



## **The call for online dispute resolution**

**Dr. Chitra Rathore**

Assistant Professor, Department of EAFM, S.S. Jain Subodh P.G. (Autonomous) College, Jaipur, Rajasthan, India

### **Abstract**

Justice delayed is justice denied. This popular statement does not find more relevance in any other case than in the context of the Indian judiciary. Despite being supplemented by the most efficient and comprehensive legislations, the Indian judicial system has proved to be an utter failure because of its huge pendency of cases. In today's business and commercial world, time is money. Any businessman would prefer to spend more money than wasting time. The need for the efficient and expeditious dispute resolution gave way for the advent of Alternative Dispute Resolution (ADR) to prevent the business parties from being stuck in the complex and time taking lengthy procedures of the court. However, in the vast geographical dimensions of a country like India, every disputant cannot afford to travel and contest in a court of law. These limitations of the ADR methods led to the advent of Online Dispute Resolution (ODR) which is best suited for business disputes of significantly low value. The Online Dispute Resolution is in its infancy stage and has just germinated from the embryo. In order to achieve its full growth and development, it has to overcome numerous hurdles which still lies in its way and has to gain the trust & confidence of the public. The paper discusses the basic concept of ODR and highlights its significant advantages, which makes it the need of the present business world.

**Keywords:** online dispute resolution, ODR, ADR, business disputes

### **Introduction**

Securing justice in India is not a quick process. Often the inordinate delay in the administration of justice entirely destroys the essence of the disputes and the parties lose their faith in the traditional system of dispute settlement. Alternative Dispute Resolution endeavours to quicken the process, but it has its own limitations. The advent of Online Dispute Resolution (ODR) seems to be promising in spite of the multiple challenges that it faces at its inception. Irrespective of the serious hurdles, ODR is being used effectively in National Internet Exchange of India (NIXI). NIXI has been created in consonance with the World Intellectual Property Organisation (WIPO) Domain name dispute settlement Mechanism.

### **Growth of ODR**

India is an economically developing country and constitutes an attractive market for the global business community. It does not only house billions of people, but also attracts foreign investment by virtue of its vast purchasing power and rule of law, democracy and independence of the judiciary which has a huge say in providing the investors with a sense of security. However, the Indian judicial system is plagued with congestion of courts and consequent inordinate delays and this significantly deterred the foreign business community. The judicial system has often been termed to be on the verge of collapse. Hence, ODR developed in the light of huge backlog of cases moving in a sluggish manner in the court of law.

Time is the most precious element for every businessman. Disputes in business relations are fatal and shall be cured at its very outset without harming the relations. The business disputes may be business to business (B2B) or business to

customer (B2C). Litigation is the least favoured method of dispute resolution for various reasons, especially because the time it takes. ADR methods such as negotiation, mediation, conciliation, arbitration and a mixture of these have gained much prominence in the today's world. However, the limitation of these methods, particularly, the requirement of physical presence of both the parties and the arbitrator/conciliator/mediator at one place at a number of meetings, makes even ADR methods quite cumbersome and ineffective because of the increasing number of international transactions growing day by day. These shortcomings of the ADR methods and the changing dimensions of the need of the international business community led to the development and growth of ODR.

There are three current approaches to ODR: cyberspace, non-adjudicative ADR, and arbitration. The first centres on the Internet and information technology. The principle underlying the cyberspace approach is to find better, faster and cheaper ways to resolve disputes with the aid of technology. The non-adjudicative ADR approach to ODR focuses mainly on negotiation and mediation, and how to improve both communications and relationships between parties. The arbitration approach emphasises rights and applications of law to resolve the dispute with an arbitrator's decision. The impetus behind this approach is the success of traditional arbitration. If it works so well offline, then it should be adapted online too.

### **ODR: The call of the business world**

The use of ODR is growing throughout the world and it is really suitable for India as well. The use of ODR may supplement the offline dispute settlement system. ODR will

prove to be an absolute blessing in matters of dispute where the parties are geographically distantly located. The various advantages and features of ODR which makes it the call of the present business world are discussed as under:

#### **i) Speed**

The first and foremost advantage that ODR affords is its speed. In a country like India, where litigations run for years or decades, the idea of a quick remedy seems to be an absolute dream. Business attaches significant importance to time and hence, the dispute settlement system which takes the least of time would be highly preferable. This particular aspect of ODR has significantly contributed to its wide demand and popularity.

#### **ii) Economic**

ODR is highly cost effective as it directly eliminates the need of physical meetings, and consequently no expense in the form of travel cost is required. It is not only economic in terms of cost but also in terms of time as it saves the valuable time of the businessman that would have otherwise been lost in transit. This saving is even more evident and crucial in cases involving international business disputes. Additional costs of boarding and lodging in another city where the court is situated are also saved from being incurred.

#### **iii) Efficient storage of Data**

Storage of physical documents is in itself a herculean task. Adding insult to the injury, when such physical files are too voluminous to be contained in a few rooms, the task of its efficient storage becomes quite impossible. In the case of Indian court system, the storage of data is pathetically poor. There are rooms full of papers from top to bottom, and it is pretty impossible to locate a particular file in time. Instances of such relevant documents being destroyed by termites, seepage of rain water, excess humidity through the walls or destroyed due to short circuit of electric wires resulting in fire is not so rare, in addition to the natural calamities like floods. ODR solves this problem as it uses data in the electronic form, which can be secured in a neat manner and can be retrieved as and when required.

#### **iv) Elimination of geographical barriers**

Another very prominent advantage of ODR is the elimination of the geographical barriers. The Indian Supreme Court is located in Delhi and High Courts of each state is located in the State's capital or another important city. Besides this, each district has a District and Sessions Court which is the highest court in the lower judiciary. Litigations require the parties to travel from the remotest of the villages to the designated court, sometimes only to observe no or slowest of the forward movement in the matters. This results in a serious wastage of time, money and efforts. Sometimes, it also results in denial of access to justice. Since, ODR eliminates the requirement of physical presence of both the parties at one place; it efficiently removes the geographical barriers and makes justice available at each and every doorstep.

#### **v) Readily accessible**

ODR requires a working internet connection and nothing

more. Anyone with access to internet can have access to ODR. Access to internet has been made readily available through a number of cyber cafes which are booming in every streets of India. They charge minimal for the use of internet. Not only that, several telecommunications companies have made internet accessible through the smartphones. Thus, access should not be such a major problem in the years to come.

#### **vi) Efficient time management**

In all other forms of dispute settlement, physical presence of both the parties at every scheduled date in the court or other tribunals often results in the wastage of time, efforts and money. ODR does not require travel and attendance, and it allows the business executives to be available for the company. The same is true for customers or even in non-commercial disputes for other persons. This flexibility allows efficient time management and also gives a chance to prepare the case well and make an argument as compared to the court where oral arguments have to be made and rebutted at the same time.

#### **Conclusion**

The new born system of ODR has gained some prominence but there are yet miles to be covered in this regard. Keeping in mind, the vast geographical extent of India and the preference for a quick remedy, ODR seems to be appropriate and most favoured method of dispute settlement. But, its further development requires a few important endeavours. The public must be made aware that access to justice through ODR is not only speedy and inexpensive. There is a need to change the mind-set of the judiciary and the lawyers. Proper education and training is essential for a committed, knowledgeable workforce which can work with confidence for the resolution of business disputes using ODR methods. With political commitment and a concerted effort by judiciary, the day is not far when ODR would be the method of choice for resolving not only business disputes but other disputes also.

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