CHALLENGES AND ISSUES RELATED TO ONLINE DISPUTE RESOLUTION: AN INDIAN PERSPECTIVE

Himanshu Tripathi, Law Student, Amity University, Lucknow

ABSTRACT

Dispute resolution plays a crucial role in our daily lives. Traditionally, when disputes arise, people turn to courts and tribunals to find solutions. However, these methods often end up being slow and complicated. To make the process faster and more efficient, alternative dispute resolution methods like arbitration, mediation, and conciliation have been developed. But there's an even more modern approach called online dispute resolution (ODR) which holds huge potential in India. Using ODR here comes with various advantages, but to make it work well, we need a strong foundation.

Right now, India's ODR framework isn't in great shape. We lack a proper set of rules and regulations specifically tailored for ODR. While there are some provisions in India's cyber law, the Information Technology Act of 2000, it's not enough to build a solid and lasting ODR system. Another hurdle is the absence of institutions that focus on ODR. These institutions would provide training, education, research, and policies needed for ODR to thrive in India.

In this context, the paper discusses the challenges that the Online Dispute Resolution system faces in India. It also delves into the regulatory framework that should ideally support this system. The bottom line is, while ODR has a lot of potential in India, it needs proper rules, technology, and dedicated institutions to truly succeed.

Keywords: Arbitration, Conciliation, Dispute, Internet, and Mediation.

Volume I Issue II
August 2023

LUJ | Legal Upanishad Journal
www.lujournal.com
info@lujournal.com

1. INTRODUCTION

Instead of the 21st century, we could easily name this period the Internet or technological era. Thanks to the internet, even if people are thousands of miles apart, a simple Facetime video call can make them feel closer. People form relationships across nations, whether personal, professional, or business-related. And in all these cases, making contracts is really important. But here's the problem: when disputes arise, going to court is often not practical. It takes a lot of time, money, and effort, especially when the issues aren't too big, and the people involved are far away from each other. That's where Online Dispute Resolution (ODR) comes in. Think of ODR as a type of solution that makes use of the speed and convenience of the internet and technology[1]. It's a great way to solve problems without needing to go to court. For example, it's super useful for redressing consumer grievances, making them trust the market more and helping online businesses to grow in a good way. Even though Online Dispute Resolution (ODR) has a lot of promise, it's been facing quite a few complicated challenges on its journey. These challenges come from how the system works, with lots of different problems coming together. And right now, there are some important issues that need to be solved for ODR to really reach its full potential.

2. ONLINE DISPUTE RESOLUTION

Online dispute resolution is basically about solving conflicts over the internet. This can happen in many different ways and places around the world. The ways we solve disputes online today are like early signals of how we will do it more and more in the future as technology advances. In simple words, this kind of dispute solving is like doing arbitration but using the Internet[2]. If arbitration happens online, the parties involved will have to discuss things like the choice of laws through emails, make an online agreement for arbitration that they sign digitally, and decide where the server that handles the arbitration should be located. They also need to figure out where the arbitrator will sign the award. When we say "online," it means that they're communicating using electronic things like the Internet.

---

[1] Apoorva Dixit, *Online Dispute Resolution: An Indian Perspective*, 2 INT'L J. L. MGMT & HUMAN. (2018)
[2] Chitranjali Negi, *Concept Online Dispute Resolution in India*, SSRN ELEC. J. (2015)

Volume I Issue II
August 2023

LUJ | Legal Upanishad Journal
www.lujournal.com
info@lujournal.com

Online Dispute Resolution (ODR) is the use of digital technology and the Internet to settle conflicts between parties. It involves promoting negotiation, mediation, arbitration, or other methods of dispute resolution via online platforms and technologies. ODR aims to provide a quick, convenient, and often less expensive method of resolving disputes without the need for in-person meetings or formal court proceedings.

3. CHALLENGES TO ODR IN INDIA

Lack of Awareness: Many people and businesses don't understand how ODR works or why it's helpful. Because of this, they might not use it and prefer the old ways of solving problems.

Legal Framework: The rules and laws around ODR in India are still changing and growing. The current laws about ODR in India might not be good enough to handle all the different problems and challenges that come up in the digital world. We need to make things clearer and adjust current laws to match how ODR works.[3]

Unequal Access to Technology: The digital divide, which means some people have less access to technology than others, creates a big problem for everyone being able to use online dispute resolution (ODR), especially for marginalized groups who face financial barriers[4]. Not having good internet or devices stops these groups from using ODR and makes inequality worse. We need to change policies, make technology better, teach people about using tech, and work to reduce the gap between urban and rural areas. These things are very important so that ODR can help everyone, no matter where they are or how much money they have.

Complex Disputes: ODR might not be good for really complicated legal problems that need lots of documents, cross-examination, or expert opinions. It's hard to do these things online like they are in person.

---

[3] Varsha, *Online Dispute Resolution and Access to Justice: Analysing Challenges and Opportunities*, BNB LEGAL (July 29, 2023, 6:30 PM), https://bnblegal.com/article/online-dispute-resolution-and-access-to-justice-analysing-challenges-and-opportunities/
[4] Ibid

Volume I Issue II
August 2023

LUJ | Legal Upanishad Journal
www.lujournal.com
info@lujournal.com

Digital Literacy: People need to know how to use digital tools to take part in ODR fairly. This means understanding how to use online platforms, send documents, and talk effectively online. Not knowing these things can stop some people from joining in.

Legal Validity and Enforceability: People might doubt whether the decisions made through ODR are legally valid and can be enforced in a court. They might not be sure if these decisions have the same legal value as decisions made in the usual way.

Implementation of Awards: Even if parties solve their issues using ODR, making sure everyone actually follows through with the decisions can be tough. This is especially true if one side doesn't want to agree with what was decided[5].

Problems Across Borders: Solving problems online that involve people from different places around the globe is complicated and needs international cooperation[6].

Adapting to Change: People who are used to old ways of solving problems might not want to use new digital methods. This could be because they're not familiar with them.

Data Privacy: It's really important to make sure that online platforms are safe, and that private information stays private during ODR. This helps people trust the process.

3.1 Security Issues

During most online dispute resolution (ODR) processes, one or both parties usually want to keep everything about the proceedings private. However, the internet is an open system, and using methods like email or website platforms might not be as secure as traditional methods like mail, fax, or phone calls. There's a risk that unauthorized people could intercept messages sent over the internet, and hackers might get into computers linked to the internet. For instance, there's a technique called spoofing, where someone pretends to be an authorized

---

[5] *Strengths and Challenges in Online Dispute Resolution system*, VIA MEDIATION & ARBITRATION CENTRE (July 30, 2023, 5:00 PM) https://viamediationcentre.org/readnews/MTA2Nw==/Strengths-and-Challenges-in-Online-Dispute-Resolution-System#:~:text=In%20India%2C%20ODR%20faces%20various,and%20a%20negative%20attitude%20of
[6] Ibid

Volume I Issue II
August 2023

LUJ | Legal Upanishad Journal
www.lujournal.com
info@lujournal.com

user to get access to private information. There are also tools that can intercept and manipulate specific data, known as sniffer packages. On the other hand, closed systems are safer because they're shielded from the internet. Instead of using public networks like the internet, closed systems use private lines meant just for them to send messages. This makes them more secure because they're not as exposed to potential breaches[7].

4. SUGGESTIONS:

To overcome the challenges in online dispute resolution (ODR) in India, several steps can be taken. These include:

- Bringing Everyone Online: Making sure that more people can access digital tools and technology.
- Strengthening Cybersecurity: Making online platforms more secure from cyber threats.
- Spreading Awareness: Running campaigns to help people understand how ODR works.
- Updating Laws: Changing and improving the rules that guide ODR processes[8].
- Global Partnerships: Working together with other countries to solve ODR challenges.
- Backup Plans: Having plans ready in case there are technical problems.
- Respecting Culture: Being sensitive to different cultures when using ODR.
- Using New Tech: Adding things like Augmented Reality (AR) and Virtual Reality (VR) to make online interactions better.
- Enforcing Decisions: Making sure that decisions made through ODR are followed.
- Training Legal Experts: Teaching lawyers and legal experts about ODR.
- Better Tech: Improving the technology that supports ODR.
- Guidelines: Creating clear rules for how ODR should work.
- User-Friendly Design: Making ODR systems easy for everyone to use.

---

[7] Chitranjali Negi, *Concept Online Dispute Resolution in India*, SSRN ELEC. J. (2015)
[8] Varsha, *Online Dispute Resolution and Access to Justice: Analysing Challenges and Opportunities*, BNB LEGAL (July 29, 2023, 6:30 PM), https://bnblegal.com/article/online-dispute-resolution-and-access-to-justice-analysing-challenges-and-opportunities/

Volume I Issue II
August 2023

LUJ | Legal Upanishad Journal
www.lujournal.com
info@lujournal.com

- Digital Skills: Helping people understand how to use digital tools.

- Cost-Effective Solutions: Finding ways to make ODR affordable.

- Mixing Methods: Using a combination of different ways to solve disputes online.

- Evaluating Performance: Checking how well ODR is working and making it better.

- Continuous Innovation: Keep coming up with new ideas and ways to improve ODR.

All these steps together can help make online dispute resolution in India work better and solve problems more effectively.

5. CONCLUSION

Online Dispute Resolution (ODR) has enormous potential to revolutionise the conflict resolution landscape in India. While there have been problems along the way, such as the digital divide, data security concerns, and legal uncertainty, these obstacles can be resolved with effective initiatives[9]. As we go through the digital transition of dispute resolution, overcoming these roadblocks becomes critical to ensuring that ODR procedures perform effectively and fairly. Closing the digital gap through targeted initiatives, strengthening cybersecurity to secure sensitive data, and raising knowledge about the benefits of ODR are critical ways to increase accessibility and involvement. Several policies, regulations, and revisions have also been recognised for creating an effective ODR system. Adapting the legal framework for the digital era, establishing worldwide cooperation, and incorporating cultural knowledge all contribute to the long-term advancement of ODR.

---

[9] Apoorva Dixit, *Online Dispute Resolution: An Indian Perspective*, 2 INT'L J. L. MGMT & HUMAN. (2018)