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Online Dispute Resolution in India: Legal Challenges of Privacy, Confidentiality and Access to Justice

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ABSTRACT: -

Online Dispute Resolution (ODR) involves the use of information and communication technologies to facilitate the resolution of disputes through negotiation, mediation, conciliation and arbitration. It has emerged as a promising mechanism for addressing the challenges of delay, expense and geographical barriers associated with conventional dispute-resolution processes. In India, the development of ODR has gained momentum through judicial acceptance of electronic communication, institutional initiatives and policy recommendations advocating technology-enabled dispute resolution. Nevertheless, the transition from physical to digital dispute resolution raises significant concerns regarding informational privacy, confidentiality, cybersecurity, procedural fairness and equitable access to justice.

This paper critically examines the Indian legal framework governing ODR, with particular reference to the Arbitration and Conciliation Act, 1996, the Information Technology Act, 2000, the Mediation Act, 2023, the Digital Personal Data Protection Act, 2023, the Bharatiya Sakshya Adhiniyam, 2023, and relevant constitutional principles. It analyses selected judicial decisions, including State of Maharashtra v. Dr. Praful B. Desai, Grid Corporation of Orissa Ltd. v. AES Corporation, Shakti Bhog Foods Ltd. v. Kola Shipping Ltd., Vidya Drolia v. Durga Trading Corporation and Justice K.S. Puttaswamy (Retd.) v. Union of India, to identify the legal principles relevant to technology-enabled dispute resolution.

Using a doctrinal research methodology supported by a limited comparative analysis of international standards, the paper identifies gaps in the regulation of ODR platforms, the protection of confidential communications, the preservation of electronic evidence and the participation of digitally disadvantaged persons. It argues that the legitimacy of ODR depends not merely on technological efficiency but also on lawful data processing, enforceable confidentiality safeguards, informed consent, procedural equality and accessible alternatives. The paper recommends a proportionate regulatory framework, privacy and security by design, standardised procedural protocols, independent accountability and assisted-digital facilities. It concludes that ODR should supplement the existing justice-delivery system without weakening constitutional guarantees or excluding individuals who cannot effectively participate in digital proceedings.

Keywords: Online Dispute Resolution, data privacy, confidentiality, access to justice, arbitration, mediation, digital evidence, procedural fairness, cybersecurity.

1. INTRODUCTION

Access to justice is an essential component of the rule of law. The effectiveness of a justice-delivery system

depends not merely on the existence of courts but also on the ability of individuals to approach appropriate forums, understand the applicable procedures, obtain a fair hearing and secure an effective remedy within a reasonable period. In India, judicial pendency, litigation costs, geographical distance, procedural complexity and unequal access to legal assistance continue to create significant barriers to the resolution of disputes.

Technology-enabled dispute resolution has emerged as a possible response to these difficulties. Online Dispute Resolution, commonly known as ODR, integrates information and communication technologies into dispute-resolution processes. It may involve online negotiation between parties, mediation conducted through video-conferencing or digital platforms, arbitration through electronic communication, and technology-assisted case management.

ODR is not simply the electronic filing of court documents or the use of video-conferencing during a conventional hearing. Although these practices constitute important forms of legal digitisation, ODR can involve a more comprehensive redesign of how disputes are initiated, managed, negotiated and resolved. Depending on the model adopted, technology may facilitate communication between parties, assist neutrals in managing proceedings, enable secure document exchange or provide structured tools for settlement.

The development of ODR in India received considerable policy attention through the NITI Aayog Expert Committee's 2021 report, Designing the Future of Dispute Resolution: The ODR Policy Plan for India. The report recognises the potential of ODR to improve the accessibility, affordability and efficiency of dispute resolution and recommends coordinated action by the Government, judicial institutions, dispute-resolution institutions, legal professionals and technology providers.

However, the adoption of digital mechanisms creates a set of legal and ethical challenges that cannot be resolved through technological innovation alone. ODR proceedings may involve sensitive personal information, financial documents, commercial secrets, confidential settlement offers and witness statements. Such information may be exposed through unauthorised access, insecure storage, unlawful recording, excessive data collection or inadequate contractual safeguards.

Similarly, digital proceedings may exclude individuals who lack reliable internet connectivity, appropriate devices, digital literacy, language support or a private environment in which to participate. The use of private platforms also raises questions concerning accountability, neutrality, transparency and the commercialisation of dispute resolution.

The central argument of this paper is that ODR must be developed within a legal framework that reconciles technological efficiency with privacy, confidentiality, procedural fairness and meaningful access to justice. A dispute-resolution mechanism cannot be considered effective merely because it is fast or inexpensive; it must also ensure that parties can participate freely, understand the process and exercise their legal rights.

1.1 Statement of the Research Problem

India does not have a single, comprehensive statute regulating every form of ODR. Instead, the relevant legal framework is distributed across several enactments, including the Arbitration and Conciliation Act, 1996, the Information Technology Act, 2000, the Mediation Act, 2023, the Digital Personal Data Protection Act, 2023, and the Bharatiya Sakshya Adhiniyam, 2023.

Although these enactments provide important legal foundations for electronic communication, arbitration, mediation, data processing and electronic evidence, uncertainty remains regarding the minimum standards applicable to ODR platforms. Questions arise concerning responsibility for data breaches, the retention

and deletion of dispute records, the recording of virtual proceedings, informed consent, platform neutrality and the availability of remedies for digitally disadvantaged users.

The research problem is therefore to determine whether the existing Indian legal framework adequately protects the rights of parties using ODR and, where deficiencies remain, to identify proportionate legal and institutional reforms.

1.2 Research Questions

The paper addresses the following questions:

1. What is the existing legal framework governing ODR in India?
2. How adequately do Indian laws protect privacy, confidentiality and electronic evidence in technology-enabled dispute resolution?
3. What challenges arise in ensuring equal participation and meaningful access to justice through digital platforms?
4. How can India develop an accountable and inclusive ODR framework without compromising procedural fairness or imposing disproportionate regulatory costs?

1.3 Objectives of the Study

The principal objectives are:

1. To examine the statutory framework applicable to ODR in India.
2. To analyse judicial decisions relevant to remote proceedings, electronic communication, arbitration and privacy.
3. To identify the legal and practical challenges associated with data protection, confidentiality and digital exclusion.
4. To examine relevant international principles and comparative experiences.
5. To recommend legal, procedural and institutional measures for strengthening ODR in India.

1.4 Research Methodology

This study adopts a doctrinal legal research methodology. It examines relevant legislation, judicial decisions, policy documents and international instruments to identify the legal principles governing ODR. The paper also employs a limited comparative approach by examining the UNCITRAL Technical Notes on Online Dispute Resolution and the European Union's experience with online consumer-dispute resolution. These materials are used to identify useful regulatory principles rather than to suggest that foreign frameworks automatically apply in India.

The study is primarily qualitative and analytical. It does not claim to provide empirical findings concerning the frequency of cybersecurity incidents, the success rate of ODR platforms or the experiences of all categories of users. The legal analysis must be read alongside the applicable commencement notifications and rules in force on the date of submission.

1.5 Scope and Limitations

The paper focuses on privacy, confidentiality and access to justice in technology-enabled negotiation, mediation and arbitration. It considers court-connected digital processes where they help explain the relevant principles.

It does not treat all forms of ODR as legally identical. The obligations applicable to a consensual negotiation platform may differ from those governing a binding arbitral proceeding. Similarly, the legal status of a settlement depends on the applicable statutory framework and the nature of the dispute.

The analysis is limited to the legislation, judgments and policy materials identified in the paper. It does not claim to be a comprehensive empirical evaluation of every ODR provider operating in India.

2. LITERATURE REVIEW

The development of ODR has been examined through policy reports, international guidelines and legal scholarship concerning digital justice, arbitration, mediation and data protection. These sources establish the potential of technology-enabled dispute resolution while identifying the need for safeguards against exclusion, procedural unfairness and misuse of information.

2.1 NITI Aayog's ODR Policy Plan

The NITI Aayog Expert Committee's report, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (2021), is an important policy document concerning the institutional development of ODR in India.

The report treats ODR as an ecosystem involving dispute-resolution institutions, technology providers, trained neutrals, legal professionals and public authorities. It identifies the potential of ODR to reduce transaction costs, improve convenience and facilitate the resolution of disputes that may otherwise remain unresolved because of procedural or geographical barriers.

The report also recognises that the success of ODR depends on trust, appropriate institutional design, technological infrastructure and professional competence. Its approach is significant because it does not treat the mere availability of a digital platform as sufficient to guarantee access to justice.

Nevertheless, the report is a policy recommendation rather than a statute. Its proposals do not independently create binding obligations for all ODR providers. A continuing challenge is therefore to translate its broad principles into clear legal duties, enforceable standards and effective remedies.

2.2 UNCITRAL Technical Notes on Online Dispute Resolution

The United Nations Commission on International Trade Law issued the Technical Notes on Online Dispute Resolution in 2016. These notes provide non-binding guidance for designing ODR systems, particularly for disputes arising from electronic commerce and other high-volume, low-value transactions.

The framework emphasises accessibility, fairness, transparency, due process and accountability. It recognises that technology should facilitate the resolution of disputes without eliminating the parties' opportunity to understand the process and present their positions.

The Technical Notes are relevant to India because they provide a structured basis for evaluating platform design and procedural safeguards. However, they are not a treaty or domestic legislation and do not independently determine the enforceability of an online settlement or arbitral award in India.

Their principal contribution is the recognition that effective ODR requires both technological capability and procedural legitimacy.

2.3 International Developments in Mediation

The UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018, and the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019, demonstrate the growing importance of mediation and cross-border settlement enforcement.

These instruments are relevant to discussions concerning the legal status of mediated settlements and the development of institutional confidence in dispute resolution. Their application, however, depends on the relevant legal framework and the circumstances of the dispute. They should not be treated as establishing a complete regulatory framework for ODR in India.

2.4 Constitutional Privacy Jurisprudence

The Supreme Court's decision in ***Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*** recognised privacy as a constitutionally protected right. The judgment provides an important foundation for evaluati-

ng the collection, processing, storage and disclosure of personal information.

Its relevance to ODR arises from the nature of digital dispute-resolution processes, which may require parties to upload identity documents, financial records, correspondence and other sensitive information.

However, the constitutional principles recognised in Puttaswamy must be applied with doctrinal care. The judgment does not automatically impose identical direct constitutional obligations on every private ODR provider. The applicable statutory provisions, contractual obligations and nature of the activity must also be considered.

2.5 Judicial Acceptance of Technology in Legal Proceedings

Decisions such as ***State of Maharashtra v. Dr. Praful B. Desai and Grid Corporation of Orissa Ltd. v. AES Corporation*** illustrate judicial acceptance of remote communication in appropriate legal contexts.

These judgments are important because they demonstrate that physical presence is not necessarily indispensable to every legally valid procedure. However, their holdings must be understood in the factual and statutory contexts in which they were delivered.

They do not establish that all online proceedings are automatically fair, that every arbitration agreement authorises virtual hearings or that existing confidentiality rules are sufficient to address cybersecurity risks.

2.6 Research Gap

The literature and policy materials establish the benefits of ODR and the need for fair, accessible and secure digital processes. Nevertheless, broad principles do not always answer practical questions about platform accountability, data retention, unauthorised recording, informed consent, automated decision-support and the participation of vulnerable users.

This paper addresses that gap by examining how the Indian legal framework can be applied to the specific risks arising in ODR and by proposing differentiated safeguards based on the type of proceeding, sensitivity of the information and potential consequences for the parties.

3. CONCEPT AND DEVELOPMENT OF ONLINE DISPUTE RESOLUTION

3.1 Meaning of ODR

Online Dispute Resolution refers to the use of information and communication technologies as an integral component of dispute resolution. It combines established dispute-resolution mechanisms with digital communication and case-management tools.

ODR may include:

- Online negotiation between disputing parties.
- Mediation conducted through video-conferencing or digital platforms.
- Arbitration involving electronic submissions and virtual hearings.
- Hybrid proceedings combining physical and online participation.
- Technology-assisted case management and settlement support.

The legal consequences of these processes differ. A negotiated settlement depends on agreement between the parties, whereas an arbitral award results from adjudication by an arbitral tribunal acting under the applicable arbitration law.

It is therefore necessary to distinguish consensual processes from adjudicatory processes when examining confidentiality, consent, enforcement and procedural safeguards.

3.2 Advantages of ODR

ODR can offer several advantages.

First, it can reduce travel and administrative expenses, particularly where parties are located in different

cities or countries.

Second, it can improve scheduling flexibility and reduce the time spent coordinating physical meetings.

Third, it can facilitate the exchange of documents and maintain structured electronic records.

Fourth, it may provide an efficient mechanism for handling repetitive or relatively standardised disputes, including certain consumer and commercial disputes.

Finally, it can improve access for people who face geographical or mobility-related barriers, provided that the necessary technological and accessibility arrangements are available.

3.3 Limitations of ODR

The advantages of ODR should not be overstated. Its effectiveness depends on the nature of the dispute, the parties' circumstances and the reliability of the platform.

Disputes involving severe power imbalances, intimidation, complex credibility assessments or a need for physical inspection may require additional safeguards or a different procedural format.

A person who lacks a suitable device, stable internet connectivity or a private place to participate may experience greater difficulty in an online process than in a physical hearing.

Accordingly, ODR should be treated as an additional method of dispute resolution rather than a universal replacement for courts, tribunals or in-person procedures.

4. THE INDIAN LEGAL FRAMEWORK GOVERNING ODR

India's legal framework for ODR consists of several statutes that address different aspects of digital communication, dispute resolution, data protection and evidence. These enactments provide a foundation for technology-enabled dispute resolution, but they do not collectively eliminate every uncertainty concerning platform governance.

4.1 Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996 is the principal legislation governing arbitration and conciliation in India.

Section 7: Arbitration agreement. Section 7 recognises an arbitration agreement and permits an agreement to be recorded through electronic communications that provide a record of the agreement. This facilitates the recognition of arbitration agreements formed or evidenced electronically.

However, the provision does not independently establish a comprehensive regulatory framework for online arbitration platforms. The existence and validity of an arbitration agreement must still be assessed against the statutory requirements and applicable principles of contract law.

Section 18: Equal treatment of parties. Section 18 requires parties to be treated with equality and each party to be given a full opportunity to present its case. This requirement is particularly important in online proceedings because technical interruptions, unequal access to documents, language barriers or inadequate participation facilities may affect a party's ability to present its case.

Section 19: Determination of rules of procedure. Section 19 provides flexibility concerning procedural rules, subject to the requirements of the Act. This flexibility may facilitate the adoption of online hearings and electronic document exchange. Nevertheless, procedural flexibility does not authorise a tribunal to disregard the principles of equal treatment and a fair opportunity to present a case.

Section 42A: Confidentiality. Section 42A, inserted by the Arbitration and Conciliation (Amendment) Act, 2019, imposes a confidentiality obligation on the arbitrator, arbitral institution and parties concerning arbitral proceedings, subject to the statutory exception concerning disclosure of an award where necessary for its implementation and enforcement.

The provision is important for online arbitration because proceedings may involve commercially sensitive information and confidential documents. However, Section 42A should not be interpreted as a universal confidentiality provision governing every form of online negotiation, mediation or digital communication. The precise obligations of a platform provider must also be examined with reference to the applicable contract, institutional rules and other relevant legislation.

4.2 Information Technology Act, 2000

The Information Technology Act, 2000 provides the principal statutory foundation for recognising electronic records and electronic transactions in India.

Sections 4 and 5 address the legal recognition of electronic records and electronic signatures, respectively, subject to the conditions and limitations prescribed by the Act. Section 10A recognises the validity of contracts formed through electronic means.

These provisions support the use of electronic communication in dispute-resolution processes. Nevertheless, recognition of electronic form does not automatically establish the validity of every online agreement. The ordinary requirements concerning consent, authority, contractual intention and enforceability remain relevant.

Section 43 addresses specified forms of unauthorised access and damage involving computer systems and data. Other provisions of the Act may also be relevant where digital dispute-resolution platforms experience unlawful access, interference or related cyber incidents.

The original draft relied on Section 43A as a general data-protection safeguard. This requires qualification because the Digital Personal Data Protection Act, 2023 provides for consequential amendments to the Information Technology Act, including Section 43A, subject to commencement arrangements.

Accordingly, the operation of Section 43A and the corresponding provisions of the new data-protection framework must be assessed against the commencement notifications in force on the date of submission. A paper should not treat a provision as operative merely because it appears in an enacted statute.

4.3 Digital Personal Data Protection Act, 2023

The Digital Personal Data Protection Act, 2023 establishes a statutory framework for the processing of digital personal data, including obligations relating to data processing, rights of individuals and enforcement.

Its relevance to ODR is considerable. Online dispute-resolution platforms may process names, contact details, identity documents, financial information, correspondence, settlement offers and records of legal proceedings.

The applicable obligations depend on the Act's definitions, territorial scope, processing context, exemptions and commencement provisions. Since commencement may occur in stages, each relevant provision must be checked against the official notifications and rules in force at the time of submission.

The Act's enactment should not be confused with the commencement of every substantive obligation.

Irrespective of the precise statutory position applicable to a particular platform, responsible ODR design should incorporate the following safeguards:

1. Data minimisation: Collect only information reasonably necessary for the dispute-resolution process.
2. Purpose limitation: Clearly identify why information is collected and how it will be used.
3. Access controls: Restrict access to authorised persons whose roles require access to the information.
4. Encryption: Protect sensitive information during transmission and storage.
5. Retention and deletion: Establish defined retention periods and secure deletion procedures, subject to legal preservation obligations.

6. Vendor accountability: Identify the responsibilities of platform operators, cloud-service providers and other service providers.
7. Incident response: Maintain procedures for detecting, reporting, investigating and responding to data breaches.

These measures should be distinguished from the specific duties imposed by statutory provisions that are actually in force. Good-practice recommendations do not become binding legal obligations merely because they are included in a research paper.

4.4 Mediation Act, 2023

The Mediation Act, 2023 represents an important legislative development in the regulation of mediation in India.

Section 30 specifically addresses online mediation. It contemplates mediation conducted through electronic means, including pre-litigation mediation, subject to the statutory requirements, including the consent of the parties and safeguards concerning the integrity and confidentiality of the process.

The provision is particularly relevant to the present study because mediation often involves sensitive settlement discussions, admissions, commercial information and personal communications.

The Act also addresses confidentiality and mediated settlement agreements, providing a statutory framework for important aspects of mediation practice.

However, the commencement status of the relevant provisions must be verified before they are presented as operative law. The enactment of a statute does not, by itself, establish that every section has commenced.

Online mediation also raises practical questions that legislation alone may not fully resolve. These include how the identity of participants should be verified, whether third parties are present, how unauthorised recordings should be addressed and what procedures should apply when a participant loses connectivity during a material stage of the mediation.

Clear institutional rules and proportionate technological safeguards are therefore essential.

4.5 Consumer Protection Act, 2019

The Consumer Protection Act, 2019 establishes the legal framework for consumer rights, consumer dispute redressal and related regulatory measures.

Section 94 empowers the Central Government to take prescribed measures concerning unfair trade practices in e-commerce and direct selling and the protection of consumer interests.

However, Section 94 should not be described as an express statutory mandate requiring all consumer disputes to be resolved through ODR. The legal basis for a particular online grievance mechanism must be identified separately.

Consumer disputes may involve e-commerce grievance mechanisms, consumer commissions, mediation and other applicable procedures. The suitability of ODR depends on the nature of the complaint and the rights available under consumer-protection law.

An online platform's terms and conditions cannot remove mandatory statutory protections merely because a consumer has accepted them electronically.

4.6 Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023, which came into force on 1 July 2024, provides the current statutory framework governing evidence in the proceedings to which it applies.

Sections 61–63 address electronic and digital records and their proof, including requirements relevant to admissibility.

ODR proceedings may generate substantial electronic material, including:

- Emails and electronic correspondence.
- Chat messages and settlement communications.
- Electronic signatures and digitally executed documents.
- Video recordings and audio recordings.
- Platform logs, timestamps and audit trails.
- System-generated reports and electronic transaction records.

The digital form of a record does not automatically establish its authenticity, reliability or admissibility. The applicable statutory requirements must be satisfied, and issues concerning integrity, attribution, preservation and the circumstances in which the record was generated may arise.

ODR providers should therefore maintain appropriate record-management procedures without retaining sensitive information indefinitely or collecting unnecessary material.

4.7 Constitutional Framework: Articles 14, 21 and 39A

The Constitution of India provides the broader normative foundation for assessing the fairness and accessibility of digital justice.

Article 14 guarantees equality before the law and equal protection of the laws. It is relevant to questions of arbitrary exclusion, discriminatory platform design and unequal access to public dispute-resolution systems.

Article 21 protects life and personal liberty and has been interpreted to require fair, just and reasonable procedures. The constitutional significance of access to justice and procedural fairness must be considered when digital systems affect an individual's ability to obtain a legal remedy.

Article 39A directs the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and that opportunities for securing justice are not denied by reason of economic or other disabilities.

These provisions support an inclusive approach to ODR. They do not automatically establish an unrestricted constitutional right to use any particular private platform, but they reinforce the need to avoid digital arrangements that make legal remedies practically inaccessible to disadvantaged persons.

5. JUDICIAL DECISIONS: CASE BRIEFS AND LEGAL ANALYSIS

Judicial precedents are essential to understanding the legal principles applicable to technology-enabled dispute resolution. However, the cases discussed below do not all concern ODR directly. Their relevance must be assessed according to the actual issue decided by the Supreme Court.

The reporter citations below should be checked against the original judgments before formal submission. Unverified neutral citations and database-specific Manupatra references have not been presented as independently confirmed.

5.1 State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 SCC 601

Facts and legal issue

The case concerned the recording of evidence through video-conferencing in criminal proceedings. The issue was whether a witness could be examined through video-conferencing or whether physical presence before the court was indispensable.

The objection raised a question concerning the interpretation of procedural law in the context of technological developments.

Decision of the Supreme Court

The Supreme Court accepted video-conferencing as a permissible means of recording evidence in the circumstances of the case. The Court adopted an interpretation that allowed technology to serve the objectives of judicial proceedings rather than treating physical co-location as an absolute requirement.

Relevance to ODR

The decision supports the proposition that technology can facilitate legal proceedings where the governing law permits it and the relevant procedural safeguards are maintained.

It is relevant to online hearings, remote participation and the use of digital communication in dispute-resolution processes.

However, the judgment did not decide whether every arbitral hearing may be conducted online, whether an online arbitration agreement is necessarily valid or what cybersecurity standards should govern private ODR platforms.

Its relevance is therefore persuasive and procedural, rather than a comprehensive endorsement of every aspect of ODR.

5.2 Grid Corporation of Orissa Ltd. v. AES Corporation, (2002) 7 SCC 736

Facts and legal issue

The case arose in an arbitration-related context and concerned the use of electronic communication for consultation and deliberation.

The issue involved whether effective communication and consultation necessarily required the physical presence of all participants at the same location.

Decision of the Supreme Court

The Supreme Court recognised that modern communication facilities could facilitate effective consultation without requiring physical co-presence in every situation.

The decision reflected a functional approach to communication and procedural requirements in the particular legal context before the Court.

Relevance to ODR

The judgment supports the limited proposition that physical presence is not invariably essential to effective communication in legal proceedings.

It can be relied upon when discussing the development of remote participation and the use of communication technology in arbitration.

Nevertheless, the decision should not be represented as holding that every virtual hearing is automatically fair or that all online proceedings satisfy the requirements of the Arbitration and Conciliation Act, 1996.

A tribunal must still ensure adequate notice, equal treatment, reliable participation and a meaningful opportunity for each party to present its case.

5.3 Shakti Bhog Foods Ltd. v. Kola Shipping Ltd., (2009) 2 SCC 134

Facts and legal issue

The case concerned the existence and proof of an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996.

The issue involved whether an arbitration agreement could be established through written exchanges and commercial correspondence rather than only through a single formally signed document.

Decision of the Supreme Court

The Supreme Court considered the substance of the parties' communications and the statutory requirements governing arbitration agreements.

The decision is relevant to the recognition of agreements evidenced through exchanges of communication, subject to the requirements of the governing law.

Relevance to ODR

The judgment supports the proposition that the existence of an arbitration agreement must be assessed by examining the relevant communications and statutory requirements rather than insisting on a single document in every situation.

This principle is relevant to electronically recorded arbitration agreements.

However, the decision should not be cited as establishing a general doctrine of the virtual arbitral seat or as directly deciding the legality of online arbitration platforms. Those questions require separate legal analysis.

5.4 Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1

Facts and legal issue

The case arose from a dispute concerning the arbitrability of landlord–tenant disputes governed by the Transfer of Property Act, 1882.

The Supreme Court examined the circumstances in which a dispute may be referred to arbitration and the extent of judicial scrutiny at the referral stage.

Decision of the Supreme Court

The Court clarified the principles governing non-arbitrability and judicial intervention at the referral stage. It explained that certain categories of disputes are unsuitable for private adjudication because of the nature of the rights involved, the statutory framework or the public interests implicated.

The judgment also emphasised the limited nature of judicial examination at the referral stage, leaving questions that require fuller consideration to the appropriate adjudicatory process where the law permits.

Relevance to ODR

The judgment is important because the use of technology does not alter the legal nature of a dispute.

A dispute that is not legally capable of being referred to arbitration does not become arbitrable merely because an online platform offers to determine it.

The judgment also reinforces the need to distinguish between the availability of an ODR service and the legal authority of the chosen process to determine the dispute.

It did not directly decide issues concerning online procedural fairness, platform confidentiality or cybersecurity.

5.5 Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

Facts and legal issue

A nine-judge Constitution Bench of the Supreme Court considered whether privacy is protected as a fundamental right under the Constitution of India.

The case arose in the context of the constitutional status of privacy and the relationship between individual liberty, dignity and state power.

Decision of the Supreme Court

The Supreme Court unanimously recognised privacy as a constitutionally protected right.

The judgments discussed several dimensions of privacy, including bodily privacy, decisional autonomy and informational privacy.

The decision established an important constitutional foundation for examining the collection, use and disclosure of personal information, particularly where state action is involved.

Relevance to ODR

ODR platforms may process personal, financial and commercially sensitive information. The principles recognised in Puttaswamy therefore provide an important constitutional framework for evaluating digital justice systems.

Publicly operated or court-connected digital systems must be designed with appropriate attention to constitutional rights and lawful data processing.

At the same time, the decision should not be interpreted as automatically imposing identical direct constitutional duties on every private platform. The legal obligations of private ODR providers must also be assessed under applicable statutes, contracts and other relevant legal principles.

5.6 Comparative Analysis of the Judgments

The decisions discussed above serve different legal purposes.

Judgment	Principal legal relevance to ODR
Praful B. Desai	Acceptance of video-conferencing for evidence in the circumstances of the case.
Grid Corporation	Recognition of effective remote communication in the relevant arbitration context.
Shakti Bhog Foods	Assessment of the existence of an arbitration agreement through relevant communications.
Vidya Drolia	Arbitrability and the scope of judicial scrutiny at the referral stage.
Puttaswamy	Constitutional protection of privacy and informational autonomy.

Taken together, these judgments support a cautious but constructive approach to technology-enabled legal processes. They demonstrate that technological innovation may be accommodated within existing law, but only within the limits of the applicable statutory framework and procedural requirements.

None of these decisions, individually or collectively, provides a complete regulatory code for ODR platforms. This limitation strengthens the case for clear institutional standards and a coherent legal framework.

6. CORE LEGAL CHALLENGES IN ONLINE DISPUTE RESOLUTION

6.1 Privacy and Data Protection

Privacy is one of the most significant legal concerns arising from ODR. Unlike a conventional dispute-resolution process, an online proceeding may require the continuous electronic collection, transmission and storage of information through multiple systems and service providers.

The information processed may include personal identification documents, financial statements, commercial contracts, medical records, employment information, witness statements and confidential settlement offers. Unauthorised access to such information may cause financial loss, reputational harm, commercial disadvantage or interference with individual privacy.

6.1.1 Excessive Collection and Secondary Use

An ODR provider may require information to verify identities, manage proceedings or facilitate communication. However, the collection of information should remain proportionate to the legitimate requirements of the process.

Problems arise when platforms collect unnecessary information, retain it indefinitely or use it for purposes unrelated to dispute resolution.

For example, a platform should not assume that information supplied for mediation may automatically be used for advertising, behavioural profiling or unrelated commercial analytics.

The legal position must be assessed under the applicable data-protection framework, the platform's contractual obligations and any relevant consent or statutory exception.

6.1.2 Cybersecurity Risks

ODR platforms may face several forms of cybersecurity risk, including:

- Unauthorised access to user accounts.
- Phishing and identity theft.
- Interception of communications.
- Exposure of stored documents through insecure systems.
- Unauthorised recordings of hearings.
- Compromise of third-party service providers.
- Loss or alteration of electronic records.

A breach may affect not only the parties but also the neutrality and integrity of the dispute-resolution process.

Cybersecurity should therefore be treated as an essential institutional responsibility rather than an optional technical feature.

6.1.3 Accountability for Data Breaches

A further challenge concerns the allocation of responsibility among the ODR institution, platform operator, arbitrator or mediator, cloud-service provider and parties.

If confidential information is disclosed, the affected party should be able to identify the responsible entity, understand the available remedies and determine whether the incident affects the fairness or validity of the proceeding.

Standard-form terms should not be used to obscure responsibility or exclude obligations that cannot lawfully be waived.

A sound regulatory framework should establish proportionate security requirements, appropriate incident-response procedures and clear accountability arrangements.

6.2 Confidentiality in Virtual Proceedings

Confidentiality is particularly important in mediation and arbitration because parties may need to disclose sensitive information to negotiate or present their cases effectively.

However, confidentiality and privacy are distinct concepts. Privacy concerns the lawful and appropriate processing of personal information, whereas confidentiality concerns restrictions on the disclosure or use of information obtained in a particular relationship or proceeding.

A process may protect personal data from external disclosure while still failing to preserve the confidentiality of settlement communications. Conversely, a confidentiality agreement may restrict disclosure without adequately regulating the collection or storage of personal information.

6.2.1 Unauthorised Recording and Disclosure

Virtual proceedings can be recorded or captured through screenshots, external devices or software tools. Such recordings may be circulated without permission, potentially exposing confidential business information, personal details or settlement positions.

Software restrictions may reduce the risk but cannot eliminate it entirely.

ODR institutions should establish clear rules concerning recording, downloading, copying and sharing information. Participants should be informed of the applicable rules before proceedings commence.

6.2.2 Presence of Unauthorised Third Parties

A participant may join an online hearing from a home, office or other environment in which third parties can listen to the proceedings without being visible on screen.

In some circumstances, a witness may receive unauthorised assistance or coaching during remote examination. These risks can affect confidentiality, the integrity of evidence and the equality of the parties.

Reasonable safeguards may include identity verification, private-room checks where appropriate, restrictions on unauthorised attendance and clear procedures for addressing suspected interference.

These measures should remain proportionate to the nature of the dispute and must not unnecessarily exclude participants.

6.2.3 Limits of Confidentiality

Confidentiality should not be described as absolute. Applicable law may require disclosure in certain circumstances, and information may need to be produced for enforcement, judicial review or other legally recognised purposes.

The governing rules should identify the scope of confidentiality, the persons bound by it, the permitted exceptions and the consequences of unauthorised disclosure.

Clear drafting reduces uncertainty and improves confidence in the process.

6.3 Access to Justice and the Digital Divide

ODR is frequently presented as a means of democratising dispute resolution. Nevertheless, access to technology is uneven, and the digital format may create additional barriers for individuals who lack reliable internet access, suitable devices or digital literacy.

6.3.1 Infrastructure and Connectivity

Unstable internet connectivity may prevent a party from joining a hearing, reviewing documents or responding to submissions within the prescribed time.

Technical interruptions may be especially harmful where a party is presenting important evidence or responding to a legal argument.

Institutions should therefore provide reasonable procedures for reconnection, rescheduling and alternative participation where technical failure affects a party's opportunity to be heard.

6.3.2 Digital Literacy and Language

A person may possess a smartphone but still be unable to navigate an unfamiliar dispute-resolution platform.

Complex registration procedures, inaccessible document-upload systems and English-only interfaces may discourage participation.

Platforms should provide clear instructions, appropriate language support and assistance for users unfamiliar with digital legal processes.

6.3.3 Economic Exclusion

Private ODR providers may charge registration, administrative or professional fees. Although online proceedings can reduce certain expenses, the total cost may still be prohibitive for a person with limited financial resources.

Regulatory and institutional arrangements should promote transparent fee structures and consider fee waivers or publicly supported facilities for eligible users.

The value of ODR should be measured not only by the reduction in average costs but also by whether people with limited resources can realistically use it.

6.3.4 Assisted-Digital Participation

A practical response to digital exclusion is the development of assisted-digital facilities through appropriate public infrastructure, legal services institutions and community facilities.

Such arrangements may provide access to devices, stable internet connectivity, technical assistance and guidance on procedural requirements.

Assistance must be organised in a manner that protects confidentiality. A person should not be required to disclose private settlement communications to an unauthorised helper merely to participate in a digital proceeding.

The availability of an assisted-digital option is particularly important where the alternative would be the practical denial of access to a legal remedy.

6.4 Informed Consent and Unequal Bargaining Power

Consent is central to consensual dispute-resolution processes. However, consent to use a digital platform is not necessarily equivalent to informed consent to every procedural feature or data-processing practice associated with it.

Parties should understand the nature of the process, the role of the neutral, applicable fees, confidentiality limits, available alternatives and the legal consequences of a settlement or award.

This requirement becomes especially important in consumer disputes and other relationships involving unequal bargaining power.

A standard-form clause requiring the use of a particular platform may not adequately address concerns about accessibility, neutrality or the practical ability to participate.

ODR institutions should therefore provide clear information before the process begins and should avoid treating a person's acceptance of lengthy standard terms as conclusive evidence that every aspect of the process is fair.

6.5 Neutrality and Automated Decision-Support

Some ODR systems use automated tools to classify disputes, organise documents, recommend settlement ranges or guide users through procedural steps.

Such tools may improve administrative efficiency. However, they can also create risks where their functioning is opaque, their recommendations rely on incomplete information or their outputs reproduce biases present in historical data.

A distinction must be maintained between administrative assistance and the exercise of adjudicatory authority.

Where automated tools materially affect a party's position, the platform should explain their role, provide an opportunity to correct inaccurate information and preserve appropriate human oversight.

An automated recommendation should not be presented as a binding legal determination unless the applicable law and the nature of the process lawfully support that consequence.

Neutrality also requires disclosure of relevant conflicts of interest and appropriate separation between the commercial interests of a platform operator and the independent functions of a mediator or arbitrator.

6.6 Jurisdiction, Enforceability and Electronic Evidence

ODR does not eliminate the ordinary legal questions associated with dispute resolution.

The parties may still need to establish the existence of a valid arbitration agreement, the arbitrability of the subject matter, the applicable law, jurisdiction, limitation and the enforceability of the outcome.

In arbitration, the juridical seat must be distinguished from the physical location from which a virtual hearing takes place. The seat has legal significance under the applicable arbitration framework and should not be confused with the server location of the ODR platform.

Electronic evidence also requires careful treatment. Emails, chat messages, recordings and platform logs may be relevant in subsequent proceedings, but their evidentiary status depends on the applicable law and the circumstances in which they were created and preserved.

Institutions should adopt procedures that protect the integrity of records while avoiding indiscriminate retention of sensitive communications.

7. COMPARATIVE AND INTERNATIONAL PERSPECTIVE

7.1 UNCITRAL Technical Notes on ODR

The UNCITRAL Technical Notes on Online Dispute Resolution, 2016, provide a useful non-binding reference for the design of ODR processes.

Their emphasis on accessibility, fairness, transparency, due process and accountability offers a framework for evaluating whether a digital dispute-resolution system is procedurally legitimate.

For India, the principal lesson is that an ODR system should provide clear information concerning the process, the role of participants, the relevant stages and the consequences of the outcome.

However, the Technical Notes are not binding domestic legislation and do not independently determine whether an online agreement or settlement is enforceable under Indian law.

7.2 European Union Experience

The European Union adopted Regulation (EU) No. 524/2013 concerning online dispute resolution for consumer disputes. The resulting EU ODR platform sought to facilitate online access to consumer dispute-resolution mechanisms, particularly in cross-border transactions.

The platform was subsequently discontinued in 2025 under later EU legislation. Its history illustrates an important institutional lesson: establishing a digital portal does not, by itself, ensure effective use, sustained participation or successful dispute resolution.

The experience should therefore be treated as a historical comparative example rather than a description of a currently operating EU-wide ODR platform.

India can draw lessons concerning accessibility, clear referral mechanisms, institutional participation and the importance of evaluating whether a digital service produces meaningful outcomes.

7.3 Lessons for India

The international experience suggests that ODR regulation should combine common minimum safeguards with flexibility in procedural design.

India should avoid assuming that a model developed for cross-border consumer disputes can automatically be applied to every commercial arbitration, employment dispute, family dispute or court-connected mediation.

The legal and institutional framework must account for the nature of the dispute, the consequences of the outcome, the bargaining power of the parties and the technological resources available to them.

International guidelines can inform this process, but domestic legislation, constitutional principles and the specific requirements of Indian procedural law must remain central.

8. RECOMMENDATIONS AND THE WAY FORWARD

8.1 Development of a Comprehensive ODR Governance Framework

India should consider developing a dedicated statutory framework or a coordinated set of rules under existing legislation to establish clear minimum standards for ODR providers.

Such a framework should define the categories of providers covered, their principal obligations, the relevant supervisory authorities and the remedies available to affected parties.

The framework should be proportionate. A simple negotiation tool should not necessarily face the same compliance requirements as a platform administering binding arbitration or handling highly sensitive information.

Until a comprehensive framework is adopted, public authorities and dispute-resolution institutions can develop model rules and contractual clauses, provided that their legal status is clearly identified.

8.2 Privacy and Security by Design

Privacy and cybersecurity should be incorporated into the design and operation of ODR platforms.

Minimum safeguards should include appropriate encryption, access controls, secure authentication, vulnerability management, incident-response procedures and due diligence concerning third-party service providers.

Providers should publish clear privacy notices and identify the purposes for which information is collected, the persons or entities who may access it, applicable retention periods and procedures for dealing with incidents.

Security requirements should be proportionate to the sensitivity of the information and the consequences of unauthorised access.

8.3 Standardised Confidentiality Protocols

ODR institutions should adopt clear confidentiality protocols covering the entire dispute-resolution process.

These protocols should address:

1. Whether and when proceedings may be recorded.
2. Who may attend virtual sessions.
3. How documents may be uploaded, downloaded and shared.
4. The treatment of settlement communications.
5. The circumstances in which disclosure may be legally required.
6. The retention and deletion of records.
7. The procedure for responding to suspected breaches.

Recording should not be the default merely because the technology permits it. Where recording is required by law, agreed by the parties or necessary for a defined procedural purpose, the scope, access and retention of the recording should be clearly regulated.

8.4 Informed Consent and Procedural Fairness

Before an ODR process begins, participants should receive a concise explanation of the process, its costs, the role of the neutral, the applicable rules and the legal consequences of the outcome.

The platform should explain any material use of automated tools and disclose relevant conflicts of interest. Reasonable accommodations should be available to participants who face disability-related, language-related or technological barriers.

Where a party cannot participate fairly through a digital process, the institution should consider an appropriate alternative, including hybrid or physical participation where legally and practically available.

8.5 Bridging the Digital Divide

Public authorities should explore the use of appropriate public digital infrastructure and legal services institutions to provide assisted-digital ODR facilities.

Such facilities should offer stable connectivity, accessible devices, technical support and language assistance.

Participation should be designed to protect confidentiality, particularly where users require assistance from staff or community facilities.

Transparent fee structures and suitable financial assistance should also be considered for eligible users, particularly in low-value disputes where the costs of the platform could exceed the practical benefit of pursuing the claim.

8.6 Protection and Authentication of Electronic Evidence

ODR institutions should establish standard procedures for managing electronic documents and other records.

These procedures should address authentication, version control, timestamps, access logs, preservation and secure deletion. Where records may subsequently be relied upon in court, preservation arrangements should be consistent with the applicable evidentiary requirements.

The Bharatiya Sakshya Adhiniyam, 2023 must be considered when determining the proof and admissibility of electronic records in proceedings to which it applies.

Platform-generated labels or assurances should not be treated as automatically establishing admissibility.

8.7 Training and Professional Standards

Mediators, arbitrators, legal professionals and platform personnel should receive appropriate training concerning digital ethics, confidentiality, cybersecurity, online communication and procedural fairness.

Training should also address the identification of power imbalances, the management of technical interruptions and the provision of reasonable accommodations.

Any proposed certification system should be developed by legally competent institutions and should be consistent with the applicable statutory framework. Mandatory accreditation should not be attributed to the Bar Council of India or another body unless supported by an actual legal instrument.

8.8 Independent Accountability and Evaluation

ODR providers should be subject to proportionate accountability mechanisms.

Depending on the applicable legal framework, these may include independent security audits, complaints procedures, transparent reporting and review of institutional practices.

Anonymised information concerning case volumes, completion rates, withdrawal rates, average resolution time, complaints and accessibility may help evaluate institutional performance.

Such reporting must be designed to avoid the identification of parties or disclosure of confidential information.

The success of ODR should not be assessed solely by the number of disputes processed or the speed of settlement. The quality of participation, procedural fairness and accessibility are equally important indicators.

9. CONCLUSION

Online Dispute Resolution has the potential to improve the accessibility, affordability and efficiency of dispute resolution in India. By reducing geographical barriers and facilitating electronic communication, it can provide an additional mechanism for resolving suitable disputes and may help address some of the

practical difficulties associated with conventional proceedings.

However, the effectiveness of ODR cannot be assessed exclusively in terms of speed, convenience or cost reduction. Digital dispute-resolution systems process sensitive information, depend on technological infrastructure and may create new forms of exclusion. Their legitimacy therefore depends on the protection of privacy, the preservation of confidentiality, procedural fairness and meaningful access to justice.

The Indian legal framework already contains several important foundations for ODR. The Arbitration and Conciliation Act, 1996 recognises arbitration agreements and requires equal treatment of parties. The Information Technology Act, 2000 provides for the legal recognition of electronic records and electronic contracts. The Mediation Act, 2023 addresses online mediation, subject to the commencement and application of its provisions. The Digital Personal Data Protection Act, 2023 establishes a framework for digital personal data, while the Bharatiya Sakshya Adhiniyam, 2023 regulates electronic and digital records in the proceedings to which it applies.

Nevertheless, these enactments do not automatically resolve every question concerning platform accountability, unauthorised recording, retention of dispute records, digital exclusion or the use of automated tools.

The judicial decisions examined in this paper must also be understood according to their actual holdings. Praful B. Desai and Grid Corporation support the contextual use of remote communication. Shakti Bhog Foods concerns the existence and proof of an arbitration agreement. Vidya Drolia addresses arbitrability and judicial intervention at the referral stage. Puttaswamy establishes the constitutional importance of privacy. These judgments provide relevant principles, but none should be misrepresented as directly deciding the entire range of legal challenges associated with contemporary ODR platforms.

A sustainable ODR framework should combine proportionate regulation, effective privacy and cybersecurity safeguards, clear confidentiality rules, reliable evidence-management procedures and meaningful access for digitally disadvantaged persons. It should also preserve appropriate human oversight, disclose material conflicts of interest and ensure that the availability of an online process does not become a reason to deny a fair alternative.

Ultimately, technology should strengthen the administration of justice rather than determine who can access it. ODR will achieve its full potential only when efficiency is accompanied by accountability, confidentiality, fairness and inclusion. The objective should not be to replace conventional justice with an exclusively digital system, but to create a plural and accessible framework in which technology serves the needs of justice and remains subject to the rule of law.

10. REFERENCES AND BIBLIOGRAPHY

A. Legislation

1. The Constitution of India, arts. 14, 21 and 39A.
2. The Arbitration and Conciliation Act, 1996, particularly ss. 7, 18, 19 and 42A.
3. The Information Technology Act, 2000, particularly ss. 4, 5 and 10A, read with other applicable provisions.
4. The Consumer Protection Act, 2019, particularly s. 94, and applicable rules.
5. The Digital Personal Data Protection Act, 2023, read with the applicable commencement notifications and rules.
6. The Mediation Act, 2023, particularly the provisions concerning confidentiality and s. 30 on online mediation, subject to verification of commencement.

7. The Bharatiya Sakshya Adhiniyam, 2023, particularly ss. 61–63.

B. Judicial Decisions

1. State of Maharashtra v. Dr. Praful B. Desai, (2003) 4 SCC 601.
2. Grid Corporation of Orissa Ltd. v. AES Corporation, (2002) 7 SCC 736.
3. Shakti Bhog Foods Ltd. v. Kola Shipping Ltd., (2009) 2 SCC 134.
4. Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.
5. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

C. Reports and International Materials

1. NITI Aayog Expert Committee on ODR, Designing the Future of Dispute Resolution: The ODR Policy Plan for India (2021).
2. United Nations Commission on International Trade Law (UNCITRAL), Technical Notes on Online Dispute Resolution (2016).
3. UNCITRAL, Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018).
4. United Nations, Convention on International Settlement Agreements Resulting from Mediation (2019).
5. European Parliament and Council, Regulation (EU) No. 524/2013 on Online Dispute Resolution for Consumer Disputes (historical framework; the EU ODR platform was discontinued in 2025).