- **Modernize Archaic Procedures:** Digitize processes such as document notarization and stamp duty payments to ensure seamless integration with ODR.
- **Simplify Enforcement Mechanisms:** Address legal ambiguities surrounding the enforcement of ODR outcomes, such as mediation settlements and arbitral awards, to ensure swift and reliable execution.

2. Ensure Data Privacy and Security

- **Robust Frameworks:** Mandate the use of encryption, digital signatures, and secure data storage to protect user privacy and maintain the integrity of ODR processes.
- **Periodic Audits:** Require regular audits of ODR platforms to ensure compliance with data protection standards.

3. Innovate Accessible Technology

- **Encourage Innovation:** Support private sector innovations that enhance accessibility, such as AI-based tools and multilingual interfaces tailored to India's diverse population.
- **Incentivize Inclusivity:** Provide incentives to ODR platforms that design solutions addressing the needs of marginalized groups.

4. Phased Implementation Strategy

- **Pilot Programs:** Start with pilot projects in key sectors like MSMEs, consumer disputes, and e-commerce to test and refine ODR systems.
- **Gradual Expansion:** Expand ODR adoption to intergovernmental disputes, public sector undertakings, and high-volume commercial cases.
- **Comprehensive Integration:** Integrate ODR into judicial processes through mandatory pre-litigation mediation and court-annexed ODR mechanisms.

By addressing structural, behavioral, and operational challenges through these recommendations, India can create a robust ODR ecosystem that enhances access to justice, reduces judicial backlogs, and empowers individuals and businesses to resolve disputes efficiently and equitably.

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