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# **PIONEERING INNOVATIONS IN DIGITAL JURISPRUDENCE: EVALUATING ODR SYSTEMS AND AI IN SHAPING THE FUTURE OF CONFLICT RESOLUTION**

AUTHORED BY - YASH PATHAK & ANUSREA GOSWAMI

## **Abstract**

*Technology has a pivotal role in both the present and future of the nation. The effective utilisation of current technology solutions necessitates appropriate implementation and widespread understanding throughout society. Navigating digital dispute resolution can provide challenges for individuals lacking familiarity with technologically oriented frameworks. The COVID-19 pandemic necessitates the implementation of adaptable and innovative measures, including those aimed at resolving issues within the public health system. In response to the global epidemic, various business and governmental entities worldwide have implemented administrative adjustments to directly tackle the specific challenges faced by their own communities. Legal institutions have adapted their methodologies to ensure the timely resolution of disputes, while private conflict resolution mechanisms have expanded their services to prioritise the welfare of the community. The aforementioned phenomenon has resulted in a heightened need for services related to resolving disputes, thereby leading to a rise in the profitability of the corresponding industry. The introduction of ODR has significantly transformed how conflicts are resolved, regardless of their scale or magnitude. ODR services enable users to electronically submit their claims and utilise an automated mechanism to resolve conflicts. During the COVID-19 pandemic, several websites played a crucial role in facilitating the efficient operation of the legal system. Additionally, it is worth noting that online dispute resolution has been utilised in the past, particularly by online fashion platforms, thereby contributing to the growth and development of this system. One advantage of utilising an ODR platform is eliminating the need to engage legal counsel or endure the protracted procedures associated with initiating a legal action in a court of law. ODR employs an automated mechanism for the resolution of conflicts, so enabling users to save valuable resources in terms of both time and finances. There remain certain aspects that require further examination and challenges that must be addressed.*

## Introduction

The Indian legal system frequently faces criticism due to its inefficiencies, prolonged delays, and perceived inclination towards favouring individuals of wealth and influence. The COVID-19 outbreak has further contributed to the extensive array of criticisms directed on the legal system. The legal system in India has significant delays. This phenomenon can be attributed to the substantial number of cases that are submitted around the nation, leading to a congestion in the legal system. This issue is particularly challenging within the framework of the COVID-19 outbreak, as the entire system has faced heightened scrutiny. The conflicts that emerge as a result of the epidemic necessitate a fundamentally distinct strategy. The current legal system lacks the necessary resources and mechanisms to effectively address these conflicts, resulting in significant delays in the resolution process. In this particular circumstance, Online Dispute Resolution [“ODR”] has emerged as the favoured option for resolving disputes. ODR has been present in the legal system since the 1990s. However, due to the ongoing epidemic, it has experienced a significant increase in its virtual presence, incorporating a more participatory dimension.<sup>1</sup>

ODR is a modality of dispute settlement that leverages technological tools to expedite the resolution of conflicts between involved parties. The process primarily encompasses negotiation, mediation, arbitration, or a combination thereof. ODR can be considered as the digital counterpart of Alternative Dispute Resolution [“ADR”], encompassing novel approaches and tools that are not typically found in conventional ADR processes. The statutes that function in conjunction with dispute resolutions include the *Consumer Protection Act of 2019*<sup>2</sup>, the *Companies Act of 2013*<sup>3</sup>, the *Arbitration and Conciliation Act of 1996*<sup>4</sup>, as well as the *UN Conference on Global Settlement Agreements*<sup>5</sup>, among others, which regulate the mediation process. Internet and web-based technology has the capability to be utilised in a multitude of manners. The involved parties in a dispute have the ability to utilise the internet and web-based knowledge to engage in communication, such as employing email and online chat platforms. The utilisation of Internet and web-based technology in the context of dispute resolution holds the potential to enhance the efficacy of dispute settlement processes in India.

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<sup>1</sup> Abhishek Rathore & Ankit Bhandari, The Mechanism of Online Dispute Resolution, 6 GNLU J.L. DEV. & POL. 94 (2016).

<sup>2</sup> Consumer Protection Act, 2019.

<sup>3</sup> Companies Act, 2013.

<sup>4</sup> Arbitration and Conciliation Act, 1996.

<sup>5</sup> United Nations Convention on International Settlement Agreements Resulting from Mediation, 2022.

The utilisation of ODR has been found to offer cost and time advantages over conventional means of resolving disputes. Internet-based conflict resolution can be facilitated by utilising various digital platforms such as online email, chat systems, videoconferencing tools, and social media networks.<sup>6</sup>

ODR has arisen as a prospective resolution mechanism for addressing conflicts that arise in the context of internet usage, encompassing various areas such as e-commerce transactions, domain name disputes, cybercrimes, and similar issues. ODR can also be employed to address offline situations that are amenable to resolution through online platforms. These disputes may encompass a range of issues, including consumer complaints, family disputes, minor claims, and similar matters. ODR has the potential to provide numerous advantages, including enhanced efficiency, increased convenience, improved cost-efficiency, enhanced accessibility, and heightened flexibility. ODR has the potential to improve the effectiveness and productivity of conflict resolution processes through the integration of advanced technologies such as artificial intelligence, big data, and blockchain.

Nevertheless, the implementation of ODR encounters various obstacles and potential hazards. These include limited knowledge, confidence, and adoption rates among users; ethical and legal concerns; technical and security complications; as well as regulatory and institutional considerations. Hence, it is imperative to establish a comprehensive and logical structure for ODR that can effectively tackle these obstacles and guarantee the integrity, equity, and enforceability of ODR procedures and results. Various countries and regions have implemented diverse strategies to govern ODR. These techniques span from self-regulation by ODR providers and users, to co-regulation involving both public and private entities, to state regulation through legislation and policy.<sup>7</sup>

The primary objective of this article is to conduct a comparative examination of the regulatory structure governing ODR in several legal countries, including the European Union, the United States, the United Kingdom, and India. This paper aims to analyse the primary characteristics, advantages, and disadvantages of each framework, and ascertain the optimal approaches and insights gained for constructing a resilient and efficient ODR system. This article will

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<sup>6</sup> Shivraj S. Huchhanavar, In Search of True 'Alternative' to Existing Justice Dispensing System in India, Vol. 7: No. 1, 2013.

<sup>7</sup> *Ibid.*

furthermore examine the forthcoming patterns and obstacles of ODR and propose certain suggestions for enhancing ODR about accessibility, quality, and innovation.

## Online Dispute Resolution: An Overview

### A. What is ODR?

Over the course of its development, ODR has emerged as a prominent and extensively employed approach within the realm of Alternative Dispute Resolution procedures. The concept of ODR has been a subject of considerable discussion, primarily in the context of private sector and commercial conflicts. ODR is a method that facilitates the resolution of conflicts in various contexts, such as the worldwide business-to-business market, interactions between Internet enterprises and customers, and disputes between two consumers engaged in person-to-person transactions. This is achieved through the use of advanced online arbitration and mediation services. Various types of web portals, including web conferencing and email platforms, can be utilised as alternative means for parties involved in a dispute to convene, hence eliminating the need to physically appear in court and select a forum that may provide geographical inconveniences for one or both parties. ODR has emerged as a more expedient and effective technique for settling conflicts in situations when the involved parties are physically separated by distance.<sup>8</sup>

### B. Evolution of ODR

Since the onset of the twenty-first century, there has been a notable surge in the global expansion of the internet, with a growth rate of 566.4%.<sup>9</sup> Despite the occurrence of the economic crisis of 2000–2001, commonly referred to as the bursting of the 'dotcom bubble', and the subsequent 'Great Recession' of 2007–2008, which had a significant impact on national economies worldwide, the digital economy had robust growth, leading to a substantial expansion of the e-commerce industry.<sup>10</sup> The economic crisis, upon closer examination, might be seen as a fortuitous event that catalysed a transformative shift in the realm of ecommerce. Moreover, online media platforms have witnessed conflicts arising in several types of commercial transactions, including B2B (business-to-business), B2C (business-to-consumer),

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<sup>8</sup> Anita Ramasastry, Government-to-Citizen Online Dispute Resolution and Commercial Disputes: A Preliminary Inquiry, *Washington Law Review*, Vol. 79, 2004.

<sup>9</sup> World Internet Users Statistics and 2020 World Population Stats, *Internetworldstats.com* (2021), <http://www.internetworldstats.com/stats.htm/>.

<sup>10</sup> The Dotcom Bubble, *Nethistory.info* (2021), <http://www.nethistory.info/History%20of%20the%20Internet/dotcom.htm>.

and C2C (consumer-to-consumer) activities, as well as e-contracts and similar arrangements.<sup>11</sup> These various factors have had a role in the development of ODR. The origin of ODR may be traced back to the field of ADR, wherein both concepts share fundamental similarities. The primary distinction is in the fact that ODR specifically pertains to the resolution of disputes through online platforms, facilitated by various technology resources. ADR has demonstrated notable achievements in this particular topic, since it represents a non-conventional approach that circumvents the involvement of courts and litigation. Additionally, ADR endeavours to resolve issues in a comparatively expeditious manner, thereby ensuring a mutually beneficial outcome for all parties involved.<sup>12</sup>

Currently, the ADR mechanism has reached a highly advanced stage, to the extent that it is employed to resolve disputes involving multi-billion dollar amounts. An example of this can be seen in the tax dispute arbitration case involving Vodafone, where the Permanent Court of International Arbitration in The Hague, The Netherlands, expressed its endorsement of the ADR arbitration mechanism.<sup>13</sup> The court emphasised the importance of amicable negotiations in resolving disputes between an investor of one contracting party and the other contracting party, to the greatest extent feasible.

The implementation of the ODR mechanism facilitates expedited access to the judicial process, so exemplifying the adage that the prolonged delay in dispensing justice ultimately results in a denial of justice. The entitlement to avail oneself of the legal system is often regarded as an essential and fundamental human right. The concept of the "right to justice" is essentially constituted by the combination of the right to access justice and the right to timely justice. The presence of pending cases and the resultant delay in the dispensation of justice serve as evident indicators that, when faced with the intricate court system burdened by excessive caseloads, it is imperative to acknowledge that technology plays a pivotal role in the effective administration of justice. Nevertheless, additional progress is required in order to transition conflicts from conventional to non-conventional online channels, with the aim of promoting justice by facilitating prompt and efficient resolutions that maintain this fundamental human entitlement.

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<sup>11</sup> Scott Cooper, Colin Rule & Louis F. Del Duca, From Lex Mercatoria To Online Dispute Resolution: Lessons From History in Building Cross-Border Redress Systems, Papers.ssrn.com (2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1840572](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1840572).

<sup>12</sup> Ebay Services: Buying and Selling Tools: Dispute Resolution Overview, Pages.ebay.com (2021), <https://pages.ebay.com/services/buyandsell/disputeres.html>.

<sup>13</sup> 'Vodafone Wins International Arbitration Against India in \$2 Billion Tax Dispute Case, The Wire (2021), <https://thewire.in/business/vodafone-Arbitration-india-tax-disputecase>.

### C. Types of ODR

Online Dispute Resolution involves several sorts of techniques which are applied so as to resolve disagreements on the Internet, and they are:

#### 1. *Automated negotiation*

In order to comprehend the application of ODR as a negotiation method, it is important to acknowledge the existence of two primary forms of negotiation.<sup>14</sup> These forms include:

- a. *Automated negotiation* refers to a process in which parties collaboratively establish a predetermined range or scope within which they would mutually agree to reach a settlement. This process can be characterised as blind bidding. Subsequently, both parties proceed to present their respective offers, without any knowledge of the opposing party's offer. In the event that the offer falls within the predetermined range, the computer will compute the average value, thereby resolving the dispute for said amount. However, in the event that the offer falls outside the range of acceptable values, a resolution is not achieved and the computer prompts the parties to engage in another round of blind bidding.
- b. *Assisted negotiation* is a highly advanced process that possesses the capability to accommodate a wide range of settlement terms and conditions, extending beyond mere payment-related aspects. This form of negotiation involves two parties and excludes the participation of a neutral third party, while incorporating the aid of a computer.

#### 2. *Digital Mediation*

Mediation is a less frequently utilised approach for resolving disputes in online settings. The online process shares similarities with its offline counterpart, with the distinction that it incorporates the integration of facilitative and evaluative techniques alongside information technology (IT). The sphere is commonly subdivided into three distinct components: a chat room designated for collaborative sessions, a separate area for caucuses, and a designated space for the purpose of filing and storing documents. Despite initial scepticism, online mediation has proven to be a successful mechanism.<sup>15</sup> The aforementioned phenomenon is consistently observed due to the various benefits and advantages it offers, including cost savings, time savings, and overall convenience.

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<sup>14</sup> Gabrielle Kaufmann-Kohler, Online Dispute Resolution and its Significance for International Commercial Arbitration, *Global Reflections on International Law, Commerce and Dispute Resolution*, November 2005, pp. 438-441.

<sup>15</sup> Ethan Katsh, Online Dispute Resolution: The next Phase, 7 *LEX ELECTRONICA* [51] (2002).

### 3. *Online arbitration*

Online arbitration entails the inclusion of a neutral and impartial third party to mediate between the involved parties. In contrast to mediation, the participants involved in arbitration are legally obligated to adhere to the ruling made by the arbitrator, commonly referred to as an arbitral award. Face-to-face interaction is absent in the resolution process, with technology assuming a prominent role as a fourth party in facilitating dispute resolution and administering online awards. In order for ADR modes to be classified as ODR, a significant proportion of the proceedings should be conducted through online platforms.<sup>16</sup> Offline proceedings should only be pursued in cases where compelling justifications exist or when the involved parties deem it inappropriate to conduct dispute resolution online, despite the potential benefits in terms of effectiveness and efficiency.

Upon examination and evaluation of the aforementioned methods, it becomes evident that they lack binding nature as they do not lead to enforceable determinations. Instead, they result in settlements or, in cases of unsuccessful resolution, no outcome whatsoever. The sole method of dispute resolution accessible through online platforms is arbitration. The method commonly referred to as non-binding arbitration, as acknowledged by both providers and users, requires clarification regarding the specific aspects in which it lacks binding force. The potential outcomes that emerge are either non-binding from the outset or non-binding at the conclusion. The Ford Journey programme, which is an online platform for resolving disputes related to motor vehicle sales, serves as a noteworthy illustration of a unilaterally binding mechanism. The ICANN system for resolving disputes related to domain name registrations under the Uniform Dispute Resolution Policy (UDRP) adopts a distinct approach. In this system, the respondent (i.e., the holder of the domain name) is obligated to comply with the arbitration process, as it is legally binding.<sup>17</sup> However, it is important to note that the final decision reached through arbitration does not impose binding obligations on either party involved in the dispute.

#### D. **A perusal of ODR websites**

- a) *Virtual magistrate project (VMP)*: VMP is the first-ever online ADR platform that settles disputes based on allegations made on the internet, including copyright, trademark, privacy infringement, defamation, and fraud. NCAIR supported the VMP

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<sup>16</sup> Emilia Bellucci, Arno R. Lodder & John Zeleznikow, *Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a ThreeStep Model*, 10 *Harvard Negotiation L.* (2007).

<sup>17</sup> ICAN, <https://www.icann.org/>.

as well. 8. Emails are used for the whole process. The person filing the complaint must include all relevant details and the other party's position. The VCILP will then examine the complaint and start the process. VMP will consider all relevant legal statutes as well as the parties' contract in order to reach a mutually agreeable resolution.<sup>18</sup>

- b) ***The Online Ombuds Office (OOO)***: a more sophisticated form of the VMP, it was originally founded in 1996. OOO is an Ombudsman who mediates disputes in a manner similar to that of VMP. The Ombudsman reached out to the concerned parties via email, providing a comprehensive explanation of the process. The VMP and OOO are comparable in that they offer free services, which saves money when compared to traditional litigation. Trademark disputes and eBay Up4scale are the two instances that OOO has settled most frequently.<sup>19</sup>
- c) ***WIPO Organization for World Intellectual Property***: While each system is unique, the most of them adhere to the process for arbitration when it comes to disputes over domain names and other intellectual property. WIPO uses synchronous platforms, such as online chat and audio or video conferencing, to resolve disputes. The party seeking online mediation through the WIPO Center may do so if they believe their intellectual property rights have been violated.<sup>20</sup>

### **ADR vs. ODR: A comparative Analysis**

#### **A. What is ADR?**

ADR refers to a variety of procedures that are specifically designed to resolve conflicts in a manner that deviates from the traditional courtroom environment. The concept incorporates various methods of dispute resolution, including mediation, negotiation, conciliation, and arbitration. One of the key benefits of ADR resides in its characteristic of informality and flexibility, enabling parties to exert a higher degree of influence over the process of resolving disputes. In contrast to traditional litigation, ADR procedures prioritize collaboration and the cultivation of agreeable solutions, so creating a spirit of cooperation rather than adversarial resistance.<sup>21</sup>

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<sup>18</sup> Friedman, G. H. (1996). Alternative Dispute Resolution And Emerging Online Technologies: Challenges And Opportunities Hastingscomm. & Ent.LJ,19,695.

<sup>19</sup> Hang, L. Q. (2000). Online Dispute Resolution Systems: The Future Of Cyberspace Law. Santa Clara L. Rev., 41, 837.

<sup>20</sup> World Intellectual Property Organization.

<sup>21</sup> Genn H (2012) What is civil justice for- reform, ADR, and access to justice. Yale J Law Human. 24:397, 416.

One example of a conflict resolution method is mediation, which is the involvement of an impartial third person who assists in facilitating discussions between parties in dispute, with the aim of achieving a mutually acceptable resolution. The aforementioned process is propelled by the practice of engaging in open communication, fostering understanding, and reaching compromises, so guaranteeing that all sides are actively involved in molding the final result.<sup>22</sup> In contrast, arbitration exhibits a greater degree of organization and has resemblance to a streamlined rendition of a judicial trial. The process of arbitration involves the selection of an arbitrator, either by the involved parties or a designated institution, who is responsible for examining the presented evidence and arguments. Subsequently, the arbitrator issues a judgment that holds legal authority and is binding upon the parties involved. Arbitration, as a method of dispute resolution, is frequently characterized by its expediency and confidentiality, rendering it a desirable option for resolving economic conflicts.

#### **B. How is ODR different from ADR?**

Both ADR and ODR offer similar advantages, including expedited outcomes, decreased expenses, and the possibility of maintaining positive relationships among the involved parties. However, these approaches vary in terms of their implementation and extent.

The use of ADR maintains a degree of in-person interaction, a component that certain individuals consider crucial for facilitating successful communication and comprehension. The presence of a mediator or arbitrator in a physical setting has the potential to foster trust and promote collaboration among the involved parties. Nevertheless, the necessity of being physically present can impose restrictions on the practicality of ADR in situations where the parties involved are located far apart or belong to different legal jurisdictions.

On the other hand, ODR completely eliminates geographical constraints. It leverages technological advancements to facilitate the convergence of individuals or groups, even in instances where they are geographically separated by continents. This can offer notable benefits in the context of international conflicts, since the costs and logistical challenges associated with travel and time zone disparities would pose substantial obstacles to resolution.

Although ADR may entail a greater degree of personal engagement, ODR demonstrates

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<sup>22</sup> *Ibid*,

superior scalability. The standardized methodology provided by this system enables the concurrent management of a greater number of instances. In addition, ODR solutions frequently offer sophisticated functionalities, like data analytics and automated case management, that can enhance the efficiency of the process.

### **Advantages of ODR**

Similar to conventional methods of resolving disputes, ODR enables the mediator to customize the procedure in order to effectively cater to the specific requirements of the parties involved in the disagreement.<sup>23</sup> In addition to augmenting certain advantages associated with conventional mediation, there are benefits in utilizing online platforms for the resolution of disputes. The aforementioned method will facilitate more flexibility, the generation of more innovative solutions, and expedited decision-making. The subsequent discussion highlights the advantages of ODR, namely cost-effectiveness, ease, and the circumvention of intricate jurisdictional concerns.

#### **A. Lower Costs and Convenience**

Similar to conventional methods of resolving disputes, one advantage of online dispute resolution is the potential for significant cost savings in comparison to traditional litigation, which is known for its high expenses. Indeed, ODR may represent the sole viable alternative for persons who lack the financial means to undertake extensive travel or who find themselves embroiled in e-commerce conflicts of very minor monetary value. Given that attorney's fees are often the most significant cost in conventional litigation or conflict resolution, parties have the potential to achieve substantial cost savings through cyber-mediation, which frequently obviates the need for legal representation.<sup>24</sup>

For instance, in cases where the parties have established responsibility and their disagreement pertains exclusively to the monetary settlement figure, the aforementioned cyber-mediation platforms that operate with full automation could potentially serve as a satisfactory means of resolving their dispute.<sup>25</sup> Furthermore, significant financial benefits may be achieved as a result of ODR due to the elimination of expenses associated with long-distance phone calls or

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<sup>23</sup> E. Casey Lide, ADR and Cyberspace: The Role of Alternative Dispute Resolution in Online Commerce, Intellectual Property and Defamation, 12 OHIO ST. J. ON DISP. RESOL. 193.

<sup>24</sup> George H. Friedman, Alternative Dispute Resolution and Emerging Online Technologies: Challenges and Opportunities, 19 HASTINGS COMM. & ENT. L.J. 695, 712.

<sup>25</sup> *Ibid.*

teleconferencing.<sup>26</sup>

One of the most widely acknowledged advantages of ODR is the elimination of the need for disputants to undertake extensive travel in order to engage in negotiations. Given the potential for online disputes to occur between individuals residing in disparate locations, potentially spanning entire nations, it seems certain that at least one party involved in such a disagreement would need to undertake extensive travel should they opt for a conventional dispute resolution mechanism.

The ability for parties to engage in ODR from their respective work locations or residences has the potential to result in cost savings and time efficiency. There is no necessity to procure a neutral venue for the purpose of facilitating the mediation process, as the requisite documents and materials are conveniently accessible and do not necessitate extensive transportation. Moreover, the asynchronous nature of e-mail communications yields other advantages.<sup>27</sup> The transmission of messages does not occur in real-time, but rather involves the process of composing written content that is subsequently dispatched at a later time. The convenience of participation in cyber-mediation is significantly enhanced due to the ability to write, post, and answer to e-mail, listservs, and web postings at any given moment. Several scheduling challenges may occur in traditional mediation, particularly in relation to coordinating meeting times and locations. Parties have the capacity to engage in negotiation when they are prepared and during opportune periods.<sup>28</sup>

The mediator has the ability to engage in private discussions, known as caucusing, with one or both parties involved in the mediation process, without disrupting the overall progress of the mediation. The reduction in idle time experienced by disputants is comparable due to the mediator's ability to allocate time to one party without causing the other party to wait idly, as is typically the case in traditional conflict resolution processes.<sup>29</sup>

One could posit that the capacity for message editing prior to sending them leads to more

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<sup>26</sup> Lan Q. Hang, Online Dispute Resolution Systems: The Future of Cyberspace Law, 41 SANTA CLARA L. REV. 837, 855 (2001).

<sup>27</sup> *Ibid.*

<sup>28</sup> Jim Melamed, The Internet and Divorce Mediation, available at <http://www.mediate.com/articles/melamed9.cfm>.

<sup>29</sup> Joel B. Eisen, Are We Ready for Mediation in Cyberspace? 1998 BYU L. Rev. 1305, 1308 (1998).

deliberate and refined contributions. Asynchronous Internet communications offer the benefit of allowing for the creation of meticulously crafted messages, which stands in contrast to the spontaneous and impulsive nature of real-time face-to-face mediation discussions. Furthermore, numerous ODR processes, including the aforementioned fully automated ODR websites, are accessible 24/7, 365 days a year. As a result, disputants are able to promptly engage in negotiations to resolve their disagreements, rather than enduring prolonged waiting times for trial proceedings.

## **B. Avoiding jurisdictional issues**

One notable benefit of utilizing ODR as a means of settling conflicts is its ability to circumvent the challenge of determining the jurisdiction of a specific court in relation to the dispute at hand. By entering into an agreement, disputing parties have the ability to voluntarily commit to a conclusion, so circumventing any potential jurisdictional complications.<sup>30</sup>

### **Practical issues with ODR: An Analysis**

There exist several challenges associated with utilizing the internet as a means of resolving disputes. A few of the concerns that have been cited include:

- “confidentiality, privacy, security, record keeping, storage of information
- access issues such as concerns about the growing digital divide between the it haves and it have-nots
- appropriateness of ODR for a particular type of disputes
- training the it requirements to make it work, that is, the development of standards, and
- development of ethical codes of practices”

Moreover, the legitimacy of the procedure is contingent upon the establishment of a suitable jurisdiction, as well as the equitable nature of the proceedings. To ascertain the suitable legal framework and jurisdiction in the realm of cyberspace, it is imperative to thoroughly examine the internet's transnational character from a technical perspective and the resulting repercussions. In the context of commercial transactions between businesses and consumers, it is important to consider certain factors when addressing disputes. One such factor is the jurisdiction of the destination country, where the consumer should be entitled to the legal protections provided by their country of residency. Another factor to consider is the jurisdiction of the approach, wherein the applicable legal framework should be determined by the

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<sup>30</sup> William T. D’Zurilla, *Alternative Dispute Resolution*, 45 LA. B.J. 352 (1997).

merchant's location. Hence, consumers may encounter challenges in promptly accessing the judicial system and securing access to an appropriate forum for seeking remedy.

Some of the other legal issues with ODR are as follows:

#### **A. Different Regulatory Philosophies**

The ODR issue highlights the recurring philosophical disparities between the European Union (EU) and North America, which are also evident in other discussions over Internet legislation. In contrast to their North American counterparts, Europeans tend to exhibit a lower level of trust towards private regulation. The individuals in question have developed a familiarity with a higher degree of government intervention. In contrast, the United States and Australia exhibit a greater degree of trust and dependence on industry to assume leadership roles and self-regulate.

One example of an organization that has formulated multiple rules of conduct pertaining to the resolution of business-to-consumer (B2C) conflicts is the International Chamber of Commerce (ICC). The aforementioned codes encompass the International Code of Advertising Practice, the International Code of Sales Promotion, and the ICC International Code of Practice on Direct Marketing. Numerous nations lacking autonomous self-regulatory mechanisms often turn to the International Chamber of Commerce (ICC) for the establishment of rules and guidelines pertaining to self-regulation. Self-regulation is commonly grounded on three fundamental concepts. Firstly, it entails ensuring that customers have unrestricted access to information. Secondly, it upholds the ability of advertisers to contest any complaints raised against them. Lastly, it incorporates an enforcement mechanism that operates within the boundaries of national codes or guidelines, while adhering to legal frameworks.<sup>31</sup>

The National Alternative Dispute Resolution Advisory Council (NADRAC) in Australia is currently directing its focus towards the increasing use of ODR.<sup>32</sup> The utilization of information technology (IT) in conflict resolution encompasses several methods such as video conferencing, electronic mail, artificial intelligence systems, and the Internet. Additionally, the utilization of information technology (IT) is employed to address conflicts in various domains, including but not limited to domain names, intellectual property, e-commerce, and internet

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<sup>31</sup> A Wiener 'Regulations and standards for online dispute resolution: a primer for policymakers and stakeholders' 2002, at <http://www.alanwiener.mediate.com/alanwiener/Wiener-ODRStandards-Primer2a.PDF>.

<sup>32</sup> The NADRAC 'On-line ADR background paper' January 2001.

service provider (ISP) services.

One further domain of philosophical divergence is to the contrasting perspectives of customers and businesses. Business organizations often express optimism over ODR as a potential solution to the challenge of navigating several legal systems that may be applicable to online transactions. International cooperation holds significant potential for progress and advancement. An instance of collaboration between the European Union (EU) and Canada involves their joint commitment to facilitate the implementation of standardized criteria pertaining to various aspects of e-commerce.<sup>33</sup> This includes the mutual acceptance of certificates and procedures related to certification authorities for cross-border utilization of electronic signatures, as well as the assurance of consumer protection through alternative dispute resolution mechanisms. It is comprehensible that consumers exhibit a certain degree of hesitation in relinquishing numerous rights to judicial systems, which have been acquired during a century of reform. For instance, the business sector frequently demonstrates a preference for the implementation of an industry-specific voluntary code of conduct. However, it should be noted that while a complaint method, customer service center, or industry code may exist, they do not offer the same degree of certainty as an unbiased and publicly funded institution such as a court.

## **B. Fragmented Legal Framework**

ADR methods operate within the legal framework. The impact and success of ODR processes are contingent upon their correlation with established formal dispute resolution mechanisms, such as courts. Regrettably, the legal structure governing e-commerce and online dispute resolution exhibits significant fragmentation. Globally, the legal landscape consists of a combination of international treaties, legal instruments, and domestic laws that regulate many aspects of both substantive and procedural matters. The legal framework inside the European Union exhibits significant diversity. In the context of consumers, certain European Union (EU) member states enforce regulations that ban the implementation of any mechanism impeding consumers' access to legal recourse for dispute resolution. The utilization of ADR is limited by some individuals to situations where the ADR mechanism was informed subsequent to the emergence of the issue, where consumers were adequately informed, and when consumers are granted equivalent fundamental procedural rights as those offered by a court.

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<sup>33</sup> C Kuner 'Legal Obstacles to ADR in European Business to Consumer Electronic Commerce' *Electronic Commerce & Law Report* Vol 5, No 28, p 773, 19 July 2000.

Kuner (year) highlights the existence of many legal barriers within the European Union (EU) that hinder the implementation of ADR methods in the context of business-to-consumer (B2C) disputes.<sup>34</sup> The numerical value provided by the user is 40. There exist certain guidelines and directives that are applicable in this context, such as the OECD Guidelines, which encompass regulations pertaining to the resolution of disputes. The *Brussels Convention of 1968* encompasses a range of default jurisdictional regulations pertaining to the execution of judgments in civil and commercial cases that involve consumers. As an illustration, Article 13 grants consumers the entitlement to initiate legal proceedings in the Contracting State where they have established their abode.<sup>35</sup> In a similar vein, the *Convention on the Law Applicable to Contractual Obligations*, commonly referred to as the Rome Convention, offers standard choice-of-law regulations for contracts involving consumers.<sup>36</sup> The application of the law of the consumer's habitual residence is stipulated in Article 4 of the Rome Convention, while Article 5 establishes that parties are prohibited from deviating from the required legal provisions of said country. The utilization of ADR in consumer contracts is subject to additional limitations as stipulated in the *Council Directive 93/13/EEC* of 5 April 1993 on Unfair Terms. The Distance Selling Directive grants consumers some non-derogable rights that have the potential to restrict the applicability of many common ADR clauses.<sup>37</sup>

One advantageous aspect of the new E-Commerce Directive is the inclusion of Article 17, which aims to eliminate barriers to ODR.<sup>38</sup> Member states are obligated to promote the operation of entities responsible for resolving disputes outside of the court system, particularly those involving consumer issues, in a manner that ensures sufficient procedural safeguards for the parties involved. Additionally, member states are required to encourage entities responsible for out-of-court dispute resolution to notify the Commission of any significant decisions they make regarding Information Society services, as well as to provide any other relevant information pertaining to practices, norms, or customs related to electronic commerce. In this analysis, De Zylva critically examines the ramifications of the Distance Selling Directive implemented by the European Union (EU) and puts out a number of justifications for

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<sup>34</sup> C Kuner 'Legal Obstacles to ADR in European Business to Consumer Electronic Commerce' *Electronic Commerce & Law Report* Vol 5, No 28, p 773, 19 July 2000.

<sup>35</sup> Brussels Convention of 1968, Art. 13.

<sup>36</sup> Convention on the Law Applicable to Contractual Obligations, 1980.

<sup>37</sup> Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 (The Distance Selling Directive).

<sup>38</sup> Directives, [http://europa.eu.int/eur-lex/en/dat/2000/c\\_128/c\\_12820000508en00320050.pdf](http://europa.eu.int/eur-lex/en/dat/2000/c_128/c_12820000508en00320050.pdf).

advocating the resolution of e-commerce disputes through online mechanisms.<sup>39</sup> An additional positive development is the creation of the European Extra-Judicial Network (EEJ-Net), which facilitates collaboration among different European Union (EU) entities responsible for resolving disputes outside of the court system. The primary objective of this network is to enhance the management of cross-border disputes through collective efforts.<sup>40</sup>

### C. Jurisdictional issues

The proliferation of a fragmented legal framework and the transnational nature of technology, particularly the Internet, has resulted in a multitude of jurisdictional challenges. ODR emerges as a promising approach when the disputing parties are physically distant from each other.<sup>41</sup> Potential solutions for addressing jurisdictional challenges could perhaps be discovered in the proposed Hague Convention, which aims to establish legal consensus on matters pertaining to jurisdiction in the realm of cyberspace.<sup>42</sup> *The Hague Conference on Private International Law*<sup>43</sup> (HCPIL) made a recommendation for the establishment of a dispute resolution process that would be applicable on a global scale. The proposed framework entails the establishment of a singular system, overseen by an autonomous regulatory body, which may be directly administered by public authorities or delegated to representatives from industry, consumers, and public authorities. Additionally, it proposes a framework for accrediting various regimes that align with the overarching rules and objectives. The principles of transparency, independence, reliability, and legality should be regarded as fundamental requirements.

### D. Privacy and Confidentiality

Online ODR providers are need to navigate the diverse privacy laws that are increasingly prevalent in the digital landscape. In the United States, there exists a comprehensive array of more than 40 distinct legal statutes that pertain to the domain of privacy. Australia possesses a considerable number of privacy regulations, alongside a recently implemented regulatory framework that encompasses a significant portion of the private sector. However, despite the existence of these rules, the track record of safeguarding internet privacy is unsatisfactory. The majority of websites fail to adhere to fundamental privacy protocols.

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<sup>39</sup> M O de Zylva 'Why resolve e-commerce disputes online', International Internet Law Review pp 37–42, 2001.

<sup>40</sup> Commission Working Document on the creation of European Extra-Judicial Network: [http://europa.eu.int/comm/consumers/policy/developments/accejust/accejust06\\_en.pdf](http://europa.eu.int/comm/consumers/policy/developments/accejust/accejust06_en.pdf).

<sup>41</sup> M S Donahey 'Dispute resolution in cyberspace' Journal of International Arbitration Vol 15 No 4, p 127, 1998.

<sup>42</sup> Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial matters adopted by the Hague Conference on Private international law (HCPIL).

<sup>43</sup> The Hague Conference on Private International Law, 1893.

One further concern associated with the online dispute resolution process pertains to the issue of identity. The inquiry at hand pertains to the methods employed in substantiating virtual identity. The complexity of this matter arises from the observation that individuals may exhibit different behaviors in online settings compared to their behavior in face-to-face interactions. For instance, in virtual chat-rooms, individuals have been found to engage in role-playing by assuming identities that differ from their own, such as men adopting the role of women or elderly individuals pretending to be younger. An extensive online subculture has emerged wherein individuals adopt personas that diverge from their actual identities in offline contexts.

### **ODR and AI: The way forward?**

The Harvard Negotiation Law Journal states that AI pertains to the examination of automated human intelligence.<sup>44</sup> This encompasses both applied research, which involves the development of computer applications capable of doing activities that typically require human intellect, and theoretical research, which involves investigating methods for representing information in a format that can be understood by computers. The domain of Artificial Intelligence and Law encompasses the application of sophisticated computer technology for legal objectives. Information technology (IT) has grown increasingly prevalent in contemporary business environments. However, it is important to note that parties engaged in arbitration may possess varying financial resources and technical competencies, which might impact their accessibility and utilization of specific IT applications.

In a broader context, it is possible for IT solutions to be utilized in manners that possess intrinsic unfairness. For instance, emails, if not managed in a suitable manner, can potentially constitute inappropriate ex parte contacts between a party involved in a legal dispute and the arbitral tribunal, which consists of the arbitrator or arbitrators. Under any of these conditions, it may be necessary for a tribunal to undertake measures to ensure that the application in question is not utilized in a manner that leads to unequal treatment of the parties or hinders a party from effectively and equitably presenting its arguments. The implementation of artificial intelligence (AI) is poised to bring about a transformative shift in the field of legal practice. In the forthcoming two decades, the technologies currently employed in the field of law will progressively assume the role of practicing law autonomously. The field of arbitration is not impervious to the impact of technological advancements. Consider envisioning an artificial

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<sup>44</sup> Arno R Lodder and John Zeleznikow, "Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Systems in a Three Step Mode" (2005) 10 Harvard Negotiation Law Review 287–338.

intelligence (AI) legal professional possessing the ability to comprehend and analyze arguments, establish factual information, and discover the relevant legal principles. The function of the arbiter is one that would greatly appreciate the impartiality and autonomy that can be offered by advanced intelligent technology.

#### **A. How AI can transform ODR?**

The proliferation of online activities, shown by the utilization of e-commerce platforms such as amazon.com and e.com, has given rise to the emergence of online disputes.<sup>45</sup> There is a contention that in the event of an online transaction, disputing parties are more inclined to adopt online methods for resolving their conflicts. Therefore, the expansion of electronic commerce necessitates novel approaches for conflict resolution. Emerging methods of conflict resolution are now being introduced, allowing the involved parties to avoid the necessity for physical travel or in-person appearances in courtrooms, before arbitrators, or in front of mediators. Legal doctrine has defined many types or procedures of ADR for electronic activities. Consequently, it is now possible to classify ODR as a kind of dispute resolution when a dispute is resolved, either entirely or partially, through the utilization of an open or closed network serving as a virtual platform.<sup>46</sup>

An important matter of consideration pertains to the applicability and adaptability of conventional approaches, such as negotiation, mediation, and arbitration, within the contemporary digital landscape. This entails exploring the potential utilization of the latest information and communication technologies to fully leverage the resources offered by electronic settings. The incorporation of ODR is necessary in order to facilitate the development of intelligent and efficient procedures. Artificial intelligence (AI)-based problem-solving strategies can be effectively employed in conjunction with ODR methods. This information can be examined from two distinct vantage points. Firstly, it can be viewed as a resource that aids parties and decision-makers in achieving optimal outcomes when resolving commercial disputes. Secondly, it can be seen as a novel approach to autonomous dispute resolution, wherein intelligent software, backed by a knowledge base and decision-making abilities, plays a central role.

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<sup>45</sup> Ethan Katsh, Janet Rifkin and Alan Gaitenby, "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law" (1999)15 Ohio State Journal on Dispute Resolution 705.

<sup>46</sup> Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (Jossey-Bass Wiley 2001).

Therefore, it is crucial to take into account the numerous options for resolving disputes that emerge from artificial intelligence (AI) models and techniques. These choices encompass argumentation, game theory, heuristics, intelligent agents, and group decision systems, as outlined by *Peruginelli, Lodder, and Thiessen*.<sup>47</sup> In contrast to prior methodologies, the ODR framework necessitates the inclusion of not only the disputing parties and the ultimate third party (mediator, conciliator, or arbitrator), but also what *Ethan Katsh and Janet Rifkin* refer to as "the fourth party" - the technology components involved. The introduction of expert systems and intelligent software agents will play a crucial role in the establishment of the "fourth party."<sup>48</sup> These technological advancements will empower the parties involved as well as the mediator/arbitrator in their pursuit of a just and equitable resolution. As previously noted by Lodder, it is imperative to acknowledge the presence of an additional party, sometimes referred to as the "fifth party," which encompasses the service providers responsible for supplying and distributing the technological components.

The current developments are transforming ODR into a novel and intricate method of engagement and conflict resolution. Although it may initially appear complex, ODR ultimately offers significant benefits such as efficiency, affordability, and advantages over traditional approaches. The objective of AI research in this domain is to achieve a technological threshold, leading to computational systems that can function as autonomous entities.<sup>49</sup> In this comprehensive method, there is a lack of human interference in determining the outcome or directing the parties towards a given condition. There exists an alternative system that fulfills this primary function. This entity is commonly referred to as an electronic mediator or arbiter. The ideal candidate should possess strong interpersonal skills to effectively engage with stakeholders and comprehend their preferences and concerns. Additionally, they should demonstrate the capacity to analyze various circumstances and determine the most optimal approach to be pursued. Undoubtedly, this particular approach presents considerable challenges due to the inherent difficulty of replicating the cognitive capacities of a human expert and accurately perceiving the emotions and aspirations of the relevant parties within a

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<sup>47</sup> G Peruginelli and G Chiti, "Artificial Intelligence in Alternative Dispute Resolution" in Giovanni Sartor and Claudia Cevenini (eds), Proceedings of the Workshop on the Law of Electronic Agents (LEA02) (Bologna: CIRSFID 2002).

<sup>48</sup> Arno Lodder and Ernest Thiessen, "The role of artificial intelligence in online dispute resolution" in Workshop on Online Dispute Resolution at the International Conference on Artificial Intelligence and Law, Edinburgh, UK (2003).

<sup>49</sup> Arno R Lodder, and John Zeleznikow, Enhanced Dispute Resolution Through the Use of Information Technology (Cambridge University Press 2010).

computer system. Moreover, the act of granting machines the authority to make consequential decisions that impact our lives carries an inherent element of risk.

The ODR system can be classified based on the various functions that machinery may fulfill. Currently, the prevailing ODR systems in use are classified as first-generation. These systems maintain the centrality of human people in the processes of planning and decision-making. Computational tools are commonly utilized, although they are perceived just as instruments, lacking autonomy or significant agency in the decision-making process. The primary technologies employed in this particular ODR system encompass instant messaging, forums, video and phone conversations, video conferences, mailing lists, and the relatively new addition of Video Presence. Agent-based technologies can be employed, however they do not possess any active role or autonomy. These systems are prevalent in contemporary times and are typically accompanied with a web page for help. These systems serve as an initial and essential progression towards the development of more self-governing systems, distinguished by the utilization of intelligent systems. The second iteration of ODR systems is primarily characterized by an enhanced utilization of technology resources.<sup>50</sup> These tools are being employed not alone for facilitating communication between parties and enhancing information accessibility. In addition to their primary function, these tools are utilized for the purpose of generating ideas, developing plans, defining strategies, and making informed decisions. From a theoretical standpoint, it can be argued that second-generation systems surpass those of the initial generation by incorporating novel intelligent and autonomous artifacts. The present cohort of individuals heavily depends on and is facilitated by technological advancements that enable consistent interconnectedness across all relevant entities. Nevertheless, through the utilization of cutting-edge technologies in conjunction with this communication layer, it becomes feasible to offer services that encompass a greater degree of supplementary benefits. The implementation of such services can be explored across a range of disciplines, including artificial intelligence, mathematics, and philosophy.

The intersection of these fields encompasses a variety of technologies that will greatly enhance the effectiveness of previous generation ODR tools. These technologies include artificial neural networks, intelligent software agents, case-based reasoning mechanisms, methods for knowledge representation and reasoning, argumentation, learning, and negotiation.

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<sup>50</sup> Nadja Alexander (ed), "From ADR to ODR: Can technology shape the future of mediation practice?" KLUWER ARBITRATION.

Consequently, there is a shift occurring from the utilization of reactive communication technologies for information sharing among parties to the adoption of proactive ODR services that actively aid disputant parties in a virtual setting. Hence, it is evident that the integration of diverse study domains, particularly artificial intelligence (AI), has the potential to enhance the advancement of ODR methodologies, enabling their use to address intricate scenarios involving multiple parties, issues, and contracts. The utilization of such technologies facilitates the development of processes that emulate the cognitive processes of human experts, hence enhancing the efficiency of ODR instruments. *Lodder and Zeleznikow* argue that the ODR environment should be conceptualized as a virtual domain where individuals involved in disputes are provided with a diverse range of tools for resolving their conflicts.<sup>51</sup> Participants are afforded the freedom to choose any tool they deem suitable for the purpose of resolving their issue, and they may employ these tools in any sequence or way they see fit. Alternatively, they may opt to receive guidance throughout the process.

### **ODR in India: An Analysis**

There have been occasions in which courts have recognized the necessity of implementing ODR procedures within their systems. *Justice Ramana*, an eminent authority in the field, has expressed the view that ODR has the potential to effectively address a wide range of issues, including those pertaining to consumer, family, business, and commercial matters.<sup>52</sup> He observed the necessity of reducing paper consumption, a longstanding component of the existing system. The procedure has indeed commenced through the utilization of e-filing, whereby digital versions of paper books are submitted instead of physical ones.

Given the prevailing circumstances of the COVID-19 epidemic, *Former Chief Justice Bobde* himself has acknowledged the imperative of implementing measures to enable virtual court proceedings, so averting the closure of higher judicial institutions.<sup>53</sup> Previously, he has emphasized the necessity of establishing legally enforceable mediation agreements, while acknowledging the numerous advantages associated with this method of resolving disputes. The individual has additionally underscored the importance of implementing international arbitration and artificial intelligence (AI) as a prominent alternative to the existing state of affairs.

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<sup>51</sup> Arno R Lodder and John Zeleznikow, "Artificial Intelligence and Online Dispute Resolution", *MEDIATE.COM*.

<sup>52</sup> 'Justice Ramana Tells SCO to Harness Technology To Resolve Disputes', *INDIA LEGAL*.

<sup>53</sup> PTI, 'CJI rules out total shutdown of Supreme Court amid coronavirus threat', *LIVEMINT*.

Indeed, the discussion surrounding the establishment of a formal ODR system in India has already commenced, as seen by the *Nilekani panel's* recommendations in 2019.<sup>54</sup> The group proposed the implementation of online dispute resolution mechanisms to address grievances stemming from digital payment transactions. The committee proposed the implementation of a two-tiered ODR platform, consisting of an automated level and a human level, with the inclusion of an appeals process. Hence, it appears that the conditions are favorable, partially influenced by the sense of urgency brought forth by the COVID-19 pandemic, for ODR to emerge as a prominent method of resolving disputes in India.

Recently, a meeting on 'Catalyzing Online Dispute settlement in India' was organized by NITI Aayog, in collaboration with Agami and Omidyar Network India. The objective of the meeting was to convene relevant stakeholders and foster collaborative efforts towards the expansion of online dispute settlement in India.<sup>55</sup> During the discussion, participants acknowledged the significant potential of ODR in India, particularly in the context of small and medium value conflicts. Efficient dispute resolution holds the potential to promote access to justice and facilitate corporate operations, thereby playing a crucial role in revitalizing the economy against the adversities presented by the COVID-19 pandemic.

#### **A. Validity of ODR**

The promotion of alternative conflict resolution between parties is facilitated by the Indian legal structure, specifically under Section 89 of the *Code of Civil Procedure, 1908*<sup>56</sup>. In a similar vein, Order X Rule 1A grants the court the authority to instruct the parties involved in a legal proceeding to select an ADR mechanism for the resolution of their conflicts. This can also encompass ODR.

ODR adheres to the legal framework established by the *Information Technology Act of 2000 and the Arbitration and Conciliation Act of 1996*. A fundamental prerequisite for ODR is the unequivocal agreement of the involved parties to pursue the resolution of their issues using online means. According to the Arbitration Act, the parties possess the freedom to select the location for the hearing, including the possibility of conducting it online.

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<sup>54</sup> Nandan Nilekani and others, 'Report of the High Level Committee on Deepening of Digital Payments' (2019) 97.

<sup>55</sup> NITI Ayog and others, 'Catalysing Online Dispute Resolution in India' (NITI Ayog, 12 June 2020)

<sup>56</sup> Code of Civil Procedure, 1908.

Instances have been observed in which parties have chosen to engage in arbitration using the medium of electronic mail.<sup>57</sup> In the case of *Grid Corporation of Orissa Ltd.*, the Supreme Court specifically states that:

*“when an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons required to act in consultation with each other must necessarily sit together at one place unless it is the requirement of law or of the ruling contract between the parties”.*<sup>58</sup>

Moreover, in the case of *Meters and Instruments Private Limited*<sup>59</sup>, the highest court made an observation.

*"Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There appears to be a need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated."*

According to the provisions outlined in Sections 4, 5, and 65-B of the IT Act<sup>60</sup>, electronic records and signatures are eligible to be presented as evidence and granted legal validity within the framework of the Indian legal system. The utilization of video conferencing for the purpose of recording witness testimony was recognized by the Supreme Court in the case of *State of Maharashtra vs. Dr. Praful B. Desai*<sup>61</sup>. Hence, the submissions and procedures have the potential to be conducted using online platforms. In order to ensure consistency, the International Chamber of Commerce has established a set of criteria that should be adhered to. These factors encompass reaching a consensus on the designated time zone, the preferred format of documents, and other related materials.

Upon the declaration of the award, in accordance with Section 31 of the *Arbitration Act*<sup>62</sup>, it is permissible to transmit the award electronically through the exchange of scanned copies via email. The original document can be subsequently dispatched by postal services. The procedure is now concluded, with the only remaining task being the implementation of the award. This

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<sup>57</sup> Shakti Bhog Foods Ltd. v. Kola Shipping Ltd. (AIR 2009 SC 12); Trimex International FZE Ltd. v. Vedanta Aluminium Ltd. (2010) 3 SCC 1.

<sup>58</sup> Grid Corporation of Orissa Ltd. vs. AES Corporation (2002) 7 SCC 736.

<sup>59</sup> Meters and Instruments Private Limited & Anr. v. Kanchan Mehta, 2017 TaxPub (CL) 0840 (SC).

<sup>60</sup> Information Technology Act, 2000.

<sup>61</sup> State of Maharashtra vs. Dr. Praful B. Desai (2003 4 SCC 601).

<sup>62</sup> Arbitration and Conciliation Act, 1996.

can be accomplished by obtaining a decree from a court, which can be easily obtained.

Hence, it can be argued that the practice of ODR is considered legitimate within the context of India. Currently, the National Internet Exchange of India (NIXI) use this technology for the purpose of resolving domain name disputes. Online arbitration is a process that bears resemblance to conventional arbitration, with the sole distinction being that it takes place through digital platforms. Hence, the legal framework that governs traditional arbitration should also be extended to encompass ODR. Similar to the legality of ADR in India, ODR is also recognized as a legal method of resolving disputes in the country.

## **B. India's ODR Policy**

India's ODR policy is derived from the wider framework of the “*National Policy on Information Technology*”<sup>63</sup> (NPIT) and the *National e-Governance Plan*<sup>64</sup> (NeGP)”. The primary objective of these policies is to promote the utilization of Information and Communication Technology (ICT) with the intention of enhancing governance, service provision, and facilitating access to justice. ODR is an essential element of these policies, as it aims to utilize technology in order to efficiently, economically, and inclusively address conflicts.

### **1. Key features**

- a. The adoption and promotion of ODR platforms is advocated for by India's ODR policy, which encompasses many stakeholders such as the government, judiciary, businesses, and individuals. India has witnessed the establishment of multiple ODR platforms, including Centre for Online Resolution of Disputes (CORD), SAMA, and Presolv360. These platforms offer a diverse array of ODR services encompassing negotiation, mediation, and arbitration.<sup>65</sup>
- b. The strategy promotes the utilization of public-private partnerships (PPPs) for the advancement and dissemination of ODR systems. This technique aids in guaranteeing that ODR services are not just technologically sophisticated, but also customized to suit the distinct requirements of the legal and corporate environment in India.<sup>66</sup>

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<sup>63</sup> National Policy on Information Technology.

<sup>64</sup> National e-Governance Plan.

<sup>65</sup> Pitamber Yadav, *Harnessing Technology for Dispute Resolution: A Critical Assessment of India's ODR Policy 2021*, SSRN.

<sup>66</sup> *Ibid.*

- c. The ODR strategy in India aims to include ODR into established conflict resolution systems, including courts and arbitration centers. This integration facilitates a smooth and uninterrupted transition between online and offline dispute resolution procedures, thereby enabling disputing parties to leverage the advantages offered by both realms.
- d. The ODR policy in India places significant emphasis on the importance of capacity building and awareness generation among a wide range of stakeholders, including as judges, attorneys, mediators, arbitrators, and the general public. The establishment of a culture that embraces the use of ODR is of utmost importance in order to promote its widespread acceptance and to ensure that the advantages of ODR are comprehensively recognized and valued.<sup>67</sup>
- e. The ODR policy in India acknowledges the importance of establishing a strong legal and regulatory framework to facilitate the development and adoption of ODR. This include the acknowledgment and implementation of outcomes in ODR, adherence to data protection and privacy regulations, and the formulation of optimal methodologies and benchmarks for ODR service providers.

### **Recommendations & The Way Forwards: The ODR Way**

The incontrovertible evidence of the delivery of justice through ODR is apparent. The successful resolution of various nuances, difficulties, and problems that arise in a disputed matter has been achieved over an extended period. This has resulted in the development of an effective mechanism for resolving disputes outside of the formal court system, thereby providing valuable services to humanity. Nevertheless, after a span of twenty years, ODR has not attained the anticipated outcomes. During the mid-1990s, the industry witnessed the entrance of over 200 ODR providers in response to the increasing number of online conflicts arising within the e-commerce sector. It is evident at present that numerous ODR providers have encountered failure and were unable to achieve success due to various factors.<sup>68</sup>

Currently, it is evident that early ODR providers lacked awareness regarding network coverage and the viability of network access for individuals. They operated under the assumption that all users would have access to a reliable network connection, disregarding the limited or non-existent connectivity in remote and rural regions.

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<sup>67</sup> *Ibid.*

<sup>68</sup> Mirèze Philippe, ODR Redress System for Consumer Disputes, 1 Int'l J. Online Dispute Resolution (2014).

Additionally, there is a misconception among many legal professionals regarding ODR, as they fear that it may render their services unnecessary. This concern arises from the belief that individuals would opt for ODR to resolve minor conflicts, hence diminishing the demand for traditional legal consultations.

#### **A. Need of reforms**

It is imperative to request that governments provide convenient access to justice through online platforms. This is due to the substantiated evidence that ODR mechanisms are cost-effective and efficient, in contrast to traditional courts where individuals often experience prolonged delays in obtaining justice, often spanning months or even years. ODR providers have demonstrated that the realization of justice through ODR is not a mere figment of imagination, but rather a tangible and accessible solution for achieving sustainable company objectives, enhancing consumer pleasure, and addressing various civil concerns. In light of the COVID-19 epidemic, the development of an ODR method has become imperative. Numerous international courts and arbitral institutions, including the “*International Chamber of Commerce (ICC), the American Arbitration Association (AAA), the AAA's international division known as the International Centre for Dispute Resolution (AAA-ICDR), the International Center for the Settlement of Investment Disputes (ICSID), the Singapore International Arbitration Centre (SIAC), the Stockholm Chamber of Commerce (SCC), and the London Court of International Arbitration (LCIA)*”, have provided recommendations and directives pertaining to the utilization of videoconferencing and digitized case management systems. These institutions strive to establish a strong digital enterprise with a focus on cyber expertise for ODR processes.

In a recent ICC arbitration case involving *J&F Investimentos S.A. and Paper Excellence*, it was determined that arbitration institutions has the capacity to effectively resolve high-value conflicts through online platforms, showcasing their adaptability and versatility in this regard.<sup>69</sup> During the COVID-19 epidemic, the hearing was done using internet videoconferencing, which involved a total of seventy people from various locations like Spain, Singapore, London, Brazil, and New York. The rapid shift from in-person hearings to online hearings conducted from home in response to the COVID-19 pandemic, along with global lockdown measures and transportation limitations, demonstrates the effectiveness of ODR as a suitable method for

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<sup>69</sup> 2017 Arbitration Rules – ICC – International Chamber of Commerce, ICC – International Chamber of Commerce (2021), <https://iccwbo.org/dispute-resolution-services/Arbitration/rules-of-Arbitration/>.

resolving disputes during such circumstances.

### **B. Adoption of AI**

The rapid expansion of Artificial Intelligence (AI) and its integration into dispute resolution protocols will also have implications for the future of ODR. The development of intelligent mediators is underway, with the aim of providing personalized responses to individuals by taking into account their specific circumstances.<sup>70</sup> The Supreme Court is in the process of developing the Supreme Court *Vidhik Anuvaad* Software, an artificial intelligence-based tool designed to facilitate the translation of court documents between English and nine vernacular language scripts. In the event that the results yield beneficial outcomes, the impact of artificial intelligence (AI) on the legal process, specifically ODR, has the potential to expand. Consequently, it becomes imperative to establish appropriate regulatory measures to govern its utilization effectively.

### **C. Technological capacity and logistical support**

The technological competence and internet penetration across the population are crucial aspects in the implementation of ODR in India. Despite the presence of a substantial number of internet users in India, it represents merely 34.8% (2016) of the country's total population.<sup>71</sup> The key obstacles hindering the widespread adoption of ODR are the constraints imposed by limited internet access and the absence of accessible infrastructure, such as affordable PCs. Addressing these infrastructure challenges will necessitate substantial and resource-intensive efforts from both governmental and corporate entities to enhance their capacities in order to facilitate the adoption of ODR in India. In addition to technological obstacles, ODR encounters psychological barriers, as individuals may not quickly embrace internet-mediated communication in comparison to in-person interaction. Without a change in mindset, the actions done to progress will not be able to get rapid endorsement for ODR.<sup>72</sup> Nevertheless, there appears to be a noticeable transformation in India's interaction with online technology due to the increasing dependence on e-commerce as a significant driver of commerce. It is imperative to conduct a comprehensive examination of the procedures and strategies employed by ecommerce organizations in order to establish a solid foundation for the implementation of

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<sup>70</sup> R. Jatin Katiyar, Online Dispute Resolution during Pandemic in India, 4 INDIAN J.L. & LEGAL Rsch. 1 (2022).

<sup>71</sup> Internet Live Stats, 'Internet Users by Country (2016)'.

<sup>72</sup> Sree Krishna Bharadwaj H, 'A Comparative Analysis of Online Dispute Resolution Platforms' (2017) 2 AJOMIS 81, 82.

ODR, particularly among the internet-savvy youth.

#### **D. Need for a regulatory framework**

The adoption of ODR necessitates the establishment of a regulatory framework, as it serves as a fundamental legal basis and guarantees the principles of equity and impartiality. Legislation acknowledging the legal validity of electronic contracts and ODR agreements has been enacted by various countries, including the United States through the implementation of the ESIGN Act and UETA. ISO standards, such as ISO 27001 and ISO 37301, offer guidance pertaining to the management of information security and compliance. In order to safeguard confidential data, measures for data protection and privacy are implemented.<sup>73</sup> The significance of enforceability in ODR agreements is underscored, thereby equating them with conventional dispute resolution mechanisms. Additionally, customer protection laws incorporate specific provisions to address the resolution of customer complaints. The acquisition of accreditation and certification may be deemed required in order to guarantee the attainment of high standards and adherence to ethical ideals. To ensure compliance, stakeholders involved in ODR should undertake a thorough examination of relevant legislation.

#### **E. Resolving enforceability issue: a case of ecommerce disputes**

The optimal approach to address the matter of enforceability involves integrating the dispute resolution system with the payment system, enabling the implementation of straightforward charge backs within the payment system, in cases of ecommerce consumer disputes. The success of the eBay PayPal model in the marketplace provides valuable insights that states can consider and learn from. If the ODR procedure is not linked to the payment system, it would be reasonable to conclude the process with an arbitration method that permits the utilization of the New York Convention for the purpose of enforcing the outcome. Considering the fact that the New York Convention has been ratified by over 170 countries, it is reasonable to conclude that the arbitration stage should be the ultimate phase of ODR. This is because the New York Convention allows for the acceptance and execution of arbitral awards. According to Article II of the New York Convention<sup>74</sup>, contracting states are obligated to refer the parties involved to the established system. Article III mandates the recognition and execution of the award<sup>75</sup>, while Article V outlines specific grounds for non-recognition, albeit restricted, in circumstances that

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<sup>73</sup> Unleashing ODR: A Brighter Future in Dispute Resolution, PRESOLV360.

<sup>74</sup> New York Convention, Article II.

<sup>75</sup> New York Convention, Article III.

are particularly severe.<sup>76</sup>

## Conclusion

One of the primary obstacles in the integration of ODR into mainstream practices pertains to the accessibility of high-quality ODR platforms. Currently, there are only a limited number of ODR platforms that have achieved significant recognition, potentially indicating a lack of reliability in the available options. There is a need for further enhancement in order to promote wider use of ODR among individuals. Additionally, there is a need to streamline the process of ODR. The issue of language is a significant obstacle in the context of ODR. The diverse composition of the Indian people poses significant challenges in terms of communication. Consequently, there has been a proliferation of various ODR platforms that specifically cater to the provision of services in local or regional languages.

The subsequent phase in the progression of ODR involves its advancement to a state where it assumes an essential and crucial role inside the system. This approach will facilitate international harmony and foster global linkages in matters pertaining to cross-border issues. Moreover, this practice will contribute to environmental conservation since it reduces the excessive consumption of paper. Advancing ODR is crucial in achieving these aims. Moreover, the prevailing approach to address the ongoing pandemic is persistence. This study examines the current state of the Indian dispute resolution landscape, the challenges it now faces, the potential role of ODR in addressing these challenges, and the strategies for promoting ODR in India. The use of ADR mechanisms has the potential to potentially modify the objective of debates in India. The current state of the discourse surrounding environmental objectives in India is deeply concerning. In light of this perspective, with regard to this strategy, it is advisable for the Government to contemplate adopting a more proactive stance in order to steer the progress and utilization of these sophisticated technologies in the context of resolving disputes. This approach should be driven by the fundamental ideals of justice and fairness. It is imperative for the Government to undertake a comprehensive examination of the utilization of artificial intelligence technologies within the realm of dispute settlement. It is recommended that the Government give due consideration to the establishment of an independent regulatory body dedicated to ODR. This proposed authority would be responsible for overseeing the regulation of ODR practices, as well as facilitating and regulating the adoption of ODR

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<sup>76</sup> New York Convention, Article V.

methods within India.

The legal maxim "Justice delayed is justice denied" conveys the notion that if justice is administered after a significant period of time, it is essentially equivalent to a complete absence of justice being rendered. The delay in the administration of justice incurs substantial costs in terms of complications. The Indian legal structure engenders a lack of confidence and acceptance among individuals regarding the organization of justice. As a result, these alternative dispute resolution solutions are characterized by their expediency and evident superiority over traditional rigid methods in addressing issues.

