

Simplifying ODR

“
*The future has already arrived; it
is just not evenly distributed as
yet.*”

-WILLIAM GIBSON

Book Of Content

- Background
- Phases of Origin Of ODR
- Benefits
- Indian Ecosystem
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Background

- Courts should be a service not a place.
- Revolution of the dispute resolution through TECHNOLOGY
- Traditionally Communication- both verbal and non verbal existed without technology and required the physical presence.
- COVID-19 Pandemic- welcomed technology and facilitated video-conferencing led remote participation in hearings.



ORIGIN

PHASE 1

Late 1990s with the expansion of internet and the evolution of e commerce.
eBay started a pilot project
Handled 200 disputes in a two-week period.
By 2010, eBay was handling over 60 million disputes per year through ODR platforms.

PHASE 2

Growth of ODR Startups
21 new ODR Programs launched in 1999
Introduction of Blind-bidding process.
OBJECTIVE: to let parties arrive at a settlement without disclosing to the other party the maximum amount that they would be willing to settle at.

PHASE 3

In-house private ODR platforms
Service providers
State sponsored ODR platforms
Court-annexed ODR systems

Benefits



- **Cost-effective**
- **Convenient and quick**
- **Allows for customisable processes**
- **Encourages dispute resolution**
- **Limits implicit bias caused by human judgment**

Long-term benefits

- Enhances Access to Justice
- Encourages individuals to pursue legal remedies they might otherwise avoid.
- Promotes Procedural Fairness
- Encourages awareness of rights and enforcement mechanisms
- Strengthens contract enforcement
- Drives Legal Ecosystem Transformation
- Democratises dispute resolution through tools like mobile phones & video conferencing
- Enables digital processes: e-filings, digital documents, virtual hearings
- Paves Way for Policy Action
- Committee to identify reforms and create an action plan to mainstream ODR in India

Indian Ecosystem

- **Digital Platform-Based Process:**
 - Disputes are submitted and handled on online platforms.
 - Parties interact using video conferencing, email, or chat.
- **Multiple Resolution Methods:**
 - **Negotiation:** Parties communicate directly to settle the dispute.
 - **Mediation:** A neutral third party facilitates discussion to reach a mutual solution.
 - **Arbitration:** Neutral arbitrator gives a decision (often binding).
- **Participation from Anywhere:**
 - Parties join proceedings using smartphones, laptops, or other devices.
 - No physical presence required — suitable even for people in remote areas.

Indian Ecosystem

- **Neutral Third-Party Involvement:**
 - A trained mediator, conciliator, or arbitrator manages the process.
 - Ensures fairness, impartiality, and smooth communication.
- **Focus on Speed and Efficiency:**
 - Designed to resolve disputes much faster than traditional courts.
 - Saves time by avoiding lengthy legal procedures.
- **Accessibility and Inclusivity:**
 - Makes justice available to individuals who cannot afford court litigation.
 - Reduces need for travel and paperwork, lowering overall costs.

ODR Initiative Platforms

Department of Consumer Affairs Initiatives

Integrated Consumer Grievance Redressal Mechanism (INGRAM):

Centralized platform for lodging consumer complaints

Dedicated Consumer App:

Simplifies complaint filing for consumers

Consumer Protection (E-commerce) Rules, 2020:

Strengthens consumer rights in digital marketplace

National Consumer Helpline (NCH):

Provides guidance and support to consumers

Consumer Protection Act, 2019:

Establishes robust legal framework for consumer protection

Revamped E-Daakhil Portal:

Simplifies e-complaint filing and improves accessibility

NATIONAL PAYMENTS CORPORATION OF INDIA (NPCI)

NPCI took a significant step towards enhancing consumer protection in digital payments by directing all payment system operators (PSPs) to establish an Online Dispute Resolution (ODR) system.

This system was designed to efficiently handle disputes and grievances related to failed transactions within their respective payment systems.

Existing legislations

- **Arbitration and Conciliation Act, 1996**
- **Replaced 1940 Arbitration Act** – addressed issues like jurisdiction, arbitrability, and court interference
- **Broader Scope for ADR:** Covers arbitration **and** conciliation comprehensively
- **Emphasis on Conciliation:** Encourages resolution through conciliation at any stage
- **Court Involvement Limited:** Minimizes unnecessary judicial interference
- **Can Be Invoked Anytime:** Even when the case is already before the court (sub-judice)
- **Major Milestone:** Strengthened ADR framework in India

Code of Civil Procedure, 1908 (CPC)

- **Section 89 Reintroduced (1999, effective 2002):**
 - Allows settlement of suits by **arbitration, conciliation, mediation, and Lok Adalat**
- **Order X Amended:**
 - Introduced **Rules 1A, 1B, 1C** to support ADR processes
- **Referral to Arbitration:**
 - Once referred, **entire A&C Act, 1996 applies** to proceedings
- **Unique Provision:**
 - Section 89 not seen in European or American contexts
- **Objectives:**
 - **End litigation quickly**
 - **Encourage ADR** methods
 - **Judicial approval to ADR settlements** – binding like court orders
- **ODR Not Explicitly Promoted:**
 - Online adoption increased only during pandemic
 - Future of online proceedings yet to be established as the norm

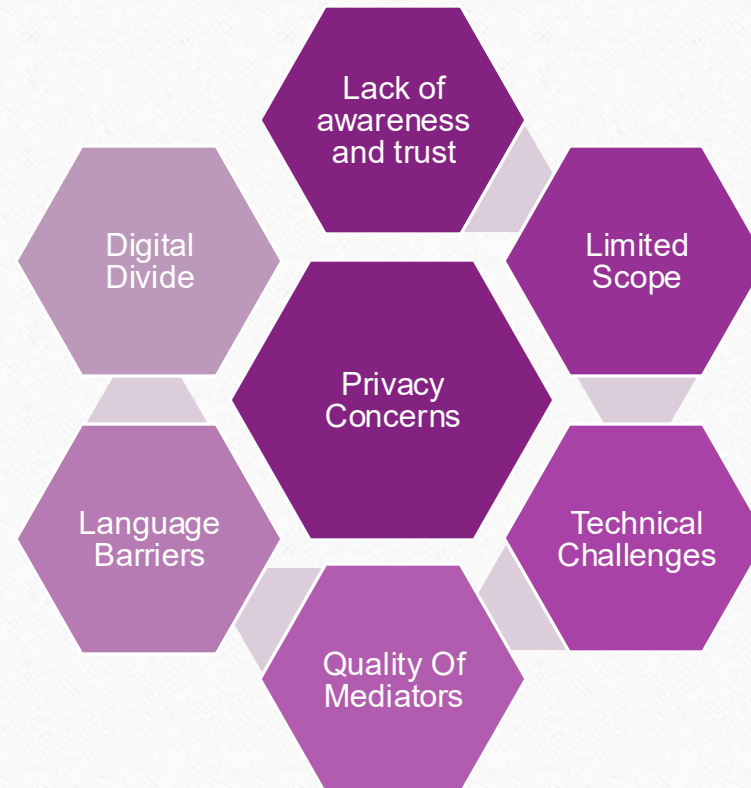
The Information Technology Act, 2000 (the IT Act, 2000)

- **Facilitated Growth:**
- **Game-Changer for ADR & ODR:** Enabled legal recognition of digital processes
- **Recognition of Electronic Records:**
 - Sections **5 & 6** recognize **electronic records** and **digital signatures**
 - Replaced need for paper records in legal proceedings
- **Legally Valid Digital Contracts:**
 - Agreements, including arbitration/ADR clauses, can be executed digitally
- **ODR Enablement:**
 - Allowed ADR proceedings to be conducted entirely online
 - Supported **e-commerce expansion, network coverage**, and adoption of **ODR mechanisms**

Bharatiya Sakshya Adhiniyam, 2023

- **Sections 62 & 63 Introduced:**
- Deal with **admissibility of electronic records** and **special procedures**
- **Recognition of Digital Evidence:**
- **Audio CDs, videos, and video conferencing recordings** admissible as evidence
- **Strengthens ODR:**
- Provides legal backing for online hearings and digital proceedings
- **Encourages ADR via Technology:**
- Builds trust in ODR outcomes by making them legally enforceable

Challenges To ODR In India



Relevant Case Laws

State of Maharashtra v. Dr. Praful B. Desai

The Apex court in the case of *State of Maharashtra v. Dr. Praful B. Desai* [i] acknowledged the use of video conferencing to record witness statements. Even the Arbitration Act enumerates that subsequently, in an ADR process, when the award is declared, it can be exchanged via emails by sending scanned copies. This stance has considerable legal backing, and there are various cases where the courts have upheld the validity of dispute resolution using electronic communication.

Relevant Case Laws

Grid Corporation of Orissa Ltd v. AES Corporation

The Supreme Court in the case of *Grid Corporation of Orissa Ltd v. AES Corporation* [ii] made a noteworthy observation that “*when an effective consultation can be achieved by resorting to electronic media and remote conferencing, it is not necessary that the two persons who are required to act in consultation with each other must necessarily be together at one place unless it’s a requirement of law or a contract between the parties*”. Thus, it is reasonable to conclude that the ODR process comes well within the ambit of the existing legal framework in India.