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## ONLINE DISPUTE RESOLUTION IN COVID-19: ON THE RISE

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### *Abstract*

*Online Dispute Resolution (ODR) is a parallel branch of Arbitration Dispute Resolution (ADR) with a tinge and addition of technology. We all are well aware of the traditional litigation processes which for some inevitable reasons will always prevail but the burden on the courts of dispute cases can be avoided. Recently the NITI Aayog has set up a webinar on ODR in India where the speakers talked about the need of ODR post-Covid-19 will be on the rise and mechanisms to strengthen the process across the country is also needed. In this article the authors will give an extensive introduction pertaining to ODR followed by the origin of the Online Dispute Resolution (ODR) and its position in India. In addition to it, the authors will discuss the role of Online Dispute Resolution amidst Covid-19 and the recognition of the ODR in the banking sector in the country. The authors will also throw light on different ODR institutes in India as well as the advantages and challenges of ODR in India will also be discussed and lastly in conclusion some suggestions have been made by the authors for a feasible functioning of the Online Dispute Resolution in India in order to make it a success in a country like India.*

Keywords: ODR, Arbitration, Covid-19, Technology, Litigation

### **Introduction**

Online Dispute Resolution (ODR) is a parallel branch of Arbitration Dispute Resolution (ADR) with a tinge and addition of technology. We all are well aware of the traditional litigation processes which for some inevitable reasons will always prevail but the burden on the courts of dispute cases can be avoided. Arbitration Dispute Resolution is one avenue to resolve certain

disputes through Arbitration, Mediation and Conciliation which could ease the burden on the courts.

Recently the NITI Aayog has set up a webinar on ODR in India where the speakers talked about the need of ODR post-Covid-19 will be on the rise and mechanisms to strengthen the process across the country is also needed. Online Dispute Resolution also deploys Information Technology along with the ADR. With the introduction of e-Courts and online hearing through videoconferencing Indian Courts have stepped out of the traditional litigation process in the ongoing pandemic.

In the present time, traditional justice delivery system is on hold due to the spread of Covid-19. Recently the Apex Court has opened the avenue for e-Court hearing for urgent matters and now the High Courts and many District Courts have also started hearing cases online and now the Apex Court has also brought in e-filing of cases and petition. Arbitration is known to be a less complex and more flexible process for resolving disputes and it is also an emerging practice in the legal fraternity worldwide. Today the commercial industry is huge so are the disputes arising out of it and these billion dollars disputes prefer to go to Arbitration for obvious reasons. Due to globalisation cross-border disputes are also surging and at present due to Covid-19 countries are under lockdown and the means of travelling is minimal for such circumstances the Online Dispute Resolution are the best way to settle a dispute.

### **Origin of Online Dispute Resolution**

Online disputes first coined by the founder of eBay Professor Ethan Katsh and Janet Rifkin. He opened an online portal for dispute resolution between the buyers and sellers which turned out to be a success. The National Centre for Technology and Dispute Resolution was also founded by Professor Ethan Katsh and Janet Rifkin in 1998 that cultivated the idea of online dispute resolution globally. Later they also wrote a book called *Online Dispute Resolution* in 2001 in which they divided the evolution of ODR into three stages:

- a) Up until 1995, the growth of ODR was minimal,
- b) From 1995 to 1998 with the rising use of internet the ODR mechanism also escalated and became popular and,
- c) Post-1998 the commercial entities started to invest and set up the ODR institutions.

Since then online dispute resolution has not looked back and has been thriving and today at the time of pandemic the need of ODR has arisen stronger than it was ever before.

### **Online Dispute Resolution in India**

Disputes that are resolved with the help and support of technology over the internet and when parties resolve their disputes with the help of Information Technology along with the Arbitration Dispute Resolution mechanism is called the ODR. Online Dispute Resolution also includes Mediation, Arbitration and, Negotiation like the ADR.

In an ODR all the meetings and exchange of opinions, views and advice take place through video conferences, emails and, over phone calls. Mediators or Arbitrators take forward every step of the ODR process online only along with the parties to the dispute.

ODR is not a new phenomenon in India but at present, it is in an embryonic stage which has the potential to facilitate justice with the help of Information Technology Act, 2000 and Arbitration and Conciliation Act, 1996 to a larger extent.

### **Role of Online Dispute Resolution amidst Covid-19**

India has done great in the litigation industry the Supreme Court has exemplarily changed the course of justice in the wake of the Coronavirus pandemic when physical courts were impossible to run. Statistically, Indian courts have heard more cases and pronounced more judgements than the UK and Canada. Presently, Covid-19 has challenged the Indian legal system in a way that the online or virtual administer of justice has become a necessity.

Online Dispute Resolution is now becoming the talk of the town, every now and then either Judges or eminent lawyers speak the need of ODR in the current scenario as well as post-Covid-19. Recently the NITI Aayog organized a webinar in association with the Indian Dispute Resolution Centre in which the CEO of NITI Aayog addressed that Covid-19 is an opportunity to strengthen the ODR in the country. Post-covid there is going to be a surge in the property, lending, credit and commerce disputes and ODR has the potential to tackle with these disputes.

ODR is a step ahead from ADR. It is not only need of the hour but it would be a huge avenue for dispute resolution in post-Covid. ADR in India is an emerging and widely used mechanism by

many commercial companies and entities and using ODR for pending cases with the consent of the parties would give more recognition to the outside court settlement with much more flexibility involving the technology.

### **Recognition of ODR in the Banking Sector**

In 2019, a committee set up by the Reserve Bank of India submitted their report on the rise of the digital payments and disputes regarding that. The committee also emphasised on the need and use of online dispute resolution for the digital payment disputes. There has been a surge in the digital payments which was also encouraged by the Government agencies. India must prepare itself for all the challenges that might occur in the wake of such a large digital transformation. ODR can play a vital role to tackle such disputes arising out of small and medium transactions.

Today many banks are preparing to avail the ODR mechanism to resolve small-medium disputes. Recently ICICI Bank has transferred its 10,000 matters to online Arbitration and Conciliation to SAMA, an ODR institute.

ODR is now paving its way in India and the current pandemic is a good opportunity to thrive. ODR has started to find takers through many ODR institutions and it is also recommended by the judiciary as well.

### **Institutes for Online Dispute Resolution in India**

**SAMA:** It is a platform for online dispute resolution which provides services such as Arbitration, Mediation and Conciliation. SAMA also welcomes all kind of disputes related to companies or individuals. It is a platform which is also recognized by the Ministry of Law and Justice, Government of India. ICICI Bank is also using SAMA to help resolve 10,000 matters.

**CADRE (Centre for Alternate Dispute Resolution Excellence):** It is another platform that renders the online dispute resolution services through modern technologies. It is a website where the parties to dispute approach and on the agreement, an arbitrator is appointed and the fees of the Arbitrator are levied on the parties equally. CADRE uses e-mails, WhatsApp etc. to communicate throughout the ODR process, where parties do not come face-to-face.

**CODR (Centre for Online Resolution of Disputes):** It is another institute that supports ODR in the country it also facilitates ODR services involving technology. Parties to a dispute are allowed to avail themselves independently.

ODR has several platforms that render the online disputes and there are also companies, entities and individuals that are choosing ODR. Covid-19 is suitable circumstances where ODR can take lead ADR and thrive in the times to come.

### **Advantages and Challenges of Online Dispute Resolution in India**

Covid-19 has brought a circumstance where ODR has made its presence felt and today many of the traditional litigation experts are rooting for it. ADR has been a success in India and it has also become the favourite resort to settle or resolve disputes in the commercial sectors. ODR is nothing new but a step ahead with a flavour of modern technology involved. ODR is flexible, incurs a low expense, and consumes less time to resolve a dispute. The best part is that all of these processes take place online via e-mail, WhatsApp, SMS or video conference. Nobody either the parties to a dispute or the arbitrators are required to meet face to face.

There may be some challenges occur as well in a country like India that everybody may not be able to afford ODR and India also lacks the uniform distribution of technology across the country. Since this mechanism is laced with technology there might be some glitches occur from time to time which can hinder the process. Currently, India also lacks professionals who can resolve disputes online.

In the other part of the world, ODR is handling the gigantic amount of cases in the business sector. In the US and EU, the ODR are very popular and commercial sectors actively resolving their matters through ODR without any physical hindrance and hassle to meet the parties physically.

### **Conclusion**

ODR is in a nascent stage in India, but the current time is favourable for it to evolve and grow. Indian courts are enormously overburdened and if there is an alternative to achieve justice it must be encouraged. ADR has proved itself in the country and it is also relied upon by the

companies and many individuals. India has a huge market and e-commerce is one of them, ODR would be a perfect avenue to settle or resolve such matters.

ODR has the potential to be able to entice companies and individuals in India. Covid-19 might work as a catalyst for ODR to make it reach and spread across the country which would not have been possible soon enough, had the situations been normal. India is still not well versed with the ODR much to implement it outrightly. Professionals must be trained and people and companies need to be educated about the use of ODR mechanism. If these requirements are met then ODR has a bright future in India. It would be a win-win situation for the Indian courts, legal professionals as well as parties to a dispute.

