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# Demand and Opportunities for Online Dispute Resolution in India

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## ABSTRACT

*Deferral in equity and significant expenses of prosecution are significant downsides of the Indian judicial system. These variables have brought about the deficiency of confidence of individuals in the Indian legal framework. Accordingly individuals try not to go to courts for their civil cases and disputes. This absence of confidence has fostered the goal of debates by elective strategies like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). These strategies have been demonstrated fruitful in decreasing the pendency of cases and expenses, in created just as in developing nations. Information and Communication Technology (ICT) after the improvement of PC and web innovation has portrayed a significant part in each circle and accordingly dispute resolution has additionally been influenced by this change. Online Dispute Resolution has arisen because of mechanical changes and the advancement of online networking. It is another idea and is fit for tackling the issues of the legal framework, and ADRs. It has been demonstrated to assist the courts with diminishing the immense excess of cases particularly at area and subordinate levels in various nations. The E-Court framework has additionally been viewed as a piece of the ODR development. In various created nations like the USA, Australia, New Zealand, Canada, UK, and so on awards were given by the public authority to ODR projects, and various drives were taken to help web based business and the ODR framework. In India, the system is prepared to help the new changes and ODR framework. There is a requirement for ODR to take care of the issues of the Indian legal system. Indian government should genuinely consider strategising toward this path.*

**Keywords** – *Alternative Dispute Resolution, Online Dispute Resolution, India, Indian legal system, civil litigation.*

## I. INTRODUCTION

The essential lawful guideline “justice delayed is justice denied”, which implies if equity has not been administrated opportune it is equivalent to no equity by any means. This expression is reflecting in the Indian legal framework from a long time. Indian legal framework has been

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overburdened by gigantic pendency of cases, which has brought about a postponement in Equity. The most recent measurements show enormous pendency of issue in the higher and lower courts. Toward the finish of February 2016, fifty nine thousand four hundred and sixty eight cases were unsettled in various High Courts all over India. Of this unsettled cases, around four-fifths are civil and the rest criminal. Additionally towards the end of June 2015, forty lakh five thousand seven hundred and four cases were unsettled in various High Courts in the country. There were more than two crores eighteen lakh cases unsettled in district courts all around the nation, twelve states have in excess of five lakh cases to litigate; while somewhat more than one case, on a normal, was anticipating passing of judgement for something like ten years. Around thirty eight lakh three thousand cases were unsettled for over five years however under ten years, 17.5 % of the complete number of cases. Hence, more than one-fourth of cases unsettled across district courts in the nation were unsettled for something like five years. Also, 29.5 % of all cases, or sixty four lakh five thousand cases, have been unsettled for over two years, as per the E-Committee's report.<sup>2</sup>

One more disadvantage of the Indian judicial system is the significant expenses of prosecution. These variables have brought about the deficiency of confidence of individuals in the Indian legal framework. In this way individuals try not to go to courts for their cases and disputes. This absence of confidence has fostered the resolution of disputes by alternative strategies like ADR and ODR. These strategies have been demonstrated effective in decreasing the pendency of cases and expenses.

## **II. EXPOSURE OF VARIOUS TECHNIQUES FOR ADR**

ADR techniques have been created as an option in contrast to the conventional strategies for litigation and it incorporates arbitration, conciliation, intervention, unbiased assessment and fair assurance. These strategies can be utilized to determine any matter by an agreement between the parties. It tends to be utilized to determine different classes of disputes, for example, common, business, modern and family disputes. ADR framework has helped a great deal in regards of global business cross-line disputes. Arbitration and Conciliation Act, 1996 at present accommodates lawful acknowledgment of these strategies for elective dispute techniques instead of prosecution. ADR framework enjoys different upper hands over the legal arrangement of dispute resolution which makes it exceptionally well known and viable.

The critical advantages of ADR Framework over litigations –

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<sup>2</sup> "More Than Two Crores Cases Pending in India's District Courts: Report" The Indian Express, June 9, 2016

- Parties can agree to rules for their case.
- It is extremely quick and efficient gadget.
- Cost of ADR techniques is exceptionally low.
- Arbitrator, mediator and conciliator are picked by the selection by the parties.
- There is no compelling reason to draw in advocate by parties.
- It assists with keeping up with confidentiality and security.
- It is cordial for the parties.

Hence ADR system gives a consensual method of resolution of disputes and gives an extremely straightforward casual adaptable strategy to assist the gatherings with addressing their dispute. Lord Woolf in his report has additionally proposed elective dispute resolution for common cases to urge admittance to justice.<sup>3</sup> ADR framework is likewise helping the court framework and court run ADR framework has become famous to give equity to the overall population.

### **III. ODR**

ICT after the advancement of PCs and online innovation has portrayed a significant part in each scenario and thusly dispute resolution framework has likewise been influenced by this change. Online dispute resolution has arisen because of innovative changes and the advancement of online networking. It is fresh idea and is fit for taking care of the issues related to civil suits, the legal frameworks, and ADRs. It has been demonstrated to assist the courts with diminishing the enormous excess of cases particularly at locale and subordinate levels in various nations. The E-Court framework has additionally been viewed as a piece of the ODR development.

ODR has been working at the worldwide level effectively. Different nations have encountered this framework to tackle various disputes related to companies, between company and consumer, family disputes, between state disputes, and other common disputes. It has various benefits over the conventional court framework and ADR frameworks.

For instance –

- This framework is exceptionally effective to tackle the disputes which emerge in the internet particularly domain name disputes on the grounds that such disputes are special to the electronic programme.

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<sup>3</sup> Lord Woolf, Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System In England and Wales (July 1996) Quoted In Hazel Genn, „What Is Civil Justice For? Reform, ADR, and Access to Justice“ *Yale Journal of Law & the Humanities*, Vol. 24 (2012), Issue 1, Article 18, p. 401.

- This framework improves trust in online business which will at last develop e-commerce.
- ODR framework is vital for small-value disputes because of the minimal expense of this component. In these disputes, parties don't like to go to court or to resort conventional ADR framework.
- ODR is additionally useful to tackle cross-border international commercial disputes, because of jurisdictional and procedural obstructions in the conventional ADR framework.
- ODR framework defeats territorial hindrances. Parties need not travel anywhere for filing the case. They just require an internet connection for accessing ODR.<sup>4</sup>
- ODR will likewise assist with diminishing the pendency in the higher courts just as in lower courts, similarly as ADR framework.<sup>5</sup>

In *State of Maharashtra v D. Praful B. Desai*<sup>6</sup> SC permitted and allowed video conferencing as a substantial method of recording proof for witness proof. In *Grid Corporation of Orissa Ltd. v. AES Corporation*<sup>7</sup> SC acknowledged that the genuine presence of gatherings isn't required for discussion and closing of agreements in the event that it very well may be finished by electronic media and innovation. In *Shakti Bhog Food Ltd. v. Kala Shipping Ltd.*<sup>8</sup> correspondence and acknowledgment by message, wire, telegram, etc. has been acknowledged as a legitimate method of correspondence.

#### IV. OPPORTUNITIES FOR ODR IN INDIA

ODR can be talked about in two different ways one as dispute preventive other as a dispute settling gadget. Firstly, it attempts to build trust in organizations. This cycle acts prior to emerging disputes and clashes between business networks and buyers. Online input frameworks by business networks and online complaint settling frameworks by them are acceptable practices. Secondly, it is essential for the dispute resolution arrangement of a state.<sup>9</sup> There are various ways to deal with ODR, for example, the cyberspace non-adjudicative ADR, litigation, etc. This load of techniques might be utilized in India. Moreover, ODR appears best

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<sup>4</sup> Chitranjali Negi, „Pendency in Indian Courts- an Idea of Online Dispute Resolution,“ April 17, 2015, available at:<https://ssrn.com/abstract=2597817> (Visited on January 2, 2017)

<sup>5</sup> “*Dispute Resolution Mechanism in Electronic Commerce*” (2005) (Unpublished dissertation of LL.M, University of Manchester.

<sup>6</sup> (2003) 4 SCC 601.

<sup>7</sup> AIR 2002 SC 3435.

<sup>8</sup> AIR 2009 SC 12.

<sup>9</sup> Orna Rabinovich-Einy and Ethan Katsh, “Digital Justice: Reshaping Boundaries in an Online Dispute Resolution Environment” 1 IJODR 5(2014).

to enhance the offline dispute settlements framework.

“Ethan Katsh and Janet Rifkin theorized that the foundational pillars of any successful ODR regime are trust, convenience and expertise. India now has a long legacy of citizens trusting technology, whether in e-payments or in education and healthcare.

To augment dispute resolution mechanisms, Lok-Adalats and Gram Nyayalayas have been created as alternative options for affordable justice. In November 2019, a reply to a parliamentary unstarred question revealed that, between 2016 and 2018 regular, national and permanent Lok-Adalats cumulatively disposed of 2.68 crore cases. Further, 395 Gram Nyayalayas, which are conceptualized on the premise of grassroots access to adjudication mechanisms, has been notified in 12 states with 225 of them being operational, as per a parliamentary question answered on September 21.”<sup>10</sup>

## **V. OPPORTUNITIES FOR ODR IN INDIA FOR DISPUTES RELATED TO DOMAIN NAME**

In India ODR has been rehearsed to settle domain name disputes. NIXI<sup>11</sup> has utilized the ODR framework. For this reason, dispute resolution strategy has been defined as per global reports and guidelines. The whole interaction is being directed online. Mediators are delegated from the board chose by the authorities who are specializing knowing about the law and involvement with the resolution of domain name disputes. Various disputes have been settled by this framework and barely any award has been challenged in the courtroom.

## **VI. ROLE OF TLCEODRI<sup>12</sup> FOR OPPORTUNITIES OF ODR IN INDIA**

TLCEODRI has been overseeing techno-legal issues of ODR since 2012. “ODR India”<sup>13</sup> and “Perry4Law”<sup>14</sup> has dispatched to direct ODR under TLCEODRI. Administrations like online mediation, online arbitration, and digital arbitration can be profited by stakeholders by visiting the site and ODR Agreement Clause. Subsequently parties start system according to rules of organization. Rules and regulations for the foundations and the board of disputes have additionally been given at their sites. Parties can attend procedures online. Arbitrator would be designated by TLCEODRI then; at that point parties can exchange applicable documents online

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<sup>10</sup> India needs more online dispute resolution. Available at: “<https://www.financialexpress.com/opinion/india-needs-more-online-dispute-resolution/2117658/>”

<sup>11</sup> National Internet Exchange of India (NIXI) is a government non-profit company established in 2003 to facilitate and control domestic Internet traffic in India. Since 2005, NIXI has also created INRegistry as its autonomous body for maintenance of .IN domain. Since December 2012, NIXI also manages the National Internet Registry of the country delegation Internet Protocol addresses (IPv4 and IPv6) and Autonomous System numbers to its Affiliates.

<sup>12</sup> Techno-Legal Centre of Excellence for Online Dispute Resolution in India

<sup>13</sup> ODR India is the sole Techno Legal ODR initiative of India managed by TLCEODRI

<sup>14</sup> India's 1st & only techno-legal & ICT law firm

to help their case.

To prepare for the ODR procedure, TLCEODRI has additionally dispatched a blog for ODR preparing in India where they can post articles, sentiments, perspectives, ideas, and techniques relating to the utilization of Cyber Arbitration and ODR in India. An ODR Discussion Forum has additionally been dispatched by TLCEODRI so open mindfulness about Cyber Arbitration, Online Arbitration, online dispute resolution, and so forth can be spread.<sup>15</sup>

## **VII. ROLE OF ICC<sup>16</sup> FOR OPPORTUNITIES OF ODR IN INDIA**

ICC has formed certain rules to keep up with principles in ODR proceedings. The arbitration procedures ought to follow by these principles and everything about is unmistakably referenced in the arbitration arrangement. The judges should consistently attempt to keep up with correspondence and unbiased during the procedures and consent to Sec. 12 and 18 of the Arbitration and Conciliation Act 1996.

At last, when the arbitral award has been formed it tends to be traded between the gatherings through email and endorsed by the mediators as specified under Sec. 31 of the Arbitration and Conciliation Act 1996. Filtered duplicates of the award can be sent through email while the first reports can be sent by means of a post sometime in the future for reference. This would finish the arbitration procedures. The arbitral award can be upheld as per the law and there ought not to be any trouble emerging out of the award.<sup>17</sup>

## **VIII. CONCLUSION**

ODR has essentially huge scope potential for development. For example, the input rating framework in web-based business, were gatherings to an exchange condemn or acclaim each other has gained notoriety for scaling action through smooth exchanges. In the Netherlands, the 'Rechwizer' framework takes into account family and obligation disputes to be dealt with by an online arranging measure assembled as 'separating together'. Parties are asked a progression of clear inquiries and afterward arrange the answers in a way with the end goal that the gatherings know their privileges and ideal interests, and are at the end directed towards a mutual understanding.

The capability of ODR for dispute resolution and regulation is most exhaustively recorded in a report in the UK headed by Prof. Richard Susskind. It visualizes a three-stage component

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<sup>15</sup> Available at <http://www.odrindia.in>

<sup>16</sup> International Chamber of Commerce

<sup>17</sup> Chenoy Ceil, "Dimensions of Online Arbitration in India" June 6, 2012. Available at: <http://ssrn.com/abstract=2078896>

beginning with online 'assessment', where there is dispute analysis and investigation of alternatives for prosecutors. Then, online 'assistance' is depended on, where facilitators and computerized arrangement devices help in non-ill-disposed resolution. At long last, if the initial two phases don't bring about a resolution, an online hearing is led, which is inseparable from online courts.

ODR can possibly raise value, reasonableness, access in the dispute resolution system in India. The accommodation brought by ODR has been shown by E-Lok-Adalats led in a few states like Chhattisgarh, Karnataka, Rajasthan, Gujarat, and soon Kerala where disputes were settled basically over WhatsApp sound/video calls. Supply-side abilities could likewise be improved through a generally huge and skilled administrations pool for mediation and portrayal.

ODR can possibly be a viable elective that uses innovation to connect boundaries and access in resolution. Through working with minimal expense, remote, innovation increased, phonetically agreeable, genial and boosted dispute evasion, regulation, and resolution while sticking to standards of normal equity, ODR could be the post-pandemic interruption that improves equity conveyance to all.

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