

The Constitutional Role of ODR in Ensuring Access to Justice in India

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Abstract

Access to justice is a fundamental right guaranteed under Articles 14 and 21 of the Constitution of India, yet practical barriers such as delay, high costs, procedural complexities, inadequate infrastructure, and overburdened courts continue to hinder its effective realization. In the contemporary digital era, rapid technological advancements, including artificial intelligence and virtual communication systems, have created opportunities to reform traditional dispute resolution mechanisms. This paper examines the concept, scope, and feasibility of Online Dispute Resolution (ODR) in India as an innovative mechanism to strengthen access to justice through technology-enabled processes.

The study analyzes the existing dispute resolution framework in India, including both adversarial systems and Alternative Dispute Resolution (ADR) mechanisms such as arbitration, mediation, and conciliation, while identifying their structural and procedural limitations. It further explores the theoretical framework of ODR, including assisted and automated systems such as e-arbitration, e-mediation, e-negotiation, blind bidding, and AI-assisted adjudication. The research highlights the advantages of ODR, including timely resolution of disputes, cost efficiency, procedural flexibility, party autonomy, scalability, accessibility, and adaptability in multi-jurisdictional disputes.

The paper also undertakes a comparative examination of international ODR models, particularly initiatives in the United States and Singapore, to understand global best practices and their applicability in the Indian legal system. Special emphasis is placed on the role of ODR in the post-pandemic era, where digital justice mechanisms have emerged as essential tools for ensuring continuity in dispute resolution and economic recovery.

The study concludes that ODR has significant potential to complement and strengthen the existing justice delivery system in India. However, its successful implementation requires robust digital infrastructure, legislative support, technological awareness, procedural safeguards, and institutional standardization to ensure fairness, transparency, and inclusivity in the administration of justice.

INTRODUCTION

To seek justice is everyone's prerogative and access to justice is the fundamental right.¹ Parallel to the evolution of human society, many systems of justices have evolved and have become instruments of positive change. The 21st century is also the century of computing technology, virtual reality and artificial

¹ According to Article 8 of Universal Declaration of Human Rights (Adopted by UN General Assembly Resolution 217A (III) of 10 December 1948), Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. <https://www.un.org/chinese/center/chbus/events/hurights/english.htm>,

intelligence. Through online applications, lengthy procedures have now been simplified and shortened. The same can be adopted for dispute resolution mechanisms to make access to justice an achievable goal both in letter and spirit.

The research paper aims at exploring the possibility of adopting an Online Dispute Resolution (ODR here onwards) system in India. By adoption of ODR it means that resolving conflicts and disputes through technology intervention. Effective dispute resolution requires easy accessibility to the legal procedures as one of the key prerequisites. The ability to resolve a case online with the concerned legal authority will save a lot of time and physical efforts of all stakeholders- litigants, lawyers and judges. The three main pillars of access to justice has been stated as effective access to courts, cost of justice and legal assistance, access to fair process. Since rights cannot be category or person specific, and pertains to all, every person is a potential consumer for taking or hiring legal services. From the law-consumer perspective, cost-effective service is important.

In *Anita Khushwa Vs Pushpa Sudan*,²³ the Supreme Court of India emphasized that access to justice is a fundamental right guaranteed to citizens by Article 14 and Article 21 of the Constitution of India. In addition, it has pointed out the four main aspects of the essence of access to justice:

1. Any adjudicatory mechanism to provide its citizens access to justice. This mechanism so provided in addition to be effective must also be just, fair and objective in its approach.
2. The mechanism must be conveniently accessible in terms of distance
3. The process of adjudication must be speedy and not time-consuming, laborious and frustrating
4. The process of adjudication must be affordable and cost effective to the litigants, otherwise it will be a deterrent to access to justice.

The concept of equal justice has also been mandated as directive principle in article 39(A) of the Constitution of India in the following words The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

From the Indian context, there has been an established mechanism for dispute resolution. These mechanisms broadly fall in the category of Adversarial and Alternative Dispute Resolution. However the issue of access to justice still is in the main stream discussion in the legal forums and stakeholders. The importance of this paper lies in the fact that on the one hand there has been huge faith of the people in the judiciary and on the other hand the concerns of access to justice. To find innovative solutions to the problem serving as combination of both existing systems an overview of the systems is discussed in the later part of the paper.

Existing Systems of Dispute Resolution

Dispute resolution system comprises of adversarial and alternative dispute resolution systems existing in the given system. It is the efficacy of both that determines whether access to justice is there in letter and spirit.

An adversary system, according to Black's law dictionary,² is a procedural system involving active and unhindered parties contesting with each other to put forth a case before an independent decision maker. In India, this system is the basis of the court system or the judiciary. Adversarial System in the context of

² Black's Law Dictionary, 8th edition, p. 58

this paper would comprise of courts and tribunals and other quasi-judicial bodies (hereinafter referred to as Courts) set up where aggrieved parties can present their dispute to be adjudicated by the respective institutions in accordance with the due process of law and by applying rule of law. To approach the courts to seek justice is fundamental right of every person. The efficiency of the judicial system in the country cannot be undermined. There has been rise in disposal of cases however there has also been more rise in filing of new cases too.²⁵ And hence the problem usually spoken of delayed justice persists. And there comes a divide of people who would not mind filing the cases before the courts and wait and people who would want to file but are deterred because of what is seen and perceived and also majorly of the economic divides of haves and have not, as access to justice system does involve direct and indirect costs.

Hence, in spite of being a fundamental right is it realistic right in the given scenario is one of the parts of the research. By realistic, it is mean in terms of actual physical access to these courts. And physical aspect component here includes the elements of time and money as main, followed by language barriers and access to legal professionals and at times the social barriers in a multicultural society like India. To address the issues there have been government measures in terms of setting up of Lok Adalat (people's court) and various policies.²⁶ Unfortunately the grappling problems of adversarial system has not yet been completely resolved so as to make access to justice a reality in all perspectives as briefly discussed above and elaboratively discussed in the forthcoming.

There are numerous hurdles for access to justice and hence the same cannot be said is only class specific but is found at all levels. The problems seems to be deep rooted and universal. The analysis of the problems after referring to the existing literatures is enumerated below:

Knowledge Vacuum: Knowledge vacuum of various stake holders is a concern.²⁷ However looking at the complexities of the laws, the paper presumes it is more at the levels of litigants and general public.

Poor Infrastructure: A good infrastructure is essential for efficient functioning and infrastructure comprises of various things including digitization. The legal system of the country is wide spread starting with Supreme Court, High Courts in each states, District Courts, Criminal Courts, Special Courts, Tribunals, State sponsored alternative dispute resolution bodies etc. There is lack of infrastructure and lack of standardization, both physical and digital especially at the lower courts.

Overburden: Courts are overburdened as they have to take care of large amounts of pending cases throughout the years and also deal with fresh cases every day. The judiciary itself has expressed concern and stated, An independent and efficient judicial system in one of the basic structures of our constitution... It is our Constitutional obligation to ensure that the backlog of cases is declared and efforts are made to increase the disposal of cases. The longish hierarchy adds to the woes. These pending cases are due to multiple reasons viz. ranging from increased filing to poor infrastructure.³

Inadequate judiciary in relation to the population: The number of judges in proportion to the population is highly skewed. It is only 18 judges per 10 lakh people, as per the latest reports.³² There are six vacancies pending in the Supreme Court, 395 vacancies across 24 high courts, and 5984 judicial vacancies in the subordinate judiciary.⁴

³ Dhayalkar, S. (2004, August 4). Judiciary overburdened, only solution is specialized benches. Indian Express. <https://indianexpress.com/article/cities/mumbai/judiciary-overburdened-only-solution-is-specialised-benches-justice-indu-malhotra-5876165/>

⁴ Rajagopal, K. (2017, December 31). A crisis in judicial vacancies looms ahead for the Supreme Court in 2018. The Hindu. <https://www.thehindu.com/news/national/a-crisis-in-judicial-vacancies-looms-ahead-for-the-supreme-court-in-2018/article22338758.ece>

State is the largest litigator: The central and state governments are the largest litigants, along with its corporations, semi- government bodies and allied organizations.

Time Consuming: Timely Resolution of Disputes is key not only for individual well- being but also for economic success. However the grim reality with respect to India is longer time to resolve the disputes. This concern has been not only of the litigants but also time and gain expressed by the judges.⁵

Procedural Barriers: To seek justice or resolve disputes through courts, there are procedural laws well established specifying the territorial and pecuniary jurisdiction and also the procedures well established for quasi-judicial bodies. Legal complexities of understanding the laws and procedures have been one of the barrier to access to justice.

Complex issues at hand: Diverse forms of litigation, multiple litigations in some cases, frequent amendments in legislation processes, huge changes in litigation patterns, increased case filing, etc. have only compounded the problems of the court.

ADR refers to alternative means to dispute resolution. Increasingly getting popular across national and international levels, ADR is cost-effective and offers swifter resolutions by way of awards or settlements. Since it includes many ways of dispute resolution, it can be used for all matters, in agreement by both parties.

These systems are broadly as follows, as of today⁶:

- Arbitration
- Mediation
- Conciliation

Arbitration, a form of alternative dispute resolution (ADR), is a method for the resolution of disputes without going to courts, through an arbitrator (one or more) called as arbitral tribunal and the parties agree to the decision undertaken by this process. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable.³⁷ Parties can refer the dispute to Arbitration by agreement.⁷

Conciliation is an ADR process in which the parties use a conciliator to resolve their disputes. He meets parties separately, makes communication more efficient, lowers tensions and tempers, finds alternate and creative means to resolve dispute and settles the issue. It is different from Arbitration in that conciliators are usually subject experts and appointed in accordance with the provisions of specific laws.

Mediation is a voluntary process in which a neutral person (the mediator) helps with communication and facilitates resolution of the dispute between the parties which will allow them to reach a mutually acceptable agreement.⁸ It is voluntary and very friendly for the involved parties, with a structured negotiation process, with the involvement of a neutral third party, through certain kinds of techniques of communication and negotiation, to resolve disputes⁴¹. The parties themselves control mediation, with the mediator facilitating the parties to reach settlement. The conciliator does not force his ideas of settlement on the parties. The main difference between Arbitration and Mediation is the whole approach of win-lose in Arbitration vis-à-vis win-win in mediation.

⁵ ANI. (2017, December 31). India should establish less time-consuming dispute redressal system: Justice BR Gavai. Business Standard. https://www.business-standard.com/article/news-ani/india-should-establish-less-time-consuming-dispute-redressal-system-justice-br-gavai-119120700680_1.html

⁶ Taly, M. (2011). Arbitration Law, A Primer. Eastern Book Company.

⁷ Taly, Supra note 36

⁸ Oklahoma Bar Association. (2015). Methods for Resolving Conflicts and Disputes. <https://www.okbar.org/freelegalinfo/disputes/>

Apart from these ADR systems, the following have also been introduced in the legal system, to ease the burden on the courts:

- Tribunals
- Lok Adalat
- Industry related laws allowing for resolution, such as Section 7B of Indian Telegraph Act, 1885, Industrial Disputes Act

Importance of study

The Online Dispute Resolution will help to improve the segment of compensation and predicament of conventional ADR. Likewise, the conventional ADR, ODR permits the neutral person to regulate modus operandi so as to tackle the specific desires of disputant. This study will help to understand how this mechanism works and how it is more convenient, effective, and efficient for both the parties and the person doing arbitration and conciliation even it can be done by artificial intelligence which is never biased to any party and will strictly follow rules provided in the rule book. It will help to make people aware that this way is more convenient and time saving for them as it is scalable and collaborative mechanism of containment and resolution. It will boost up the use of technology towards efficient and affordable access to justice especially in the post pandemic period.

During this Covid times the need of this mechanism has arise lot so with the help of this study parties can reach expedient resolution and it will help keep the economy revival. This study is important as to formulate the on going ODR system. Online Dispute Resolution (ODR) is an innovative way to resolve grievances, issues or disputes especially with regards e-commerce.

ONLINE DISPUTE RESOLUTION:A THEORETICAL FRAMEWORK

The need for resolving disputes online cannot be ruled out, in present times. In the preceding research, current systems of dispute resolution discussed also present the need for technology intervention in the system. In the present times where almost everything is eased with technology, its intervention in the justice system is also being explored in the western countries by making various procedures of dispute resolution online. While ‘online ’has become the buzzword today,⁹ in the field of dispute resolution, it has yet to be further studied and explored, especially in the Indian Context.

ODR has the potential to provide the universal right of access to justice to the citizens of the world, across all legal jurisdictions. Through the technology of the internet and mobiles, information has been democratized and can be reached by virtually anyone. This democratization can be used for the delivery of justice as well. Thus, it becomes critical to understand the history, evolution and attributes of ODR, as it has formulated itself today.

The American Bar Association in its guide for consumers defines ODR as using alternative dispute resolution processes to resolve a claim or dispute. ODR can be used for disputes arising from an online, e-commerce transaction, or disputes arising from an issue not involving the Internet, called an ‘offline ’ dispute. Alternative Dispute Resolution is an alternative to the traditional legal process, which usually involves a court, judge, and possibly a jury to decide the dispute. ODR can involve the parties in mediation, arbitration, and negotiation. The parties may use the Internet and web-based technology in a variety of

⁹ Online Banking, Online Shopping, Online Filing, Online Darshan, Online Classroom, Online booking etc.

ways. ODR can be done entirely on the Internet, or ‘online’, through email, videoconferencing, or both. The parties can also meet in person, or offline.

According to UNCITRAL, Online dispute resolution is a mechanism for resolving disputes through which the full range of traditional forms of dispute resolution (including but not limited to negotiations, mediation, conciliation, arbitration, adjudication and expert determination) where applicable, are facilitated by the use of electronic communications, other information and communication technology.¹⁰

The American Arbitration Association defines it as, Online dispute resolution is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties. It primarily involves negotiation, mediation or arbitration, or a combination of all three. In this respect it is often seen as being the online equivalent of alternative dispute resolution. However, ODR can also augment these traditional means of resolving disputes by applying innovative techniques and online technologies to the process.

Today ODR definition finds its place in codified laws too. The Civil Resolution Tribunal Act defines ODR in its Article 5 as online dispute resolution services means dispute resolution services that are provided by way of electronic communication tools and are intended to assist parties in resolving a dispute by agreement without direct assistance from a tribunal officer or person engaged or retained by the tribunal to provide facilitated dispute resolution services.¹¹

Kinds of ODR Systems

The ODR systems can be broadly classified in two main categories:

A— Assisted Technology B—Automated systems

A-Assisted Technology or Assisted ODR systems

In this category of ODR systems the technology plays a role of assisting in the set process. This is mainly done by easing the process of physical meetings and filings and all can be done online. Such assisted technologies started first in the domain of alternative dispute resolution moving now to ease the court processes too. Hence on the lines of this independent, institutionalized and intermediary systems are developed. Independent systems are either customized to the needs of private practitioners in the area of ADR or it can be a system developed for a particular alternative dispute resolution. While talking about intermediaries, it can be termed as pre-litigation or pre-arbitration step to resolve conflicts at the stage of the disputing parties. In such situations the companies get a system designed to resolve their conflicts. Such a model is very common in B2C companies and e-commerce. While we have discussed the kinds of ODR system, its usage can be classified on its type of creation:

1. E – Arbitration: It simply means Arbitration conducted through online platform. Whether Ad Hoc or Institutionalization, ODR mechanisms have been adopted. ODR systems can be customized or can be a common software which the Arbitration Service Provider can take on license. The main purpose of assisted systems is, to ease communications. These communications can take place synchronous or asynchronous. Looking at the method in which Arbitration is conducted, the ODR mechanism can help it in conducted in the virtual space completely. Since communication plays an important role, the

¹⁰ United Nations Commission on International Trade Law. (2016). Report of Working Group III (Online Dispute Resolution) on the work of its thirty-third session (New York, 29 February-4 March 2016). <https://undocs.org/en/a/cn.9/868>

¹¹ Civil Resolution Tribunal Act, 2012 retrieved from <http://www.bclaws.ca/civix/document/id/lc/billsprevious/4th39th:gov44-1#section5>

legal validity in the respective state arbitration laws is necessary. The various arbitration models, its advantages and how it can be adopted in the Indian context is discussed in the forthcoming chapters.

2. **E-Mediation:** Mediation involves resolution of dispute by parties through assistance of a neutral mediator. ODR systems can facilitate the process of mediation. The systems can be customized also either as per the need of the mediation service provider or the institution which is providing mediation services.
3. **E Negotiation:** Negotiation precedes dispute resolution. It is usually at the level of parties themselves. It is more relevant for B2C models. Here the companies usually install an ODR system for the grievances of consumers who can file through this platform. There is no specific legal compliance that is required to build such systems but yet it can be very effective in preventing escalating it to a dispute. A very good example of the same has been of eBay.
4. **E Courts:** E – Courts under Assisted technology implies the court procedures conducted online. ODR here basically eases the processes. It's more of digitization and e-information dissemination.

B Automated Systems

Automated as the word implies is the replacement of the third place i.e. the judge or mediator with technology to technology system. The role of the judge or mediator is performed by the AI systems developed to do so. Larger number of disputes with small claim amounts are ideal to be resolved through AI systems. In the dispute resolution arena AI can be adopted in following two ways:

1. Blind Bidding or Automated Mediation:

This is especially where monetary compensation is claimed and that same is not in dispute. The disputed part in such cases is the amount. In blind bidding, both the parties quote the figures what they are willing to give or accept. On the basis of the figures quote, the set algorithm decides and the final figure is informed to the parties. If agreeable, a settlement agreement can be drafted.

2. AI-Courts:

In these cases through deep learning and machine learning, the technology system deployed decides the disputes. It is also termed a robotic justice. AI systems can be adopted to partially automise some processes or completely.

Identifying the strength is in comparison to something in the present case strength of ODR is compared with the other existing mechanism of dispute resolution.

1. **Timely Resolution:** It is reported that 90% of the cases filed through ODR get resolved in 30 days as against 25% in offline systems.¹² Time for disposal of cases has been an important parameter and factor for people to decide about the method to be adopted to resolve the disputes. This fact is also evidenced by the fact that in case of contractual disputes the parties pre determine the mode of dispute resolution and it has been invariably arbitration. It was noticed that in comparison to Courts, arbitration takes less time. However today the scenario is even arbitration has become time consuming. Taking this fact into account, recently there was an amendment in the Arbitration Act specifying the time limited. It is here that the strength of ODR lies against existing ways of ADR and the Court system
2. **Cost Effective:** Various kinds of costs are involved in dispute resolution. The strength of ODR lies in being cost effective, as many of the indirect cost can be minimized. Secondly a framework of cost is

¹² <https://www.ncsc.org/Newsroom/at-the-center/november-2019/ODR-Forum.aspx>

predetermined unlike in litigation where direct costs that is lawyers' fees itself is added to each hearing which again is uncertain for how long it prolongs. The indirect costs like opportunity cost are less in ODR.

3. **Adaptability of ODR system:** ODR can be adopted by both adversarial and ADR mechanisms. ODR can assist the existing systems or can be developed into a standalone mechanism. ODR hence has the adaptability to merge with any system of dispute resolution mechanism.
4. **Party Autonomy:** Party autonomy implies freedom of parties to the dispute. This freedom in the present context implies that if the parties opt for ODR, there is freedom to parties to offer solutions and decide about the acceptance of the outcomes whether given by the neutrals or the system itself. This freedom to offer solutions for resolution of one's own dispute adds a big time win-win approach.
5. **Adoption of Dispute Design System:** Dispute Design System¹³ is an effective mechanism adopted in organizations to resolve disputes. It is a system of The same mechanism can be adopted through technology assistance for litigation and other forms of ADR. The feature strengthens the whole system by minimizing time and cost as one system cannot suit all disputes hence classifying disputes wisely proves beneficial.
6. **Procedural flexibility:** ODR systems need not follow the rigid court procedures. In litigation if ODR is used to ease the process, then many of the steps automatically get minimized as the system takes care of the same. If automated mediation or algorithm based mediation, it can have its own procedure. If institutionalized, with legislative backing the procedural flexibility can be obtained.
7. **Predictability and Consistency:** If system generated options are worked out from processes or outcomes, it will certainly carry more degree of predictability and consistency. It eliminates the human errors and mistakes which may otherwise take place, though may be rare but is not impossible.
8. **Apt in multi-state disputes:** Enforcement of laws have to be as per the territorial laws. In other words, territorial enforcement to adjudication is territorial in nature and the case lies in the court whose jurisdiction it falls as per the procedural norms. This feature makes it very difficult to approach adjudicating bodies in multi-state disputes. It is here where ODR proves to be a very effective mechanism. One such successful mechanism is adopted by WIPO for domain name disputes.
9. **Undisturbed Schedule of Parties:** Resolve anywhere anytime has been the punch line of many ODR service providers. Though these are seen in the private domains currently, but the same holds true even if it becomes part of the litigation system to ease the processes and can have ranging punch lines then from file anywhere anytime, to witness anywhere anytime.
10. **Language Flexibility:** With online tools of translation, language related hurdles can be reduced or removed. Hence understanding by the parties becomes easy which in the current system is difficult.¹⁴ With the kind of advancement of technology, the language tools can easily translate the contents through audio and print mechanisms.

¹³ *Dispute System Design (DSD)* is the process of identifying, designing, employing, and evaluating an effective means of resolving conflicts within an organization. In order to be truly effective, dispute systems must be thoroughly thought out and carefully constructed. From

What is dispute system design? (2020, June 12). PON - Program on Negotiation at Harvard Law School.
<https://www.pon.harvard.edu/daily/dispute-resolution/what-is-dispute-system-design/>

¹⁴ An interview with one the litigant who narrated in Hindi how difficult it is for them to understand the documents as they are in English Language. It was witnessed that some of the litigants were asking for help to fill basic forms.

11. **Emotions Unseen:** This is especially when conflicts are resolved on the chat boards or other mechanisms than video conferencing. The advantage of chat boards is the physical anger may not be witnessed and communications may be controlled.
12. **Magnitude of Cases:** Technology can work in all time zones and in borderless environments. This feature itself makes it possible to handle a large number of cases at the same time. Also the features of automation make document analysis and reading faster and hence enhances the number game capability.
13. **Negative Emotions Management:** Emotions and words play a very pivotal role in managing disputes. The positive words have more chances of dispute being settled than negative. In online dispute resolution the parties i.e. the claimant or filer of the claim can be guided with choice of words through in-built software.¹⁵

ODR INITIATIVES: INTERNATIONAL AND NATIONAL PERSPECTIVES

Technological intervention in the legal sector, more specifically the areas of due diligence, prediction technology, legal analytics, document automation and legal billing, has been vastly influential in determining its development and expansion. Since the thesis itself centers on access to justice and dispute resolution, in which innovation plays a key role, this research focuses on technological innovation.

Courtroom Technology broadly refers to digital tools that ease courtroom processes, falling under two categories: online dispute resolution systems and predictive technology which relies on the development of Artificial Intelligence Systems by use of machine and deep learning analytics that determine the outcome of cases. The study of these models has been done to find the best innovative way which can provide easy, equal, and economic access to justice for citizens.

The beginning of Online Dispute Resolution can be traced to the west, especially in the U.S.A. and Europe and later in Australia and Asia.

However, before discussing existing models, it is pertinent to note the precedential technological contributions to dispute resolution of various organizations. At the forefront is the International Council of Online Dispute Resolution (2017) whose development was preceded by the National Center for Technology and Dispute Resolutions (1998).

The International Council of Online Dispute Resolution (ICODR here on) merges information and communication technologies for dispute resolution. As an innovative form of dispute resolution, its founders have claimed that ODR is not just limited to being an alternative, but rather highlights its ability to build robust dispute resolution mechanisms both alternative and adversarial. ICODR aims to globalize both the theory and practice of ODR by standardizing. On its website, ICODR outlines several guidelines for emerging ODR systems. ODR systems must be Accessible, Accountable, Competent, Confidential, Equal, Fair/Impartial/Neutral, Legal, Secure and Transparent.

While analyzing existing service providers, the above parameters will be taken into consideration. As the pioneers and origin of technological dispute resolution, we look to the United States of America. Although ODR services were initiated by individuals, in the past decade we have witnessed the expansion of these platforms that span industries and companies, even moving towards judicial bodies.

¹⁵ Lodder, A. R., & Zelznikow, J. (2005). Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in Three-Step Model. *Harvard Negotiation Law Review*, 10, 287-338.

International Models of ODR

The variety of technologies, philosophies, and approaches, including successes as well as unforeseen challenges to court processes in the application of ODR technologies are illustrated by following case studies. These challenges have been overcome in some cases. However, their experiences, regardless of geography and jurisdiction are key in learning and application. Despite successes and failures, the study of these models will encourage the application of ODR to a wide array of court processes.

Cybersettle, USA¹⁶

Cybersettle, an automated resolution platform, was actually the outcome of an insurance dispute between two trial attorneys. While they were unable to come to a settlement regarding the amount, the court suggested they secretly write their preferred settlements on a piece of paper. It was decided that if the figures quoted were within the range, settlement would take place.

On Cybersettle.com, the concept remains the same but is done entirely online through algorithms. Due to its novelty approach to dispute resolution it has been granted patent by the United States of America¹⁷. The abstract of the patent as mentioned on the website clears its purpose A computerized system for automated dispute resolution through an Intranet website via the Internet or other communications linkage for communicating and processing a series of demands to satisfy a claim made by or on behalf of a claimant or other person involved in a dispute with at least one other person, such as a defendant, his or her insurer, or other sponsor, and a series of offers to settle the claim through at least one central processing unit including operating system software for controlling the central processing unit is disclosed. Preferably the system also allows for the collection, processing and dissemination of settlement data generated from the settlement through the operation of the system for use by sponsors and claimants in establishing the settlement value of future cases. Also disclosed is a method for communicating and processing a series of demands and a series of offers through the system. Automated dispute resolution is the brainchild of Charles Brofman, who invented Cyber Settle in 1996 and visualized resolving disputes not only through ADR-assisted-technology but also through an automated mechanism saving time and money.

Both parties submit price offers independently. These proposals are analyzed by Cybersettle software through an algorithm to reach a settlement. Computer software then compares both the offers and counteroffers for each round to ascertain whether the parties have reached a settlement. The same amount for the case is settled, in case of defendant quoting a higher amount. If the amount is in the settlement range, an average is taken as settlement. This bidding happens three times. In case the settlement is not reached, everything still remains confidential.

Cybersettle truly performs to the expectation of digital technology expert and legal visionary, Richard Susskind, who once said, The best way to predict the future is to invent it. Cybersettle remains an outstanding solution for dispute resolution especially where there are large amounts of undisputed cases. Cases, which would have taken years, are resolved within hours. Mimicking the efficient procedure, Cybersettle uses its patented technology to reach agreements at much lower cost and faster compared to traditional negotiation methods.

¹⁶ <http://www.Cybersettle.com/>

¹⁷ U.S. Patent number 6,330,551 granted on December 17, 2001.

Features and Benefits

- It uses Patented double-blind technology of automated negotiation which permits parties to submit confidential offers and demands, undisclosed to the opposing party
- Compares offers and demands automatically and Instantaneously
- Determines if a mutually-acceptable settlement may be achieved
- Data Security & Encryption
- Possibility of Bulk submission of cases
- Full turn-key / White-label solution
- Easy to use interface

Cybersettle self-describes its efficient access to justice with the following statements on its web page, Faster Settlements, Case Closed, Get cases to settle fast and fairly, Settle Faster- Negotiate on-line Avoid Scheduling Conflicts, meetings, court dates, Improve Success– Accelerate Settlements by engaging parties with interactive vs Passive negotiations, Reduce Costs- Lower human resource, collection, and legal costs. In India, if the system by government notification is made mandatory for certain sectors like insurance, it will undoubtedly reduce the backlog or settle a majority of disputes.

Online Dispute Resolution in the State Courts of Singapore

The State Courts of Singapore has made use of various electronic systems to improve efficiency and access to justice, such as the criminal division, integrated case management and filing system, the sentencing information and research repository, video-link hearings, civil division, the integrated electronic litigation system, and the focus on the community justice and tribunal systems. Listed below are the kinds of services and their specifications:

e-negotiation

Supports negotiation for multiple claimed items Supports proposal to pay in installments

e-hearings

In the Singaporean court systems, e-hearings are considered the third and final stage of the proceedings. During case management conferences, the registrar identifies suitable cases. Parties that require an interpreter, have hearing or visual impairments, be calling witnesses, have physical evidence, or do not meet the minimum technical requirements (a connectivity test may be conducted between the parties and a court officer prior to the hearing day) are not eligible.

E-hearings have the added benefit of easy access and can be conducted in the comfort of one's home, reducing delays associated with physical attendance and workload for counter staff, court officers, security staff, etc.

ODR Initiatives in India

Disputes in the Indian scenario can be resolved through an adversarial system of justice and alternative dispute resolution mechanism whatever the parties opt for. Before proposing the kind of ODR that would be beneficial in disposing off the cases with cost and time efficiency and also enable an inclusive justice system, it is pertinent to look at the existing initiatives of the government to address the existing issues of delayed justice and also to study the kind of digitization that is existing in the justice delivery system. It is with this current scenario that future paths can be paved to address the problems of access to justice through technology intervention.

CONCLUSION AND RECOMMENDATIONS

We know that ADR, and by extension, ODR, hybrid models are the need of the hour. It may be the right time to invest time, energy, capital and talent to build systems, which are full proof and informed by all disciplines of knowledge, and therefore become beneficial to everyone across class, caste, gender, etc.

1. Legal recognition for online processes must be given for filing, payment of fees, serving, hearing and deciding, across all domains.
2. A National Plan for Online Dispute Resolution may be created. Professionals from all aspects of the legal field, system design thinkers, the social sector, humanities, ethical hackers, software professionals, IT professionals, must be made a part of the team that draws the blue-print and details.
3. It must be stressed that ODR solutions for each category of dispute must be researched into, understood, analyzed, examined and then put into design phase.
A blanket ODR solution will hinder the objectives of easy, just, fair and effective access to justice.
4. System Design thinking is best suited to understand and evolve the various parameters on which each ODR system be created. Its principles must be utilized for these purposes.
5. Relevant infrastructure must be built with the advice of IT professionals. The defining feature of this infrastructure must be that it should be accessible to as many people at any given point of time as possible; it must consume less internet speed and space; it must be easy to fill forms and reach a decision sooner rather than later.
6. All government departments must be interlinked to the e-systems of courts, so that all sorts of documents can be easily accessed and that might just help in speedy disposal of justice.
7. A strong data privacy law will be required to make ODR a successful reality, and continuous work must keep happening on this front.
8. Lawyers and their staff must be trained to use the ODR systems. Likewise the staff in the court must also be trained to use these systems
9. Resolving disputes through using ODR systems should be included in legal pedagogy. In fact a complete subject must be introduced in both undergraduate and postgraduate courses.
10. Taking into account Indian demographics, it is quite possible that everyone is not techno savvy to use the portals and file complaints. **Techno Legal Centers** can be set up where a person with the assistance of legal or technical expert and file the complaint. To give an analogy, it would be something like ATM centers, it could be ATC (Any time Courts). The difference here being the filing can be done anytime during the office hours. These systems, once developed, might not need much space and manpower, can be installed in the existing setup of nearby government schools or banks.
11. In the matters of labour disputes, automated online processes may be created so that the concerned parties receive just treatment. In the case of criminal cases, COMPASS model might be useful to decide cases.
12. In the matter of insurance cases, there are already set parameters for settlement of disputes. That entire system can be converted in an online format too.
13. For automated systems, Algorithm security will need to be ensured
14. To institutionalize ODR legislative backing is required. While the amendments in the respective laws where ODR is to be adopted will be required, however, a forward step could be to have common legislation for ODR like Digital Justice Act or the Electronic Justice Act . The key features of this legislation would comprise a comprehensive framework including both the binding nature of automated and assisted ODR.