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## **ONLINE DISPUTE RESOLUTION AS A TOOL FOR ACCESS TO JUSTICE IN INDIA: OPPORTUNITIES AND CHALLENGES**

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### **ABSTRACT**

Access to justice is a foundational principle of the Indian constitutional framework, yet the justice delivery system continues to face persistent challenges such as excessive case pendency, procedural delays, high litigation costs, and geographical barriers. The rapid growth of technology and digital infrastructure has created new possibilities for addressing these challenges, particularly through Online Dispute Resolution (ODR). ODR represents the integration of Alternative Dispute Resolution (ADR) mechanisms, such as negotiation, mediation, and arbitration, with digital platforms to enable remote, efficient, and cost-effective resolution of disputes. This research examines ODR as a transformative tool for enhancing access to justice in India, especially for individuals and communities traditionally excluded from the formal justice system. The study analyses the conceptual foundations of ODR, its legal and policy framework in India, and its alignment with constitutional mandates under Art. 14 and 21. It explores the opportunities offered by ODR, including reduced time and costs, increased convenience, scalability, and its potential to address disputes arising from e-commerce, consumer transactions, MSMEs, and financial services. This research evaluates the challenges hindering the effective adoption of ODR in India, such as the digital divide, lack of comprehensive regulation, concerns regarding data privacy and cybersecurity, enforceability of outcomes, and resistance from traditional legal authorities. Through a doctrinal and comparative analysis, the research highlights international best practices and draws lessons relevant to the Indian context. It concludes that while ODR holds significant promise in strengthening access to justice, its success depends on robust legal frameworks, technological safeguards, institutional support, and inclusive policy measures aimed at bridging digital and socio-economic gaps.

*Keywords: Online Dispute Resolution, Access to Justice, Indian Judiciary, Digital Justice, E-Courts, Legal Technology, Judicial Pendency, Digital Divide*



## BACKGROUND

ODR is the use of technology to facilitate the resolution of disputes through processes such as negotiation, mediation, conciliation, arbitration, or hybrid mechanisms. In India, ODR has emerged as a critical tool for enhancing access to justice, particularly in a judicial system burdened by over 50 million pending cases as of 2021, with government litigation accounting for approximately 46% of these cases. Governmental reports, such as the NITI Aayog's "Designing the Future of Dispute Resolution: The ODR Policy Plan for India" (released in November, 2021), emphasize ODR's potential to address inefficiencies in traditional courts by providing faster, cost-effective, and accessible alternatives. This discussion draws primarily from this report & "Supreme Court's e-Committee's Phase III vision document for e-Courts (April, 2023)".<sup>1</sup>

ODR aligns with India's Digital India initiative and has been accelerated by the COVID-19 pandemic, which saw the adoption of virtual hearings and e-Lok Adalats. By integrating technology into dispute resolution, ODR aims to reduce the average pendency of cases (often exceeding five years in district courts across 23 states and union territories as per India Justice Report, 2019) and promote equitable access, especially for underserved populations in rural areas.<sup>2</sup>

ODR presents significant opportunities to democratize justice in India by leveraging technology to overcome geographical, economic, and procedural barriers. Key opportunities highlighted in governmental reports include<sup>3</sup>:

- *Efficiency and Cost Reduction:* ODR enables quick resolution of low-value, high-volume disputes, such as those in e-commerce, consumer grievances, tenancy, and labor sectors. For instance, a 2017's DAKSH survey indicated that litigants incur average daily costs of ₹1,049 in traditional courts (₹728 direct + ₹321 opportunity costs), while out-of-court resolutions like ODR can reduce these by up to 37%. The 2023's e-Courts Phase III document envisions ODR as part of a "whole-of-system" approach, integrating it with judicial processes to handle formulaic disputes (such as mutual consent

<sup>1</sup> E-Committee, Supreme Court of India, *Digital Courts: Vision & Roadmap—e-Courts Project Phase III* (2022), <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2023/04/2023042088.pdf> (last visited Nov. 28, 2023).

<sup>2</sup> *The NITI Aayog Expert Committee on ODR, Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (Oct. 2021), <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> (last visited Nov. 28, 2023).

<sup>3</sup> *Supra* note 1.



divorces or compounding offenses) through automated, asynchronous platforms, potentially diverting cases from overburdened courts.

- *Enhanced Accessibility and Inclusivity:* With India's internet subscribers reaching 743.19 million by 2019 (32.24% rural penetration), ODR bridges urban-rural divides by allowing remote participation via mobile apps and video conferencing. Initiatives like Rajasthan's e-Mitra centers resolved 8.5 lakh disputes in 2023 alone, demonstrating ODR's scalability under the Digital India Mission. The NITI Aayog report projects that ODR can improve India's Ease of Doing Business rankings by streamlining contract enforcement, particularly for MSMEs and cross-border disputes, through platforms like SAMADHAAN (which disposed of 3,982 complaints worth ₹721.59 crores by 2020).
- *Integration with Government and Judicial Systems:* Executive preparedness is evident in schemes, RBI's ODR policy for digital payments (launched in 2020 with a two-tier system using AI for rule-based resolutions) & SEBI's ODR framework introduced in August 2023 for investor disputes. e-Lok Adalats, a form of ODR, resolved significant volumes during the pandemic, 1.15 lakh cases in Karnataka (worth ₹330.3 crores) in 2020, with nationwide figures reaching 33,546 cases (₹270 crores) that year. The 2023 e-Courts document proposes linking ODR forums to judicial portals for seamless data sharing, enabling pre-litigation mediation and reducing court filings.
- *Promotion of Legal Health and Dispute Avoidance:* ODR platforms can provide educational tools, such as neutral evaluations and AI-driven predictions of outcomes, fostering awareness and preventing escalation. The Vivad se Vishwas scheme resolved 35,074 tax disputes by September 2020, illustrating ODR's role in government litigation reduction. Budget, 2023 allocated ₹7,000 crores for e-Courts Phase III (up from ₹1,670 crores in Phase II), signaling strong governmental commitment to scaling ODR for broader access.

## **ODR AND ACCESS TO JUSTICE IN INDIA**

The crisis of access to justice in India has been repeatedly acknowledged by the judiciary as a systemic failure rooted in judicial backlog, procedural rigidity, and socio-economic inequality. In *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, Patna*,<sup>4</sup> court unequivocally held that the right to a speedy trial is an essential facet of Art. 21, recognizing delay itself as a form of injustice. Despite this

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<sup>4</sup> 1979 SCR (3) 532.



constitutional recognition, endemic pendency, particularly in subordinate courts, continues to undermine substantive justice. Geographical and infrastructural limitations exacerbate this crisis, as highlighted in *State of Maharashtra v. Manubhai Pragaji Vashi*,<sup>5</sup> where court emphasized the uneven distribution of judicial resources across regions. Financial constraints further marginalize litigants, with court acknowledging that access to justice cannot be illusory for the economically disadvantaged. Procedural complexity, marked by technical pleadings, adjournments, and adversarial formalism, creates an exclusionary system intelligible primarily to legally trained actors. Language and literacy barriers compound this exclusion, particularly in rural and semi-urban India, where proceedings conducted predominantly in English alienate large sections of the population, thereby diluting the egalitarian promise of Art. 14.

Against this backdrop, ODR emerges as a constitutionally compatible mechanism capable of operationalizing access to justice beyond formal adjudication. The Supreme Court's endorsement of ADR as an integral part of justice delivery in *Salem Advocate Bar Association v. Union of India*<sup>6</sup> and *Afcons Infrastructure Ltd. & Anr. v. Cherman Varkey Construction Co. & Ors.*<sup>7</sup> laid the normative foundation for technology-enabled dispute resolution. These decisions recognized mediation and arbitration as tools to reduce docket congestion while preserving fairness and party autonomy. ODR advances these judicially endorsed objectives by enabling speedy dispute resolution through time-bound digital processes, thereby aligning with the constitutional mandate of expeditious justice. Its cost-effectiveness directly addresses economic barriers identified by the court,<sup>8</sup> while geographic neutrality dismantles the spatial disadvantages acknowledged in multiple access-to-justice cases. Procedural flexibility inherent in ODR, such as asynchronous participation and simplified documentation, further mitigates procedural intimidation, allowing litigants to engage meaningfully without navigating the labyrinth of formal court procedures. Importantly, the increased convenience and participatory design of ODR platforms resonate with court's insistence in *Anita Kushwaha v. Pushap Sudan* that access to justice must be "effective, affordable, and meaningful".<sup>9</sup>

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<sup>5</sup> 1995 (5) SCC 730.

<sup>6</sup> AIR 2005 SC 3353.

<sup>7</sup> CIVIL APPEAL NO.6000 OF 2010 (Arising out of SLP (C) No.760 of 2007).

<sup>8</sup> *Supra* note 4.

<sup>9</sup> TRANSFER PETITION (C) NO. 1343 OF 2008.



The sectoral deployment of ODR demonstrates its practical capacity to translate constitutional principles into lived realities. In consumer disputes, court in *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy*<sup>10</sup> emphasized the need for inexpensive and expeditious redressal mechanisms, a mandate now operationalized through online consumer dispute platforms. In e-commerce and digital transaction disputes, ODR responds to court's observations in *Internet and Mobile Association of India v. RBI*<sup>11</sup> regarding the inevitability of digital commerce & need for adaptive regulatory mechanisms. For MSMEs, whose vulnerability to prolonged litigation was judicially noted in *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*,<sup>12</sup> ODR offers a commercially viable alternative that preserves business continuity. While family and matrimonial disputes necessitate caution due to concerns of voluntariness and emotional sensitivity, as recognized in *Gaurav Nagpal v. Sumedha Nagpal*,<sup>13</sup> ODR-assisted mediation can function as a preliminary, non-adversarial forum. In banking and financial services disputes, where courts have warned against excessive tribalization,<sup>14</sup> ODR serves as a decentralized, rights-sensitive mechanism that alleviates institutional overload while preserving adjudicatory integrity. Collectively, judicial reasoning across these domains supports the conclusion that ODR, if normatively regulated, can substantively advance access to justice in India.

## CHALLENGES IN IMPLEMENTATION

The adoption of ODR in India is constrained by the persistent digital divide, which directly undermines its promise of universal access to justice. Despite rapid digitalization, large segments of the population, particularly in rural, tribal, and economically disadvantaged regions, continue to lack reliable internet connectivity, access to digital devices, and basic technological infrastructure. Court has repeatedly acknowledged these structural inequalities in the context of virtual courts and digital governance. In *Swapnil Tripathi v. Supreme Court of India*,<sup>15</sup> while endorsing technological openness, court cautioned that digitization must not exclude those without access to technology. Similarly, during the COVID-19 pandemic, concerns were raised in *Re: Prashant Bhushan & Anr.*<sup>16</sup> regarding the exclusion of litigants due to technological barriers in virtual hearings. Digital illiteracy further exacerbates this divide, particularly

<sup>10</sup> Civil Appeals No. 7543 of 2004.

<sup>11</sup> Writ Petition (Civil) No.528 of 2018.

<sup>12</sup> 2008 AIR SCW 2169.

<sup>13</sup> 2008 AIR SCW 7687.

<sup>14</sup> *Union of India v. R. Gandhi*, MANU/SC/0378/2010.

<sup>15</sup> 2018 (10) SCC 639.

<sup>16</sup> SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020.



among first-generation litigants, women, elderly persons, and marginalized communities, rendering ODR processes inaccessible or incomprehensible. Without targeted interventions in digital literacy and infrastructure, ODR risks reinforcing existing socio-economic inequities rather than alleviating them.

Beyond infrastructural challenges, the absence of a comprehensive legal and regulatory framework governing ODR poses serious doctrinal and practical concerns. India currently relies on a fragmented statutory landscape, principally Arbitration and Conciliation Act, 1996, Consumer Protection Act, 2019, & IT Act, 2000, which inadequately address core issues such as standardized procedures, accreditation of ODR platforms, and due process guarantees. The enforceability of ODR outcomes, particularly those arising from online mediation or negotiation, remains legally ambiguous. While arbitral awards rendered through online proceedings may be enforceable under the Act, 1996, settlements reached through non-adjudicatory ODR mechanisms lack clear statutory backing, raising concerns under Art. 21's mandate of fair procedure. Jurisdictional complexities further complicate cross-border and inter-state online disputes, especially in the absence of clear rules on seats, applicable law, and forum, as highlighted in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*,<sup>17</sup> where court emphasized the centrality of jurisdiction clarity in arbitration proceedings.

Equally pressing are concerns relating to data privacy, cybersecurity, & ethical integrity of ODR mechanisms. ODR platforms routinely handle sensitive personal, commercial, and financial data, yet India lacks a robust, enforceable data protection regime, notwithstanding court's recognition of privacy as a fundamental right in *Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.*<sup>18</sup> The confidentiality of dispute resolution proceedings, a cornerstone of ADR, is particularly vulnerable in digital environments prone to data breaches, hacking, and unauthorized surveillance. Moreover, the increasing use of artificial intelligence and algorithmic tools in ODR raises profound ethical and procedural concerns, including algorithmic bias, opacity in decision-making, & erosion of human oversight. In the absence of transparency and accountability, AI-assisted ODR may violate principles of natural justice, particularly *audi alteram partem*. These challenges contribute to a broader trust deficit among litigants and legal professionals, compounded by limited awareness and resistance from the traditional legal fraternity.

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<sup>17</sup> CIVIL APPEAL NO.7019 OF 2005.

<sup>18</sup> 2019 (1) SCC 1.



Despite its promise, ODR faces structural, behavioral, and operational hurdles, as outlined in governmental analyses:

- *Digital Infrastructure and Literacy Gaps:* Rural internet penetration stood at 32.24% in 2019, with 27,721 villages lacking mobile coverage, exacerbating the digital divide. Women constitute only one-third of internet users, and those over 40 represent just 15%, limiting ODR's reach. The 2023's e-Courts document highlights challenges in capacity building and process re-engineering, noting that inadequate connectivity and skills gaps burden marginalized users.<sup>19</sup>
- *Trust, Awareness, and Behavioral Resistance:* Low awareness and skepticism about ODR's effectiveness, data security, and confidentiality deter adoption. A legal culture favoring traditional courts over ADR persists, with government and PSUs showing reluctance despite high litigation costs (such as ₹47.99 crores spent by the government in the Supreme Court in 2017-18). Privacy concerns, AI biases, and enforcement of ODR outcomes remain issues, as piecemeal legislation (such as Arbitration and Conciliation Act 1996, IT Act, 2000) lacks comprehensive ODR-specific provisions.
- *Operational and Regulatory Barriers:* Shortages of trained neutrals, archaic requirements, such as stamp duties, and interoperability issues between platforms hinder seamless integration. The NITI Aayog report calls for amendments to laws like the Consumer Protection Act, 2019 and Commercial Courts Act, 2015 to mandate pre-litigation ODR. The 2023's e-Courts vision notes federal diversity in practices complicates unified standards, with risks of cyber threats requiring robust data governance.<sup>20</sup>
- *Equity and Power Imbalances:* Potential biases in online processes, such as repeat players (corporations gaining advantages), and language barriers could undermine fairness. While 40.19% believe ODR improves access, nearly 60% remain unconvinced, underscoring the need for awareness campaigns.

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<sup>19</sup> *Supra* note 1.

<sup>20</sup> *Supra* note 2.



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## COMPARATIVE ANALYSIS

The EU's experiment with centralized ODR platform, established to provide a single-entry digital gateway for consumer disputes arising from online contracts, represents perhaps the most ambitious supranational attempt to embed ODR within an integrated legal market.<sup>21</sup> Underpinned by the Directive on Consumer ADR and associated digital consumer-protection regimes, the platform was conceived as a multilingual, free-of-charge alternative to formal litigation, enabling consumers to file complaints electronically and transmit them to certified alternative dispute resolution bodies across Member States. This legislative design was explicitly intended to lower barriers to cross-border dispute resolution and foster uniform standards of fairness, impartiality, and due process as articulated in EU secondary law; however, persistent practical limitations, including historically low conversion of platform visitors into actionable disputes and limited engagement by traders, prompted the EU legislature to repeal the underlying ODR Regulation.<sup>22</sup> The centralized portal was phased out, with policy reform shifting emphasis toward strengthening national and sector-specific ADR bodies and embedding ODR practices locally rather than via a uniform EU interface, underscoring a jurisprudential lesson that legal infrastructure alone does not guarantee access without user adoption, trust, and operational integration into domestic dispute ecosystems.<sup>23</sup>

By contrast, US' approach to ODR is largely decentralized, market-driven, and institutionally pluralistic, with private ODR platforms and court-annexed digital ADR tools coexisting alongside traditional judicial processes. Private initiatives, such as FairClaims, Matterhorn, and similar software solutions have carved out substantial niches in handling high volumes of small-value disputes (particularly in e-commerce contexts), often incorporating asynchronous negotiation, structured digital mediation, and case-management technologies that supplement formal adjudicative routes. US state courts and federal districts have also integrated video mediation, virtual conferencing, and algorithm-assisted case triage as routine procedural instruments, reflecting a normative preference for procedural flexibility and judicial acceptance of digital mediation as an adjunct to due process rather than a replacement for adjudication. The US model underscores a legal culture less inclined toward centralized regulatory ODR mandates and more toward public-private collaboration, where courts and technology providers iteratively refine digital tools to balance efficiency against contested notions of fairness, evidentiary validity, and litigant autonomy.

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<sup>21</sup> Regulation (EU) No 524/2013.

<sup>22</sup> Regulation (EU) 2024/3228.

<sup>23</sup> Perumal M. & Fazila Faheem F., *A Study on the Impact of Online Dispute Resolution (ODR) on Access to Justice in India*, 6 *Int'l J. Rsch. Publ'n & Revs.* 3764 (2023).



Although judicial pronouncements specifically on ODR remain emergent, broader case law endorsing pre-litigation mediation and incentivizing ADR within court rules meshes with this technological evolution and reveals the judiciary's enduring role in shaping procedural legitimacy in digital dispute resolution.<sup>24</sup>

Singapore's tech-enabled dispute resolution architecture exemplifies a hybrid public-private model that synthesizes institutional authority with digital access. Government infrastructure, such as the Community Justice and Tribunals System provides comprehensive online claim registration, evidence management, and virtual mediation services for a variety of low-value and community disputes, while established private arbitration institutions like the Singapore Mediation Centre have piloted asynchronous, digitally assisted mediation platforms for civil and commercial cases. In parallel, sector-specific bodies, such as the Infocomm Media Development Authority's ADR scheme address industry disputes through online conciliation processes. Singapore's integration of e-litigation, case management systems, and digital workflow across both tribunal and private ADR venues reflects a deliberate policy choice to embed ODR principles throughout the dispute landscape. This model is further supported by Singapore's international commitment to mediation norms, evidenced by its role in the Singapore Convention on Mediation, 2019, which situates digital dispute resolution within a broader framework of enforceability and cross-border coherence. Taken together, these comparative modalities highlight that while each jurisdiction faces distinct legal and socio-institutional constraints, jurisprudential legitimacy in ODR is contingent not simply on technological deployment but on sustained procedural safeguards, enforceability of outcomes, & judiciary's willingness to recognize digital processes as compatible with fundamental justice norms.

## **CONCLUSION & A WAY FORWARD**

ODR emerges as significant yet underutilized instrument in India's quest to actualize meaningful access to justice, particularly in legal system burdened by chronic delays, escalating costs, and structural inequities. While recent judicial endorsements and policy initiatives reflect a growing institutional acceptance of technology-enabled dispute resolution, the absence of a coherent and comprehensive regulatory framework continues to impede the legitimacy, uniformity, and enforceability of ODR processes. The uncritical adoption of ODR without addressing systemic concerns, such as the digital divide, data protection vulnerabilities, algorithmic opacity, and procedural fairness, risks reproducing existing hierarchies of exclusion under the guise of technological efficiency. Therefore, the way forward necessitates a calibrated

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<sup>24</sup> *Id.*



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and rights-oriented approach that situates ODR within the constitutional ethos of fairness, equality, and due process under Art. 14 and 21 of the Constitution. This requires legislative intervention to formally recognize and regulate ODR mechanisms, establish minimum procedural safeguards, and ensure interoperability with the formal justice system. Simultaneously, institutional capacity-building through judicial training, professional re-skilling of lawyers, and accreditation of ODR service providers is imperative to foster trust and competence. Bridging the digital divide through infrastructural investment, multilingual platforms, and digital legal literacy programs must be prioritized to prevent technological exclusion.