

# Online Dispute Resolution: A Governance Tool for India Inc.



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## Background

India houses the largest democracy in the world. The Constitution of India – the country's supreme legal document safeguards the rights and outlines the responsibilities of Indians. In addition to this, the three pillars of our system – Executive, Legislative and Judiciary, are collectively working to provide great governance, greater laws and the greatest level of enforcement.

Any citizen can approach the judiciary in case of infringement of his right. However, the Indian judicial system has been plagued with challenges that are hampering the dispensation of timely and cost-effective justice:

- Lack of use of technology
- Exorbitant 'cost of litigation'



Figure 1 depicts the journey of what a litigant has to endure if litigation is the preferred mechanism for dispute resolution.

- Insufficient budgetary allocation
- Complex procedures and inefficiencies
- Massive backlog of cases and vacancies

International trade, foreign investment, industrial policy and promotion are the backbone of an economic superpower, but India's progress is being weighed down due to lack of conflict management creativities.

As per a report by Daksh – State of the Indian Judiciary, the average

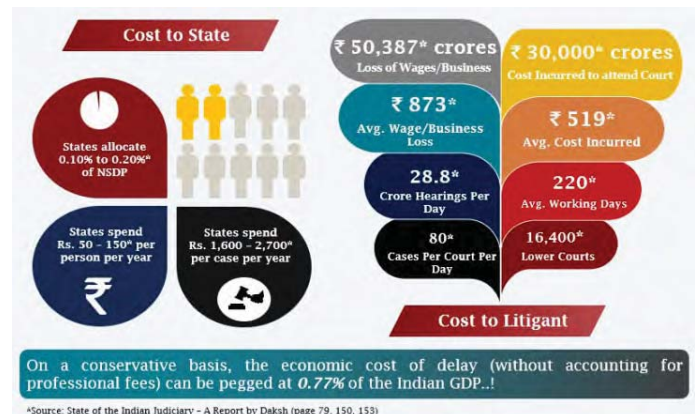


Figure 2 depicts the cost of litigation on a macro and micro level.

yearly loss of wages/ business due to litigation is approximately INR 50,500 crores, and the total yearly spending of all litigants to attend courts is approximately INR 30,000 crores.

## Alternative Dispute Resolution

Alternative Dispute Resolution (“ADR”) mechanisms provide a substitute to the conventional methods of dispute resolution and have stood ground since time immemorial.

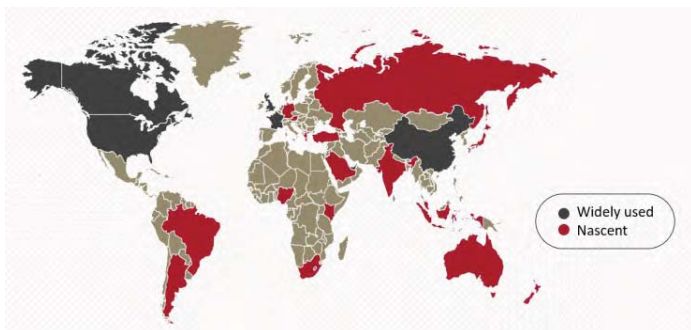
Arbitration, mediation, conciliation, Lok Adalat are all forms of ADR that are prevalent in India. ADR has also found its place in law by way of Section 89 of the Civil Procedure Code (enables the court refer disputes for arbitration, conciliation, mediation), Section 12A of the Commercial Courts Act, 2015 (mandates pre-institution mediation for commercial matters), Section 442 of the Companies Act, 2013 (provides for the use of mediation and conciliation), Section 32(g) of the Real Estate Regulation Act, 2016 (enables conciliation mechanisms), Chapter V, Consumer Protection Act, 2019 (provides for mediation for consumer disputes), Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (enables

conciliations) and so on. Moreover, the Government proposes to amend the Insolvency and Bankruptcy Code to facilitate dispute resolution through mediation.

ADR mechanisms have helped the judiciary to dispose-off plethora of cases, but the impact of ADR can be multiplied if it is coupled with technology. Therefore, it is important to catalyze the concept of Online Dispute Resolution in the country, unlock its true potential and enable resolution of disputes in a collaborative online environment, thereby making it quick, cost-effective and accessible to all – common people, companies, institutions and even Governments.

### Online Dispute Resolution (“ODR”)

Technology and legal systems are interrelated though we seldom come across mass scale use of technology for legal and judicial purposes. If technology is used in an appropriate manner, legal, judicial and law enforcement stakeholders can significantly benefit from it. ODR, believed to be the 'future of justice', is a branch of dispute resolution which facilitates resolution of disputes using Information and Communication Technology. It is the modern counterpart of ADR mechanisms like mediation, arbitration, negotiation, or a combination of any two or all three. This modern approach gives the freedom to disputing parties to decide how they want their disputes to be handled, and the use of technology facilitates the entire process, thereby making it convenient, cost-effective and efficient. ODR has extensive application and can be used to resolve a wide variety of disputes ranging from commercial civil disputes to compoundable criminal disputes.



### ODR Globally

ODR has been adopted by different geographies around the globe with maximum penetration seen in the United States of America, Canada, the United Kingdom, Singapore and China. Few ground-breaking ODR initiatives are:

1. Civil Resolution Tribunal: The British Columbia Civil Resolution Tribunal (“CRT”) is Canada's first online tribunal which deals with resolution of motor vehicle injury, small claims and strata property and societies and cooperative association disputes. Out of 14,482 disputes registered

until December 2019, CRT closed 12,912 out of them.

2. Electronic Business Related Arbitration and Mediation (“eBRAM”): eBRAM (co-founded and supported by the Hong Kong Bar Association, Law Society of Hong Kong, Asian Academy of International Law Ltd. and Logistics and Supply Chain MultiTech R&D Centre Ltd.) supports business-to-business transactions in the APEC Region.
3. Community Justice and Tribunal Systems (“CJTS”): The State Courts in Singapore have introduced CJTS, an electronic case filing and management system, which allows parties involved in small claims' disputes to file claims and access court e-services from the comfort of their homes and offices. The system also has an e negotiation feature, which allows the parties to negotiate and reach a settlement on the disputed claims without having to go to the courts.

### ODR in India

The use of ODR in India is at a nascent stage and is starting to gain prominence day by day. A joint reading and interpretation of various provisions and rules of the Code of Civil Procedure, 1908, Arbitration and Conciliation Act, 1996, Information Technology Act, 2000, and Indian Evidence Act, 1872, provides for resolution of disputes via ADR and the applicability of the same in an online environment. To surmount the aforementioned challenges faced by the Indian judicial system and scale ADR in India, infusion of technology in dispute resolution is imperative. Usage of ODR as a means for resolving disputes has a number of benefits, especially in the context of the Indian scenario. Here are a few mentions:

- Overcomes jurisdictional issues and eliminates geographical barriers
- Automation of administrative procedures and compliance
- Provides data-driven actionable insights to company boards and regulators
- Promotes good corporate governance practices and enhances brand value
- Improves the efficiency and productivity of dispute resolution professionals
- Eco-friendly process as paper-based trial is minimized
- Encourages an environment that is liberative and not litigative
- Delivers a quick, economical and effective solution to disputes

### Use cases of ODR in India

Various organizations in different domains within the country have begun implementing the concept of ODR or using technology for speedy redressal of grievances and disputes. Here is some inspiration:

1. Online Consumer Mediation Centre (“OCMC”): Started as a pilot project by the Ministry of Consumer Affairs, Government of India, this platform specifically deals with the resolution of e-commerce consumer disputes.
2. RTI Online: The Department of Personnel & Training, Government of India has built a portal that deals with applications relating to Right to Information in respect of ministries, departments and other public authorities of the central government. All aspects right from filing applications to hearing first / second appeals to case management, can be conducted online.
3. MahaRERA Conciliation and Dispute Resolution Forum: With a view to facilitate amicable conciliation of disputes between promoters and allottees, the Maharashtra Real Estate Regulatory Authority (“MahaRERA”) set up the MahaRERA Conciliation and Dispute Resolution Forum. An aggrieved allottee can lodge a formal complaint online against the builder via the MahaRERA Complaints Portal, add details, state the reasons for conciliation, submit relevant documents and make the payment to submit the complaint.

### Potential of ODR in India

The time is ripe for companies to review their dispute management policies and integrate ODR as a way of resolving disputes with employees, customers, vendors, financiers, etc., especially amidst this global pandemic which has redefined 'normal' to feature a contactless society. Apart from providing electronic negotiation, mediation and arbitration services that help resolve disputes at low cost, with least effort and in record time, new age legal tech companies are using data to provide actionable insights that will help in building trust and prevent disputes altogether. These ODR platforms are agile and can adapt to a wide variety of disputes with implementation and deployment being a simple task.

The 2015 and 2019 amendments to the Arbitration and Conciliation Act, 1996 are a clear indication of the Government's intention to institutionalize arbitration and make India an international hub with state-of-the-art infrastructure.

On the flipside, owing to the costs and complexities involved, the benefits of institutionalized dispute resolution are beyond the reach of individuals, MSMEs and institutions in respect of their smaller-value matters. This is the sweet spot where ODR platforms in an institutionalized format (defined rules and procedures) provide maximum value. Equipped with the technological wherewithal, the platform administrator facilitates the entire dispute resolution process right from initiating the dispute to appointment of resolution professional to exchange of pleadings, and finally to drawing up the award or settlement agreement.

Precedents and statistics suggest that organizations in the banking, NBFC, insurance and fintech space have the most to

gain by integrating ODR as part of their SOPs, while others will catch up soon enough. Approaching courts or consumer forums entail multiple visits to court, expenses that could eat into the original disputed amounts, and an air of uncertainty over the timeframe and outcome of the dispute. On the other hand, ODR platforms provide a level-playing field for both consumers and organizations by promising a timebound, cost-effective, efficient and convenient dispute resolution that benefits all stakeholders and offer a win-win solution in its true spirit.

As against a timeframe of several years in litigation or 6-18 months in case of in-person dispute resolution mechanisms, ODR platforms provide a binding outcome within a couple of weeks or lesser. As against 31% of the claim value lost in direct (court fees, administrative fees, attorney fees, etc.) and indirect (loss of pay / business, travel) legal costs to resolving at a fraction of that cost, from the comfort of your home or office. As against disputes translating into complete breakdown of relationships to safeguarding them by effectively resolving them early-on and rapidly, the benefits of ODR far outweigh any other resolution mechanism in the chosen category.

### Conclusion

With a backlog of 37 million cases and a daily addition of over 40,000 cases on one hand, and the hope of over a billion people for India to become a super power on the other, ODR has the potential to transform one of the core values enshrined in our constitution – “TIMELY” JUSTICE.

From a macro perspective, infusion of ODR will help create a conducive environment for foreign and domestic trade and investment, thereby making India the most suitable destination for businesses with a high Ease of Doing Business ranking. Today, there are millions of people in the remotest of our cities, towns and villages who have no access to justice, but they do have access to smart phones. With the help of technology, we can improve the access to justice significantly and bring equity at the fingertips of each and every Indian irrespective of his or her location or background. Another important consideration is the green cost of incumbent processes. By deploying ODR, we are looking at saving 1.3 million trees and 109 billion litres of water annually.

With ODR, organizations have a tool that enhances its brand value, while mitigating litigation risk and getting valuable insights into problems faced by their customers. The courts and consumer forums can do away with matters which do not warrant their intervention, thus easing the judicial logjam. The consumers are provided with another choice to effectively redress their grievances, thereby building trust, confidence and brand loyalty.

Change can be a result of initiative or a consequence of crises, and those who redefine their priorities will emerge as leaders of the new world, and those who don't may lose an opportunity to gain a competitive edge. In a world where we can borrow,

purchase and transact online, can we not imagine online resolution of resulting disputes that is swift, cheap and seamless?

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