ONLINE DISPUTE RESOLUTION: CREATING A LEVEL-PLAYING FIELD IN SMALL VALUE CLAIMS

Siddharth Kapoor and Ananya Singhal*

I. INTRODUCTION

The Internet, which was relatively inaccessible to the citizens of India a few decades ago, is now an integral part of their daily lives. India's internet penetration rate went up to nearly 47 percent in 2021, from just about four percent in 2007.[1] The pandemic in particular, contributed to the wide-spread access to a variety of online resources—including access to Indian courts to a certain extent—and accelerated the adoption of this "Internet revolution" by the population. All these changes have pressured India's dispute resolution area to adapt to this new and emerging reality, especially given that it is on the brink of a complete breakdown as the justice system suffers from a pendency of over 40 million cases and counting.[2] For this reason, ODR has become a need of the hour.

In this paper, the authors examine ODR as a new form of Alternate Dispute Resolution ["**ADR**"] in the adjudicatory environment. The first chapter overviews the benefits of ODR and how it needs to become the norm when compared to traditional litigation (Chapter I). Thereafter, we analyse the current scenario of the ODR ecosystem and why it is the need of the hour, especially for small-value disputes (Chapter II). The incorporation of ODR in the context of the Indian ecosystem is thereafter considered. This analysis focuses on small-value disputes with banks, MSMEs, and consumers (Chapter III). Finally, the concept of using ADR in the form of arbitration which shall include automated arbitration, in the context of small-value disputes, is discussed.

II. ODR – AN UNCONVENTIONAL METHOD OF DISPUTE RESOLUTION

---

* Siddharth Kapoor a Manager, Strategy Legal and Policy at Presolv360 and Ananya Singhal is a final year B.A., LL.B (Hons.) student at Symbiosis International University Pune.

[1] Tanushree Basuroy, Internet penetration rate in India 2007-2021, Statista, Jun 9, 2022.

[2] Louis F. Del Duca, Colin Rule and Kathryn Rimpfel, *eBay's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers*, 6 Y.B. ARB. & MEDIATION p.204 (2014).

Typically, ODR refers to the process of resolving disputes online. ODR is the use of ICT in the practice of dispute resolution. Today, by using technologies like algorithm-based learning, Artificial Intelligence [“**AI**”], Machine Learning [“**ML**”], and other computer programs, ODR can also be extrapolated to move beyond resolution to prediction and prevention of disputes altogether.

Aspects of ODR include e-Arbitration, e-Mediation, and e-Negotiation, or a combination thereof, which involves performing all types of Alternative Dispute Resolution [“**ADR**”] online. In the arbitration sphere, ODR comprises the entire procedure of pleadings, evidence presentation, cross-examination, oral arguments, and rendering of awards in an online setting. In the context of mediation, sessions can be conducted online in a secure environment, along with resource sharing, and ultimately drawing up and executing settlement agreements online. Negotiations can also be conducted online along with prompts of optimal settlement ranges. ODR is gaining popularity as a result of its several advantages over the offline alternatives customarily available to parties, including litigation, mediation, negotiation, and arbitration.

A. THE BENEFITS AND ADVANTAGES OF ODR

As stated earlier, ODR is the process of resolving and even preventing disputes through the use of technology.

The use of technology in administering ODR eliminates the need for the parties to convene at a central location, travel across states, and take days off work to attend a hearing that lasts just a few hours. In this way, ODR not only substantially reduces expenses but also saves time and gives parties flexibility and convenience to participate from the location and at the time of their choice. As a result, the dispute resolution system is accelerated, as parties no longer need to set aside several days per month to engage in the dispute resolution process, but rather only a few hours for an online conference. None of these benefits are offered by any other existing conflict settlement process.

Moreover, with the incorporation of algorithm-based inputs, the parties involved can make an informed decision prior to initiating a dispute. Inputs regarding the merits of the case, details of the disputed facts, timeline, etc. can be analysed to evaluate a party’s likelihood of success in a dispute. Consequently, any party desiring to engage in a dispute resolution process, whether ODR or litigation, can evaluate their position beforehand and make an informed decision regarding whether or not to pursue the matter in court, or even arrive at mutually acceptable settlement ranges through smart algorithms. If they choose to pursue the dispute, a smart algorithm can offer the most appropriate resolution process and forum based on the relevant facts and subject matter.

Due to these advantages, ODR has become the favoured method of dispute settlement not only among parties involved in cross-border transactions but also among parties engaged in domestic contracts, transactions or disputes. For example, what began as eBay's Modria[3] pilot project has proven to be a revolution in the legal sector. With the expanding adoption of ODR, it is permeating a variety of online-resolvable conflicts, including traffic offences and now certain consumer disputes.

To summarise, ODR has both short and long-term benefits which include:[4]

- Increasing access to justice;
- Providing a level-playing field to the parties;
- Improving the legal health of society, i.e., individuals becoming aware of their respective rights and enforcing them;
- Getting a cost-effective process by drastically reducing the costs of hearings by 60-70%,[5] such as by eliminating costs associated with travel, food accommodation, visa expenses, etc.; and
- Eliminating bias in the dispute resolution process by using AI and ICT.

A detailed comparison between ODR and litigation has been done in the following part of the paper.

B. ACCEPTANCE OF ODR AS AGAINST LITIGATION

[3] Edwards, B., *Is the future of Civil Justice Online? Modria thinks so.*, BLOOMBERG LAW (December 19, 2022) https://news.bloomberglaw.com/business-and-practice/is-the-future-of-civil-justice-online-modria-thinks-solast.
[4] Conference Report, Niti Aayog, Designing the Future of Dispute Resolution: The ODR Policy Plan for India Designing the Future of Dispute Resolution: The ODR Policy Plan for India, https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf. (Oct, 2021).
[5] *Ibid.*

In the context of litigation, even after spending significant costs and time, often spanning over several decades, most parties involved are not satisfied with the decision. Since the average time taken by most judges in the Higher Judiciary per case ranges from two to fifteen minutes, most litigants are not convinced that their issues have been duly considered.[6] For a decision that will decide the fate of a dispute, a few minutes are barely enough to understand the facts of the case, the submissions of the parties, the history of the dispute, and the commission of the alleged offence, amongst other things. However, given the burden of the Indian system, a judge cannot devote enough time to each case. Due to this, the essence of justice may be lost during a litigation procedure. To remedy this defect, the litigants only have the option of appealing, which incurs additional expenses, time, and uncertainty.

As per a report published by the think-tank Daksh—State of the Indian Judiciary in 2016, the average yearly loss of wages and business due to litigation is approximately Rs. 50,500 crores, and the total yearly spending of all litigants to attend courts is approximately Rs. 30,000 crores.[7] Considering this, litigation is not only burdensome to the litigating parties but also to the State. On every person, the State spends Rs. 50-150 every year and on every case, Rs. 1,600 – 2,700.[8] On a conservative base, the economic cost of delay can be as high as 1.5% of the Indian GDP without accounting for the professional fees.[9] These huge costs make litigation an unattractive option for every stakeholder involved.

To gauge the perspective of the general public on the issue of ODR v. Litigation, an 'Appeal for Change'[10] survey was conducted. The object of this survey was to determine the acceptance of ODR and ADR amongst people who included judges, mediators, arbitrators, lawyers, chartered accountants, businesspersons, professionals, litigants, students, and homemakers from age groups

[6] *HCs have just a few minutes to hear each case - Cap on hearings crucial to reduce pendency: Study*, THE HINDU, https://www.thehindu.com/news/national/%E2%80%98HCs-have-just-a-few-minutes-to-hear-each-case%E2%80%99/article14568361.ece. (Oct. 18, 2016).
[7] Daksh, Access to Justice Survey 2016-17 (2017), http://dakshindia.org/access-to-justice-2017/index.html.
[8] *Id.*
[9] Harish Narasappa, *Cost of pendency of cases could be as high as 1.5% of GDP,* BUSINESS STANDARD, https://www.business-standard.com/article/opinion/cost-of-pendency-of-cases-could-be-as-high-as-1-5-of-gdp-harish-narasappa-116081400774_1.html. (Aug. 14, 2016).
[10] An on ground empirical study by Presolv360.

ranging from 22-65 years.[11] With review, feedback, and comments from 1002 participants, the survey revealed some interesting observations.

On a question that asked individuals to choose their stance in case a dispute arises, 77.3% of the participants preferred settling the dispute by way of a compromise outside of the court instead of fighting in court. Further, when asked if they would want to opt for an alternative measure before proceeding to the court, a majority of 64.7% were in agreement without any reservations. Another 22% said that they would opt for an alternative measure if things fail to move ahead in court. Only a minority of 13.3% were unwilling to try an alternative remedy. This reflects the transition phase that India is in. People are aware of alternative dispute resolution mechanisms and are willing to undertake them.[12]

Surprisingly, on a question where the participants were asked if they would be open to the idea of resolution of a dispute by an expert as opposed to judicial machinery, 75.5% of participants had a positive response.[13] This mindset can prove to be extremely beneficial for the dispute resolution system of India by taking the burden off judges and involving experts to determine disputes concerning specific and specialized subject matters. As an example, in a dispute arising out of a patented product, if subject matter experts with a science background can aid in dispute resolution, the award can be expected to be sounder, more reasoned, and well-analysed. This also takes the burden off judges to be experts in all fields.

From these results, it may be deduced that most individuals are beginning to accept ADR techniques. Several questions were raised regarding the incorporation of technology in dispute resolution as a means of progression. The first and most obvious question is, "Do you believe technology can be used to drive dispute resolution?". A majority of the participants, i.e., 77%, believed it was time for technology to make conflict resolution more convenient, cost-effective, and efficient.[14] This is a clear indication that the public has been ready for ODR and its introduction would be welcomed by all.

---

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

III. ODR IN ITS CURRENT STAGE

After seeing the potential of ODR, a few start-ups have emerged to provide ODR services including Presolv360, Cyber Settle,[15] Smartsettle,[16] and the Mediation Room[17] on the global stage.

Many jurisdictions have also incorporated ODR in their state-administered dispute resolution mechanisms. Countries like Brazil,[18] the Netherlands,[19] Columbia,[20] Canada, the United Kingdom ["**UK**"],[21] and the United States[22] have incorporated ODR mostly for their consumer disputes or for small-value civil disputes. There have also been attempts at e-Mediation by the Singaporean[23] and British governments.[24]

China has various ODR incorporations in its judicial systems which have been leading the way for ODR internationally. It has formed internet courts[25] to cater to civil and administrative disputes arising from e-commerce websites, and another ODR Platform called 'Online Dispute Resolution Platform' (ODRP) for matters of consumer disputes in the European Union.[26] Similarly, the UK has an online Money Claims Tribunal for matters pertaining to money claims which can be resolved online.[27] South Korea has also established an e-Commerce Mediation Committee (ECMC) to resolve disputes arising out of e-Commerce and e-Transactions.[28]

A. NEED OF ONLINE DISPUTE RESOLUTION FOR SMALL VALUE DISPUTES

[15] CYBER SETTLE, http://www.cybersettle.com/ (Nov. 14, 2022).
[16] SMART SETTLE, https://www.smartsettle.com/ (Nov. 14, 2022).
[17] Karolina Mania, *Online dispute resolution: The future of justice*, 1 INT. COMP. JURIS. 76-86 (2015).
[18] CONSUMIDOR, https://www.consumidor.gov.br/ (Nov. 14, 2022).
[19] RECHTWIJZER, 'https://rechtwijzer.nl/ (Nov. 14, 2022).
[20] CIVIL RESOLUTION TRIBUNAL, https://civilresolutionbc.ca/ (Nov. 14, 2022).
[21] HM COURTS AND TRIBUNAL SERVICE, https://www.moneyclaim.gov.uk/web/mcol/welcome (Nov. 14, 2022).
[22] New Mexico Courts Online Dispute Resolution Center, https://adr.nmcourts.gov/home/odr/ (Nov. 14, 2022).
[23] Community Justice and Claims Tribunal (State Courts of Singapore), https://www.judiciary.gov.sg/services/cjts (Nov. 14, 2022).
[24] Financial Ombudsman Service, https://www.financial-ombudsman.org.uk/ (Nov. 14, 2022).
[25] China Court Observer *China Establishes Three Internet Courts to Try Internet-Related Cases Online- Inside China's Internet Courts Series – 01*, https://www.chinajusticeobserver.com/a/china-establishes-three-internet-courts-to-try-internet-related-cases-online (Dec. 16, 2018).
[26] Online Dispute Resolution Platform, https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2.show&lng=EN (Nov. 14, 2022).
[27] Money Claims Online, https://www.moneyclaim.gov.uk/web/mcol/welcome (Nov. 14, 2022).
[28] *E-commerce disputes on the rise in Korea*, THE PAYPERS, https://thepaypers.com/online-payments/e-commerce-disputes-on-the-rise-in-korea--733431. (Apr. 14, 2008).

Adoption of ODR systems to tackle small-value disputes and consumer disputes has attained normalcy in multiple jurisdictions owing to the benefits it has compared to litigation. Litigation is tedious,[29] elaborate, formal and taxing. For this reason, most litigants refuse to come to court with their disputes. 26.8% of respondents to Daksh's Access to Justice Survey (2017) stated that they did not file a case in court due to the high cost of litigation.[30]

Hence, there is an urgent need for ODR. The need has been echoed by the top institutions of the country and was acknowledged by Chief Justice DY Chandrachud, who had observed,

> "*[i]n the wide variety of litigation that comes before every court, there is a confluence of the very substantive and not very small, but important, disputes which don't have to come before the court. Cases like motor accidents claims, cheque bouncing cases, personal injury claims and issues such as this may be dealt with by ODR. The ODR initiative by NITI Aayog is commendable and the draft report is meticulously compiled. This is a unique analysis of the interface between dispute resolution and technology and its prospects in India*."[31]

When 30-40% of the claim value is spent on litigation, coupled with the uncertainty of the outcome of the case, litigation becomes inaccessible to the majority. This percentage is even higher for small value disputes since the parties do not want to engage in litigation where it is certain that the litigation will be a liability for the party even if the outcome is eventually in their favour.

For low-value claims, such as that of Rs. 10 to 20 lakhs or less, India's current court system is too costly, too slow, and too complex at its core. As per a survey, 55% of civil litigants and 67% of criminal litigants surveyed expected their cases to be resolved within a year from when they first filed them.[32] When litigants who had spent three to five years litigating were interviewed, this percentage drastically dropped.[33] The expectations of the parties can be understood from this data. The parties expect a speedy resolution of their disputes especially when the quantum of the same does not demand years of deliberation.

---

[29] An Empirical Research by Presolv360, Understanding the Indian legal scenario, 2018.
[30] *Supra* note 5.
[31] Press Release, Niti Aayog, NITI Aayog Pushes for Online Dispute Resolution for Speedy Access to Justice (Nov. 29, 2021).
[32] Daksh, A Report on the State of Indian Judiciary 2015-16 (2016), https://www.dakshindia.org/state-of-the-indian-judiciary/28_chapter_15.html#_idTextAnchor320.
[33] *Id.*

For this reason, use of ODR for low-value disputes is a need of the hour. The introduction of ODR for the resolution of these small-value disputes will have two benefits: first, an increase in access to justice; second, savings in the costs spent on litigation.

If the low quantum claims are to be addressed, the appropriate procedure would be ODR given the accompanying transparency, lack of bias, and legal validity it brings, which has the potential to take the burden off the judiciary to tackle such disputes.

IV. INCORPORATION OF ODR IN THE INDIAN CONTEXT

Claims of about Rs. 10 to 20 lacs would fall under the ambit of small-value claims. As per the authors' ODR platform's experience[34] in dealing with small claims disputes, such claims arise out of majorly three subject matters which are loans, consumer disputes, and those relating to Micro, Small & Medium Enterprises[35] ["**MSMEs**"]. How they are currently dealt with is elaborated below:

A. DISPUTES WITH BANKS

Disputes with banks, especially loan default cases, have been on an exponential rise in India. As per a 2022 report, loan defaults in India are valued at Rs. 2.4 trillion[36] out of which, Rs. 1.41 trillion alone is owned by 312 wilful defaulters who have the capacity to repay their loans but choose not to.[37] In the context of a dispute of a customer with a bank, currently, the first step to resolving a dispute is at the bank level. Banks, supported by the Damodaran Committee,[38] the Indian Bank Association,[39] and the Ministry of Finance[40] enable customers to register complaints online first. If the dispute is not resolved at this stage, the party can approach the Bank Ombudsman where

[34] Bhaven Shah and Garv Sultania *How to tackle delayed payments to MSMEs*, THE HINDU BUSINESS LINE. https://www.thehindubusinessline.com/opinion/how-to-tackle-delayed-payments-to-msmes/article65802608.ece (December 20, 2022).
[35] An Empirical Research by Presolv360 (2017).
[36] *Wilful loan defaults grow 10 times since 2012 to Rs 2.4 trn: Report*, BUSINESS STANDARD, https://www.business-standard.com/article/current-affairs/wilful-loan-defaults-grow-10-times-since-2012-to-rs-2-4-trn-report-122072000508_1.html (Jul. 20, 2022).
[37] RBI Circular, Master Circular - Management of Advances - UCBs (Apr. 08, 2022).
[38] DAMODARAN COMMITTEE RECOMMENDATIONS, https://www.indianbank.in/departments/damodaran-committee-recommendations/#! (Nov. 14, 2022).
[39] INDIAN BANKS ASSOCIATION, https://www.iba.org.in/ (Nov. 14, 2022).
[40] MINISTRY OF FINANCE, https://finmin.nic.in/ (Nov. 14, 2022).

they feel the need for a neutral third party to look at the dispute, or a Lok Adalat if they require negotiations with the bank or even the Consumer Court to seek protection of their rights.The Banking Ombudsman Scheme is an expeditious and inexpensive forum for bank customers to resolve complaints relating to certain services rendered by banks.

Owing to the Pandemic, relying on the case of *Meters and Instruments Private Limited and Anr. v. Kanchan Mehta,*[41] the Hon'ble Supreme Court allowed online dispute resolution for bank-related disputes provided that the parties were willing to drop the criminal charges in the complaint.

As per the belief of the authors, moving forward, the banking sector in India can launch an e-redressal forum for loan defaulters or even for other disputes where they can be resolved online by a neutral third party. Since these disputes are very straight forward with respect to the facts of the case, elaborate court proceedings are not necessarily required for every dispute. All banks can have a common redressal forum where the parties can register their dispute and an effective resolution process can be formulated. Alternatively, they can collaborate with an ODR platform resolution of all disputes relating to loan defaults, recalculation of interest rates, or negotiation of the terms and conditions while availing of any banking service.[42]

B. CONSUMER DISPUTES

As the second-most populated country in the world, India is one of the biggest consumer markets globally. In the second quarter of 2022, the consumer market of India amounted to a total of Rs. 22.6 trillion.[43] In 2021, 140 million people in India shopped online.[44] This also gives rise to numerous consumer disputes, all of which cannot be taken to court owing to the limitation of time and costs.

[41] Soumyajit Saha, *Online Dispute Resolution of Banking Disputes in the wake of COVID-19*, BAR AND BENCH, https://www.barandbench.com/apprentice-lawyer/online-dispute-resolution-of-banking-disputes-in-the-wake-of-covid-19 (Jun. 13, 2020).
[42] Criminal Appeal No. 1731 of 2017.
[43] World Bank, *Final consumption expenditure,* The World Bank Data https://data.worldbank.org/indicator/NE.CON.TOTL.CD?locations=IN.
[44] *Id*.

For this reason, most e-Commerce websites have an internal dispute resolution/grievance redressal body which addresses the grievances of its consumers. Issues such as those relating to defective goods, delayed or non-delivery, guarantees, and warranties are addressed by the internal grievance support of the platform. The drawback noticed in this mechanism was that, since the grievance redressal body was constituted by workers of the platform, the resolutions were conducted to the benefit of the platform. Thus, the resolution was biased and not catered to the consumers satisfactorily. As a result, many e-commerce platforms started using ODR. Currently, ODR is being used to settle more than 60 million disputes a year by e-commerce platforms such as eBay.[45] The inspiration for the same comes from Modria,[46] which was the first attempt at ODR by eBay.

In India, consumers also have the option to take their consumer complaints to Integrated Grievance Address Mechanism[47] ["**INGRAM**"], which is a platform for consumer complaint redressal launched by the Consumer Affairs Department.

It is imperative to note that Lok Adalat has also been used as a forum to resolve consumer disputes. The Department of Consumer Affairs ["**DoCA**"] in association with the National Legal Services Authority ["**NALSA**"] held a Lok Adalat for this purpose in the month of November 2022.[48] Interestingly, the DoCA also engaged with private ODR firms[49] for the purpose of providing technical assistance to carry out the successful process of the Lok Adalat. In this exercise, ODR firms were successful in counselling and amicably settling many cases.

Such results showcase that efforts to use ODR and the expertise of ODR firms are a laudable effort and advisable to resolve disputes amicably and in an efficient manner.

C. MICRO, SMALL & MEDIUM ENTERPRISES – MSMEs

[45] Colin Rule, *Technology and the Future of Dispute Resolution* 21 A.B.A. (2015). http://law.scu.edu/wp-content/uploads/Rule-Technology-and-the-Future-of-Dispute-Resolution-copy.pdf.
[46] Ethan Katsh, Janet Rifkin and Alan Gaitenby, 'Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law', (2000) 15 OHIO ST. J. ON DISP. RESOL. p.705 http://www.umass.edu/cyber/katsh.pdf (Sept. 05, 2020).
[47] NATIONAL CONSUMER HELPLINE, https://consumerhelpline.gov.in/ (Nov. 14, 2022).
[48] National Lok Adalat held on Nov. 12, 2022.
[49] Firms such as Presolv360.

The Union Ministry recognized the MSMEs as a special sector that had to be regulated considering their financial limits, working operations, and system of doing business. These enterprises are now regulated by the Micro Small & Medium Enterprises Development Act of 2006 ["**Act**"], which governs the functioning, development, and regulation of enterprises covered under the Act.

One of the main objectives of formulating this legislation was to provide for a proper legal framework for the small sector to relieve it of the requirements to comply with multiple rules and regulations made by Committees, such as the Abid Hussain Committee (1997)[50] and Study Group under Dr. S.P. Gupta (2000).[51] The services provided by the enterprises covered under the Act have proven to be an important and significant part of India's economy since they substantially contribute to the employment of millions of workers. Therefore, it becomes necessary to address the concerns of small-scale industries and services together and to recognise them as small businesses. In a fast-growing economy like India's, governmental interventions and legal frameworks must encourage the natural movement of small businesses to medium businesses.

The disputes that arise in such enterprises also need to be treated differently than those of high value contracting parties. Most of the enterprises covered under the Act do not have the means to engage in costly litigation processes or refer their dispute to arbitration. These procedures can become a big liability for these enterprises and may even lead to the closing down of the business. Therefore, in order to address such a circumstance, the Act laid down that if a dispute arises between such enterprises, they can approach a Facilitation Council which either conducts conciliation between the parties or refers the parties for mediation or arbitration. The binding nature of arbitration is preferred by most parties as an alternative to court proceedings even if arbitration gets expensive owing to the procedural flexibility provided by the process.

In view of this, the best alternative to these costly procedures is ODR, which fulfils the expectations of the disputing enterprises. ODR will reduce the burden on the owners of small businesses, will not make dispute resolution a liability, and will also assist in meeting the ends of justice.

---

[50] Expert Committee on Small Enterprises 2022 RECSE India.
[51] *Id.*

ODR has currently not been introduced by the Indian government for dispute resolution as it pertains to MSMEs, but inspiration can be taken from other jurisdictions to implement it in India. Canada has the 'Civil Resolution Tribunal' (CRT)[52] for a variety of disputes relating to MSMEs, small value claims, and e-commerce which has been a success in resolving disputes therein. The states of Ohio[53] and Utah also have separate courts for small value disputes.[54] New York State Courts have launched their first ODR system for small claims.[55] These attempts have been globally applauded for being a leap forward to make justice accessible to all.

V. ONLINE ARBITRATION FOR SMALL VALUE CLAIMS

Arbitration is increasingly becoming prevalent for disputes between businesses. The contracting parties, while entering into their contract, usually opt for arbitration as their chosen method of dispute resolution. While arbitration has numerous advantages over litigation, conducting arbitration offline can still be financially burdensome for the parties owing to the costs and logistics spent on travelling, accommodation and meals for all the individuals involved. There are also additional costs for renting a venue to conduct the proceedings.

While these costs may not make a dent for parties involved in a high-value dispute, they are deterrents for parties that have small or medium claims. If the value of the dispute is merely Rs.10-20 lakhs, it is unreasonable to spend Rs. 5-10 lakhs, which is nearly 50% of the value of the claim, on such ancillary requirements. This is where online arbitration kicks in and helps in cutting down these costs.

Online Arbitration or ODR-premised Arbitration is not a separate mechanism but refers to administering arbitration virtually with the help of case management tools, digital communication infrastructure, audio-video conferencing and other avenues. Controversies have arisen involving online arbitration, such as the determination of the seat and venue of an online arbitration;

[52] CIVIL RESOLUTION TRIBUNAL, https://civilresolutionbc.ca/ (Nov. 14, 2022).
[53] OH RESOLVE – SUPREME COURT OF OHIO, https://www.supremecourt.ohio.gov/JCS/disputeResolution/OH-Resolve/ODR.pdf.
[54] UTAH STATE COURTS, https://www.utcourts.gov/odr/ (Nov. 14, 2022).
[55] ONLINE DISPUTE RESOLUTION PLATFORM, https://cii2.courtinnovations.com/NYNYSC (Nov. 14, 2022).

however, the law itself provided answers to these issues when differentiating between a seat and venue.

It is well known that the seat of an arbitration proceeding determines the jurisdiction of the courts, whereas the venue of the arbitration proceeding is for the convenience of the parties. As per Section 20(1) of the Arbitration and Conciliation Act, 1996, the parties are free to agree on the seat of arbitration. The seat remains static and fixed, whereas the venue of arbitration can change and move to a different location. Section 20(3) specifically states and draws a distinction between the venue of arbitration and the seat of arbitration by stating that, for convenience and other reasons, the arbitration proceedings may be held at a different place than the seat of arbitration, which location is referred to as the venue of arbitration.

Hence, when arbitration proceedings are conducted virtually, the location of the parties and of the arbitrator is not material, so long as they can conveniently participate from their respective locations. Additionally, the location of the players involved does not interfere with questions relating to the jurisdiction of the courts, nor with the law applicable to the procedure and to the merits of the underlying dispute. This enables parties to submit their case effectively and, for all jurisdictional purposes, the seat of the arbitration proceedings is derived from the agreement between the parties inter-se.

Hence, the law not only enables ODR-premised arbitration, but it has also gained wide recognition in India from the Judiciary and the Government.

Insofar as the convenience of the parties is concerned, when arbitration is held online for such disputes, parties are required to spare only a few hours every week to be present online. In most online arbitrations, even the requirement of physical copies of written submissions is dispensable. This in essence makes the whole dispute resolution process effective, easy, accessible, cost-friendly, and environment-friendly.

A. HOW ODR CAN HELP IN THE AUTOMATION OF SMALL CLAIM DISPUTES

On the contrary to popular belief, ODR is not limited to resolving small claims disputes through audio or video conferencing. The definition of ODR is considerably more fluid, inclusive, and dynamic. Automated dispute resolution is also included in ODR. Automated dispute resolution is illustrated when a consumer files a complaint on an e-commerce platform and receives a fast, automated resolution to the problem.

These mechanisms can be implemented in the field of dispute resolution. Imagine a scenario in which a consumer files a dispute against an e-commerce platform for failing to provide reimbursement for a return shipment. The consumer submits the issue online on a dispute resolution mechanism related to the e-commerce platform in question. The moment a consumer initiates a grievance, the dispute resolution platform scans through the e-commerce platform's bank information and compares it with the consumer ID and transaction ID, if applicable. In the event the algorithm determines that the refund was not started, an award is immediately granted in favour of the originating party, which can be enforced in court. An automated dispute resolution could thus be provided at the click of a button. If the source of a small claim dispute is a click of a button, then the resolution too should be just a click away and not via a lengthy court proceeding.

VI. CONCLUSION

In conclusion, ODR can prove to be a catalyst to revolutionise the legal industry, especially in regard to small claim disputes, and make it efficient to deliver justice to the ever-increasing population of India. Governance and value issues will definitely become more prominent as online dispute resolution advances from isolated private-sector initiatives to widespread public-sector institutionalisation.

However, it must be noted that despite the challenges, ODR holds the potential for bridging the gap between dispute and resolution and bringing access to justice on the fingertips of all.

The low internet penetration rate of 47% in India presents a significant challenge to the widespread adoption of online dispute resolution (ODR) as a norm. In addition, the general population will need to be educated and trained on the use of ODR. Therefore, a coordinated effort by government agencies, including the Department of Telecom and Communication, the Ministry of Law and Justice, and the Ministry of Education, will be necessary to successfully incorporate ODR into the legal system.