

Online Dispute Resolution: Changing Demand in Indian Judicial System

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Abstract – “The COVID-19 pandemic and the resulting need for social distancing measures have exacerbated the existing problem of backlogs in the Indian judicial system. There is a growing understanding that the best path forward is to use technology to transform the dispute resolution ecosystem to adapt to the changing demands of justice.”[1]

Online Dispute Resolution (hereinafter ODR) widely implies debate goal components that abuse the solace and efficiency of the web and online communication sources. The term joins everything from the electronic recording of passages and correspondence of reports to online hearings. Like any component for question goal, associations should check different examinations to choose if ODR is fitting for their condition. Concerning recording and exchanging reports, electronic documenting is ordinarily logically beneficial, functional, earth heartfelt, and less inconvenient. Also, far off the hearing, which keeps an essential separation from development time, costs, and various accuses related to the eye to eye hearings, should conventionally be progressively profitable and less excessive for the parties.

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INTRODUCTION

ODR similarly allows parties to present their case from wherever on the planet, including from their homes or working environments. This option is particularly critical given that COVID-19 has to start at now showed up at more than 150 countries on the planet, countless of which have put their occupants on lockdown or conceivably have quickly shut down the courts and councils leaving little reaction for parties requiring instant or prompt help. Clearly, associations and exhortation may have stressed over whether they will have the choice to effectively acquaint their case without face with face coordinated efforts with the appointed authorities, judges, witnesses, subject matter experts, inverse parties, and even people from their own party. However, as a creating number of legal specialists make associations in ODR, advocates are getting logically more alright with coordinating oral conflicts indirectly. There are furthermore inspects which bring up issues concerning how many eye to eye to eye connection truly assists with assessing legitimacy. There are other expected perils and disadvantages related to ODR. Electronic record correspondence and correspondence are not mistaken verification and may present particular issues and network safety perils. In any case, these issues are prepared for the chiefs, as showed up by the solid digital protection measures proposed for use in

International arbitration by the International Council for Commercial Arbitration, the New York City Bar Association, and the International Institute for Conflict Prevention and Resolution.[2] Mechanical and network protection concerns, and fixes, exist for inaccessible hearings. Basically, the productive usage of ODR anticipates that entrance should a principal present-day imaginative and mechanical system, including a trustworthy web affiliation and PCs, which may not by and large be available to parties, particularly in less made economies. Countless these issues are, regardless, being tended to by mechanical turns of events and innovative procedures.

FUTURE OF ODR IN INDIA

In India, there is a noticeable inclination for specially appointed mediation over institutional discretion, which expands expenses and makes the cycle more court-like. Likewise, reasonable troubles in the appointment of mediators for lakhs of little worth questions have prompted misbehaviors in the arrangement of authorities. ODR holds the potential to guarantee that the discretion as the method of question goal scales up, particularly for low to medium worth debates.

While arrangement for Arbitration Council of India and advancing institutional arbitration have been

key advancements for this, extra endeavors for limit improvement and reasonable online mediation should be made.

The achievement of private ODR has inspired a few governments in various wards to co-pick ODR into their own public court frameworks. Progressively, wards have set up court attached ODR places for specific classifications of cases, which can be discarded quickly. In this paper, the expansive highlights of ODR are talked about alongside an assessment of the current system and its reasonableness for ODR. Additionally planned are the essentials for mainstreaming both courts added and private ODR in India. The paper likewise digs into a review of the standards structure which any ODR stage ought to fulfill to pick up and keep up trust in the framework. Going digital with mediation, negotiation, or conciliation proceedings undoubtedly reduces or removes three major challenges that disputing parties in India face.

1. Geographical Barriers - Parties can be located anywhere in the world.
2. Never-ending timelines to obtain a result - The frequency and length of each proceeding lie in the hands of the parties.
3. High costs - With not much of the physical infrastructure in play and with shorter time periods to reach an outcome, there is a considerable reduction in costs.

CURRENT POSITION

We recently engaged in a zoom call with our colleague, who works with a well-known and established startup. This gentleman couldn't understand why the two of us were always promoting mediation as a means of dispute resolution. Most of the major legal disputes at the start-up giant, where he worked, were referred to court or arbitration. Naturally, he assumed that all other organizations followed the same route. This made him feel that we were wasting our time trying to promote Mediation or Consensual Dispute Resolution.

With the corporate world struggling to live through the stifling business environment created by the pandemic and the functioning of courts coming to a grinding halt, the legal team at his startup had no other choice but to explore Mediation. Seeing the increasing use of the consensual dispute resolution mechanisms, he called the two of us to say "When all else failed, Mediation came to the rescue". We had our "we told you so moment" and had a good laugh. What followed was a very pertinent question from a user standpoint. Why can't the legal system in India adopt Online Dispute Resolution mechanisms? Upon reflection, this is our response:

We as humans are harnessing technology in every possible sector. Be it agriculture, manufacturing, or services. I don't see any reason for our legal system and more specifically consensual dispute resolution mechanisms to not harness technology for the benefits that it stands to provide the disputing parties. The current pandemic has pushed many companies and individuals to rely on technology. A significant number of individuals got their first-time experience of using video calls, relying on electronic signatures, and sharing files through secured and encrypted systems. The dramatic increase in the use of video calling applications like Zoom is clearly paving the path for the introduction of online mediation, negotiation, and conciliation in India.

The inquiry today is the way well would we be able to embrace innovation to upgrade admittance to equity and reinforce rule of law. Innovation can be problematic and there is a mechanical separation in India. We should utilize innovation to advance a feeling of comprehensive equity, equity for which the framework is intended to convey assistance.

BOUNDARIES OF ODR:

- Innovation to advance client trust simultaneously
- Join components of configuration thinking to comprehend client needs for an ODR stage
- Utilize information the board apparatuses to guarantee consistency, transparency, straightforwardness, and productivity of the legal cycle

Generally, we need a principal change in mentality – debate goal to be seen not as a court where equity is directed, but rather as help which is benefited from. Commercial Dispute Resolution has certain significant qualities that should subserve the typical court framework – and that is the significance of ODR in innovation. (1) Process to be participative (2) Party self-sufficiency

ODR to have a multi-pronged, multi-sectoral activity that centers around:

- Contest goal: settling debates that arrive at the courts through the open, proficient, straightforward cycle
- Debate regulation: Only those questions that require a legal goal should arrive at the courts. Matters which don't need legal goal shouldn't arrive at the courts by any stretch of the imagination.
- Contest evasion: Facilitate and guarantee through ODR that an issue

doesn't arrive at the phase of a debate. This would guarantee an issue doesn't turn into a question.

Automation of processes is negligible utilization of innovation. Use innovation to change keeping away from and containing questions, and resolve if vital. There is a distinction between pre-suit ODR and court attached mediation. Parties are dug in at the hour of court-added arbitration. Prelitigation ODR is even before a question has arrived at the phase of a debate. ODR can step in before disintegration of trust happens between the parties, and before accomplices become enemies.

The obligation of the relative multitude of partners/stakeholders:

- The suppliers of innovation empowered administrations: The tech empowered specialist organizations make a stage where parties can be made mindful of their privileges, the cures which are accessible to them and make offices for exchange and arbitration with neutrals.
- Proficient bodies: who will offer a prepared workforce. They could be law offices on an independent premise, or as a consortium of specialist co-ops.
- Industry: The business should disguise question control and debate evasion, maybe by presenting authoritative provisions, which command the prerequisite of going to arbitration or arrangement prior to getting to any legitimate cures.
- Governments and courts: Important to comprehend where questions emerge, what exasperates them, what mitigates them. Open API's to open imagination and enterprising energy of private area major parts in the legal cycle. The Government can likewise distinguish questions generally reasonable for ODR. This is an open door for the Government to utilize target AI apparatuses to help the government suit.

Make components for impetuses and disincentives for taking a plan of action to ODR. Lastly, for the time being, with regards to COVID, we need to make motivations for a response to ODR by perceiving the function of private, intentional ODR by urging organizations to look for the plan of action to ODR innovation.

Use ODR cycles to stem the progression of antagonistic cases arriving at the court framework: Applying ODR to lessen the heap on the legal framework. Especially in the coming months, where we will see an expansion in the quantity of business and monetary questions, ODR frameworks can

assume responsibility. ODR as a development watchman to what exactly is conceivable later on for courts: Value of ODR is to attempt the advancements inside the private ODR structure, and incorporate ODR measures into formal court measures subsequent to seeing the accomplishment of these developments in a more versatile and adaptable system. Recognize high volume repeatable debates appropriate for ODR: Disputes emerging out of Motor Vehicles Act, check to skip, protection cases can be settled through ODR to decrease the build-up and pendency. Information for law change: Using debates information (from both ODR and legal cycles) as an input circle to improve the nature of lawmaking.

Mixture Model: A crossover model of courts (and virtual courts) and ODR would be a consistent condition of the question goal. To consolidate innovation with the smartest, evenhanded approach to improve equity for all.

The point is to give a moderate, available, and successful ODR and the worry remains by what means can the Government and different partners can encourage ODR. When innovation assumes an essential job, ODR is substantially more than duplicating the current cycle of ADR on the web. The goal is to contain and resolve questions likewise utilizing scientific bits of knowledge. For a groundbreaking effect, we need to create the computerized framework to arrive at the majority, and we additionally need an adjustment in attitudes. The legal system would likewise require some coincidental changes. Distinguish debates appropriate for ODR. Cooperation between ODR focuses and public establishments could be investigated for Motor Accident Claims Tribunals, banking questions, administration debates, and so forth The Government is liberal and will help lighten concerns with respect to ODR. Working between the private ODR players and the ADR suppliers should be supplemented to guarantee that online goals can arrive at the various businesses, areas, and parts of the nation and furthermore uphold the public foundations amazingly.[3]

CHALLENGES

There is still a lot of work that needs to be done before we make the complete transition to digital dispute resolution. Online dispute resolution is attractive, especially looking at Indian scenarios where the justice delivery system is suffering from clogged and slow-moving courts. But we first need to address the elephant in the room.

1. Availability of training for professionals. Training should not be considered as a means of completing 40 hours to have the tag of a Mediation professional. Training needs to be carried out with an aim to equip or fine-tune the communication skill

set, tools, and techniques that a trainee needs, to become a consensual dispute resolution professional. This training should then be followed by independent graded evaluations. An untrained professional might fail to bridge the gap between parties which will lead to lower satisfaction and ultimately lead to decreased interest and popularity of mediation in India.

2. There is a significant need for online dispute resolution and the law permits it, however, the infrastructure needs to support it. Not everyone has access to digital infrastructure and the availability of strong internet service. India has more than 600 million internet users, however, the internet penetration rate in India is still around 50%. Recent research conducted by the Centre for Communication and Development Studies (CCDS) has blamed it on lack of infrastructure, various gender-related issues, lack of affordability, and awareness.

Without the availability of the above, even initiating a proceeding between parties won't be possible. We have personally heard our colleagues share their experiences where something as small as continuous video call drop or video lags completely derailed the communication between the parties and put an end to the resolution process.

3. One cannot ignore the importance of the online CDR platforms which need to be highly user friendly (and secure) to ensure an easy transition from offline to online CDR. CDR mechanisms being confidential in nature, the security of the proceedings becomes extremely important. With documents and settlements being exchanged over the digital medium, we need robust data privacy policies as well. There need to be mechanisms in place for the parties as well as the neutral to authenticate themselves irrefutably. Additionally, a secured and encrypted case management platform would go long way in securing the trust of the parties in online CDR.[4]

THE OBVIOUS:

Once the above challenges are resolved, incentive mechanisms need to be created to ignite aspirations of disputants for online CDR by giving it an explicit legal recognition for both process and enforcement of settlement agreements. India is grappling with the problem of lack of access to justice, and if online mediation is implemented effectively, strategically with proper training, infrastructure, and policy stimulus then it would be able to ease the burden on the Indian justice delivery system.

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