

Designing the Future of Dispute Resolution: The ODR Policy Plan for India

Draft for Discussion

The NITI Aayog Expert Committee on ODR

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Please send your comments by
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Glossary of Terms

ICT	Information and communications technology is an all-encompassing term that refers to the use of technologies such as computers and other electronic equipment to collect, store, use and send data electronically.
ODR	Online Dispute Resolution in simple terms is the use of technology to resolve disputes. However, merely integration of technology in the dispute resolution processes (such as virtual scheduling) is not ODR. The use of technology to actually resolve disputes (such as video conferencing and digital circulation of files) can constitute as ODR. ODR is also more than just e-ADR for it can include the resolution of disputes through automated dispute resolution or AI/ML tools. A detailed section [Chapter I, Section B: Understanding ODR] has been dedicated to understanding the different aspects of the term.
e-ADR	The term refers to the use of technology in alternative dispute resolution processes. eADR forms a subset of ODR.
ADR	Alternative Dispute Resolution is a method of settling disputes without litigation. While it is usually understood to mean arbitration, negotiation and mediation it can include other mechanisms such as, not limited to, resolution through an ombudsman, med-arb or non-binding arbitrations.
ODR platforms	The term refers to the technology layer in any ODR process, irrespective of whether the platform provides direct services to resolve disputes or not. It therefore has a wide import attached to it. It includes start-ups institutions that are providing ODR and also in-house ODR platforms that have been integrated by specific businesses.
ODR centres	The term refers to all the institution that offers dispute resolution services through technology platforms developed in-house or bought from a dedicated software service provider.
ODR service providers	The term collectively refers to ODR platforms and ODR centres.
Neutrals	The term includes all possible neutrals or dispute resolution professionals involved in conducting ODR proceedings. Ideally, this term would also include algorithms that perform adjudicatory or facilitative roles. However, given the limitations in innovation in India, no such reference has been made in this report.
Virtual Courts	Dispute resolution in courts through the use of ICT. The definition does not presume an end-to-end virtual court.
Court annexed ODR	A form of ODR that is conducted under the supervision of courts with the use of ICT technology. The use of court annexed mediation cells, using ICT, is an example of court annexed ODR. In the present context, court annexed ODR often refers to court annexed e-ADR.

eCourts Mission Mode Project	A pan-India project, monitored and funded by the Department of Justice, for the implementation of information and communications technology (ICT) in the Indian judiciary.
Account Aggregators	AAs are intermediaries that provide data to a Financial Information User (FIU) (like personal finance management or wealth management) from a Financial Information Provider (FIP) (like a bank, GST platform or insurance provider). They are blind to the data being transferred and the user provides explicit electronic/digital consent. The RBI provides approval to recognise these institutions.

I. Introduction

A. Background

The future of justice should be conceptualized beyond the confines of brick and mortar. As has been said, courts should be a **service not a place**.¹ Not just courts, the whole process of justice delivery can be a service – one that is accessible, formidable, intelligible, pervasive, robust and designed with an outcome-oriented framework. Today, a key tool that has been leading the creation of such frameworks, world over, has been **technology**.

Traditionally, communication – both verbal and non-verbal in dispute resolution has existed without technology and required the **physical presence** of parties in a pre-identified, designated physical space.² However, the developments in Information and Communication Technology (ICT) and increased **access to Internet** has brought into question this assumption - that effective communication and thereby dispute resolution, necessarily requires physical congregation.

In light of the COVID-19 induced pandemic, this assumption, now more than ever, has come under scrutiny. The pandemic has necessitated adjustments that are **adaptive and innovative**, including those in the dispute resolution ecosystem. Across the globe, both private dispute resolution centers³ and judiciaries⁴ have welcomed technology and released guidelines to facilitate **video-conferencing** led remote participation in hearings. Therefore, the future that William Gibson referred to in his famous quote - “*the future has already arrived; it is just not evenly distributed as yet*”⁵, seems to have indeed arrived. It now befalls upon institutions to determine how **equitable distribution** can be achieved, even in the realm of **justice delivery**.

The Judiciary is leading the way

In India, the judiciary is leading the road to equitable justice delivery. There have been several pivotal initiatives through the **eCourts Mission Mode Project** whose impact will percolate both vertically and laterally.⁶ However, to make access to justice far more effective,

¹ Richard Susskind, ‘The Future of Courts’ (August 2020) 6 (5) *The Practice* <<https://thepractice.law.harvard.edu/article/the-future-of-courts/>> accessed 15 October 2020

² Ethan Katsh, ‘ODR: A Look at History’ in Mohamed Abdel Wahab and others (ed), *Online Dispute Resolution Theory and Practice* (EIP 2013) 21

³ International Chamber of Commerce, ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic (09 April 2020) <<https://iccwbo.org/content/uploads/sites/3/2020/04/guidance-note-possible-measures-mitigating-effects-covid-19-english.pdf>> accessed 15 October 2020 and Singapore International Arbitration Center, ‘SIAC Covid-19 Updates’ <<https://www.siac.org.sg/covid-19>> accessed 15 October 2020

⁴ Goudong Du and Meng Yu, ‘COVID-19 Turns all Chinese Courts into Internet Courts Overnight’ *China Justice Observer* (19 February 2020) <<https://www.chinajusticeobserver.com/a/covid-19-turns-all-chinese-courts-into-internet-courts-overnight>> accessed 15 October 2020 and Courts and Tribunals Judiciary, ‘Coronavirus (COVID-19) advice and guidance’ <<https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance>> accessed 15 October 2020

⁵ William Gibson, *Neuromancer* (Ace Books, 1984). *Also see* Rahul Matthan, ‘The future is here. It is just not evenly distributed yet’ *Live Mint* (13 December 2019) <<https://www.livemint.com/opinion/columns/opinion-the-future-is-here-it-is-just-not-evenly-distributed-yet-11577733442732.html>> accessed 15 October 2020

⁶ eCommittee, Supreme Court of India, ‘Phase II Objectives Accomplishment report as per Policy Action Plan Document’ (2019)

there is a need for an efficient framework that resolves disputes before they approach the courts. The present Committee is concerned with creating one such framework, which builds on past efforts and takes a leap towards truly achieving the ideal enshrined in our Constitution ‘**access to justice**’ for all.⁷

Even in the context of the pandemic, the judiciary’s performance and adaptation to the new technology demands has been exemplary. It has conducted a large volume of online hearings even in these trying times.⁸ As a result, the judiciary has in many ways redefined the very **idea of a traditional judiciary** synonymous with crowded court complexes, overflowing paper files and courtroom hearings.⁹ However, the successful use of technology has not been limited to just the courts but extended beyond it in other forms of justice delivery. The Lok Adalat has been transformed into their online versions- **e-Lok Adalats**.¹⁰ It is such kind of integration of technology, which holds the potential to make justice delivery more affordable and convenient. Moving forward, there could be a spate of new technologies deployed that would require **forward thinking** enabling **law and policy frameworks**. This report is concerned with one such relatively new way of resolving disputes facilitated by technology understood by an all-encompassing terminology- Online Dispute Resolution (ODR).

Ushering in a brighter future

In light of the pandemic, building trust, confidence and efficiency is crucial for reviving the economy. There is hence a need to explore new systems to **contain and resolve** these disputes in an expedient and collaborative manner. To meet this goal, technology will play a crucial role in enabling both **equity and affordability**. However, the success of ODR as a solution will depend to a large extent on multi-pronged, diverse stakeholder involvement. The commitment to collaboratively build this framework should therefore be unerring. To this end, the Government has been playing its part and Departments and Ministries have introduced several mechanisms for ADR outside of the formal court system.¹¹ The private sector has also seen innovation with the **evolution of legal tech start-ups** who are advancing the cause of out of court settlement fairly and with finality for various disputes. This

<https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 15 October 2020

⁷ Constitution of India Article 39A and *State of Haryana v Darshana Devi* AIR (1972) SC 855. Also see Justice Madan Lokur, ‘COVID-19, Technology and Access to Justice’ *United Nations Organisation of Drugs and Crime* <<https://www.unodc.org/dohadeclaration/en/news/2020/04/covid-19--technology-and-access-to-justice.html>> accessed 15 October 2020

⁸ Shreya Tripathy and Tarika Jain, ‘Caseload During COVID-19 (April 2020): A Look at the Numbers’ (Vidhi Centre for Legal Policy 2020) <<https://vidhilegalpolicy.in/research/supreme-courts-caseload-during-covid-19-april-2020-a-look-at-the-numbers/>> accessed 23 October 2020

⁹ Cyril Amarchand Mangaldas, ‘Gavel To Click: Covid-19 Poised To Be Inflection Point For Online Courts In India’ (*Bloomberg Quint*, 12 April 2020) <<https://www.bloombergquint.com/opinion/gavel-to-click-covid-19-poised-to-be-inflection-point-for-online-courts-in-india>> accessed 05 September 2020

¹⁰ Ejaz Kaiser, ‘Chhattisgarh organises India’s first e-Lok Adalat’ (*The New Indian Express*, 11 July 2020) <<https://www.newindianexpress.com/nation/2020/jul/11/chhattisgarh-organises-indias-first-e-lok-adalat-2168331.html>> accessed 28 September 2020. Also see Chapter IV, Section C.

¹¹ Ministry of Micro, Small & Medium Enterprises, Government of India, ‘MSME SAMADHAAN – Delayed Payment Monitoring System’ <https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx> accessed 15 October 2020 and Reserve Bank of India, ‘Online Dispute Resolution (ODR) System for Digital Payments (RBI/2020-21/21 dated 06 August 2020)

<https://m.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11946> accessed 14 October 2020

development in India is building a milestone for access to justice, which will be revered by posterity as a **disruptive shift in modalities** advancing the quality of life for the common person as well as quality of business environment for industries.

To meet this end, however, it is necessary to **exploit technology** for its true potential. The advancement of information technology in the form of **artificial intelligence** (AI), big data, machine learning (ML) and blockchain can be increasingly embedded in legal processes.¹² Further, India is on the path towards ubiquitous connectivity, e-learning tools for legal guidance for the common man, opportunity of enhanced choice and agency exercised by the litigants from legal service providers, AI/ML led document automation, analysis and drafting and finally workflow and case management automation.¹³ One such example of where the true potential of technology can be exploited and harnessed can be in the realm of **blockchain** driven arbitration processes for smart contracts.¹⁴ Smart contracts drafted in computer code can use technology to **automate enforceability** through transfer of rights and obligations. Therefore, blockchain arbitration could administer resolution on the basis of such smart contracts.

B. Understanding ODR

The concept of ODR is still evolving. At a preliminary level, ODR refers to the **usage of ICT tools** to enable parties to resolve their disputes. This includes using simple to complicated communication technologies such as audio-visual tools ranging from telephones to smart phones to LED screens, spread sheets, e-mail and messaging applications, with the crux of it being to enable dispute resolution without physical congregation of the parties.

From instances seen around the world, in its first phase, ODR shares its fundamentals with ADR mechanisms such as negotiation, mediation and arbitration.¹⁵ To this extent, most of the early ODR efforts have **mirrored ADR processes** through aggregated use of simple ICT tools.¹⁶

ODR however should not be merely understood to mean ICT integration in ADR or e-ADR. ODR has a potential to provide a comprehensive access to justice, as articulated by Richard Susskind, by encompassing the following stages in the life cycle of a dispute:¹⁷

- i. **Legal Health Promotion:** ODR can play an important role in promoting legal

¹² PTI, 'CJI focus on speedy end to litigation' (*Telegraph India*, 08 December 2019) <<https://www.telegraphindia.com/india/cji-bobdefocuses-on-speedy-end-to-litigation/cid/1725051>> accessed 22 May 2020 and Kritika Padode Bhandari, 'Blockchain, the legal way' *The Hindu* (25 July 2020) <<https://www.thehindu.com/education/how-introducing-blockchain-technology-in-law-can-revolutionise-legal-procedures/article32190200.ece>> accessed 15 October 2020

¹³ Agami and others, 'Digital Courts: A Roadmap' (10 May 2020)

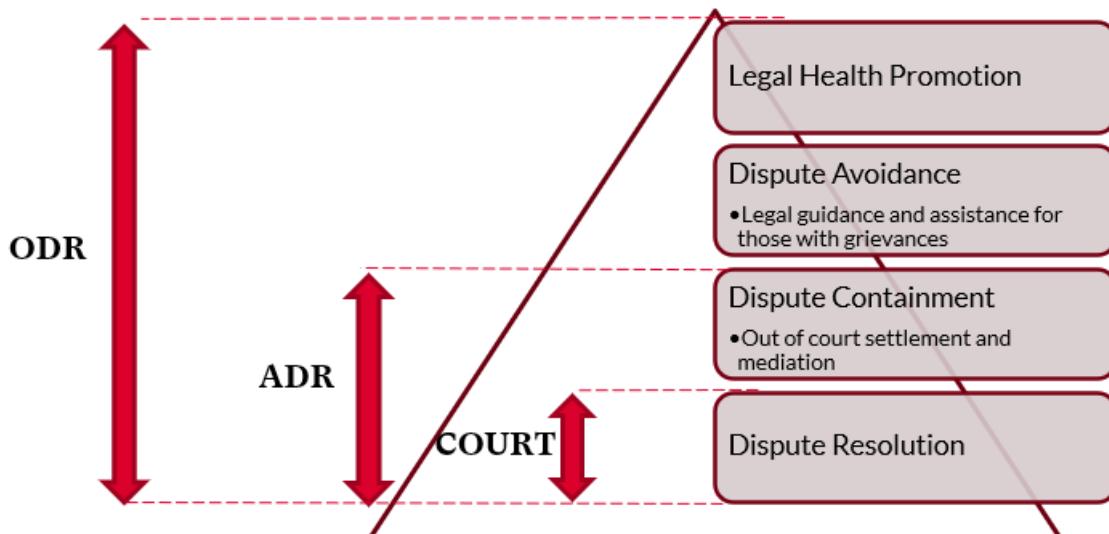
¹⁴ Stuart D. Levi and Alex B. Lipton, 'An Introduction to Smart Contracts and Their Potential and Inherent Limitations' *Harvard Law School Forum on Corporate Governance* (26 May 2018) <<https://corpgov.law.harvard.edu/2018/05/26/an-introduction-to-smart-contracts-and-their-potential-and-inherent-limitations/>> accessed 15 October 2020

¹⁵ Colin Rule, 'Is ODR ADR' (2016) 3 International Journal of Online Dispute Resolution <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 31 August 2020

¹⁶ ibid

¹⁷ Richard Susskind, 'Online Courts and the Future of Justice' (Oxford University Press, 2019) 114

- health by making people aware about the law, their rights and duties, and the remedies available with them. Overall, ODR can help in moving towards a more '**rule of law**' based society.
- ii. **Dispute Avoidance:** ODR can help avoid disputes by creating legal education and solution explorer modules, which empowers citizens to make an **informed choice** based on the strengths and weaknesses of their position in law. It will help them to also recognise and avoid legal obstacles. Such legal guidance and awareness can result in more compliant society, preventing the very occurrence of disputes.
 - iii. **Dispute Containment:** At a primary level, ODR can enable informal and pragmatic containment of dispute before it enters court systems. ODR processes such as **online mediation and online arbitration** can play an important role in the containment of disputes.



Four Layer Model for Access to Justice

Additionally, at an advanced stage, ODR also holds immense potential to improve the dispute resolution experience through **intelligent decision support systems**, smart negotiation tools, automated resolution, and machine learning. ODR also offer multi-door dispute resolution through tailored processes for specific parties and their dispute.¹⁸ With the help of technology tools, these **tailored processes can be designed** to achieve an ideal dispute resolution for all the disputants. A few of these advanced ODR systems, already underway in some jurisdictions, are described in Chapter III of the report.

Even though ODR has evolved over the years as explained in the next section on its origins, a few undisputable features of ODR which have also lent themselves to circumscribing this committee's mandate are listed below:

1. A mandatory component of ODR is the use of ICT tools **to resolve disputes**. To this end, a certain threshold in terms of integration of ICT needs to be met for a dispute

¹⁸ Colin Rule, 'Is ODR ADR' (2016) 3 International Journal of Online Dispute Resolution <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 31 August 2020

resolution process to be categorised under ODR. For instance, mere scheduling of hearing dates through email or exchange of documents online would not classify as ODR. If substantial communication (verbal and non-verbal) between parties or the parties and the neutrals occur through an **aggregated use of ICT tools** or over an ODR platform, it would fall within the ambit of ODR.¹⁹

2. ODR is **distinct from virtual courts**. ODR is used before a dispute enters courts for adjudication through an adversarial approach (in the context of India).
3. ODR is **not a new mode of dispute resolution**. It does not have a prescribed process of its own. However, any of the existing formal way of dispute resolution outside of courts can be considered to be ODR if it satisfies the requirement mentioned under the first point above.

C. Origins of ODR

Before delving into the challenges with the status quo, it is important to understand the origins of ODR; identify the pattern and pace of its development, and the challenges that have already been overcome.

The origins of ODR can be traced to the **evolution of the Internet in the 1990s**, which increased online transactions, and thereby disputes related to such transactions. Broadly, ODR's development across the world can be divided into three phases, with each phase benefiting from the subsequent innovations in ICT.

1. First Phase: eBay's experiment leads the way

The first initiatives on ODR projects were launched in 1996 in the University of Massachusetts and the University of Maryland.²⁰ In late 1990s, with the expansion of the internet and the evolution of e-commerce, a **robust system** was required to address the disputes originating from commercial activities over the internet.²¹ ODR offered a solution to this problem.

Around the same time, ODR was pioneered in a few early e-commerce entities. In 1999, **eBay started a pilot project** to provide online mediation facilities for disputes arising

¹⁹ The UNCITRAL technical notes on ODR prescribes that 'ODR requires a technology-based intermediary' i.e. an 'ODR platform'. It removes from its ambit all forms of ad-hoc usage of technology. This understanding of ODR however caters well only to the cross-border disputes that the technical notes cater to and not necessarily to the Indian context, where aggregated use of technology tools is likely to be more mainstream. This is due to the constraints in availability of technology infrastructure and levels of digital literacy required to access ODR platforms. https://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf > accessed 8 October 2020

²⁰ Ethan Katsh, 'ODR: A Look at History' in Mohamed Abdel Wahab and others (ed), *Online Dispute Resolution Theory and Practice* (EIP 2013) 23 <<https://www.mediate.com/pdf/katsh.pdf>> accessed 05 September 2020

²¹ Ethan Katsh and others, 'E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law' (2000) 15 Ohio State Journal in Dispute Resolution 708 <<https://pdfs.semanticscholar.org/952e/c0a7b70bb553ddb2cb15d8a28b977f9a6fcd.pdf>> accessed 1 September 2020

between buyers and sellers on its platform.²² The pilot project handled **two hundred disputes in a two-week period**, by far the largest number of disputes ever handled online. It prompted eBay to include dispute resolution as an option for buyers and sellers in the event a transaction was unsuccessful. Initially, eBay's dispute resolution process was contracted out to an Internet start-up, **SquareTrade**, and several years later was taken over by eBay.²³ The number of disputes handled by eBay grew steadily over the next decade and by 2010 eBay was handling over sixty million disputes per year through its ODR platform.²⁴

2. Second Phase: Boom of ODR start-ups

The success of this model and the rapid growth of the internet kick-started the evolution of ODR lead to the boom of ODR platforms.²⁵ There were upto **21 new ODR programs that were launched in the year 1999** from only nine in the previous year.²⁶ By 2004, the numbers had reached 115.²⁷ Even the Internet Corporation for Assigned Names and Numbers (ICANN) instituted a **Domain Name Dispute Resolution Policy**,²⁸ which thought started off as an offline process eventually became increasing online. However, most of these start-ups failed and disappeared. Only a few successful platforms such as Cybersettle, Smartsettle and the Mediation Room were able to make a remarkable impact in the dispute resolution ecosystem.²⁹

The technology innovation that this phase saw were also not a replication of those initiated by eBay. The most prominent innovation for eBay for example, was their **online mediation model**. Cybersettle, on the other hand followed a functionality acquired through creating a network of specialised Internet applications that enabled various forms of communication. The system enabled negotiations to be conducted using the Internet platform through a **blind-bidding process**. The goal of the process was to let parties arrive at a settlement without disclosing to the other party the maximum amount that they would be willing to settle at.³⁰

²² Ethan Katsh, 'ODR: A Look at History' in Mohamed Abdel Wahab and others (ed), *Online Dispute Resolution Theory and Practice* (EIP 2013) 27

²³ Ethan Katsh, Janet Rifkin et. al. 'Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law', 15 Ohio State Journal on Dispute Resolution (2000) 705
<<https://pdfs.semanticscholar.org/952e/c0a7b70bb553ddb2cb15d8a28b977f9a6fc.pdf>> accessed 05 September 2020

²⁴ Louis F. Del Duca and others, 'eBay's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers' (2014) 6 Yearbook on Arbitration and Mediation 204, 205
<<https://elibrary.law.psu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1060&context=arbitrationlawreview>> accessed 15 September 2020

²⁵ Ethan Katsh, 'ODR: A Look at History' in Mohamed Abdel Wahab and others (ed), *Online Dispute Resolution Theory and Practice* (EIP 2013) 27

²⁶ Vikram, '1995-2015: 50 Key Events in Evolution of Online Justice System', *the IMW Post* (12 December 2015) <<https://imwpost.com/1995-2015-50-key-events-in-evolution-of-online-justice-system/>> accessed 14 October 2020

²⁷ Karolina Mania, 'Online dispute resolution: The future of justice' International Comparative Jurisprudence 1(2015) 76-86 at 78
<<https://reader.elsevier.com/reader/sd/pii/S2351667415000074?token=BBD407137E939C8EFA3FE8086DDD B69DF06E40EB05FE7E083FFC7635FC4B36509D1A767098ECED87D9A7E79482EBE67E>> accessed 14 October 2020

²⁸ Uniform Domain Dispute Resolution Policy, *ICANN Archives* (26 August 1999)
<<http://archive.icann.org/en/udrp/udrp-policy-24oct99.htm>> accessed 14 October 2020

²⁹ ibid

³⁰ Karolina Mania, 'Online dispute resolution: The future of justice' International Comparative Jurisprudence 1(2015) 76-86 at 77

Thus, during this phase both innovation grew and expanded while those that **did not provide novel solutions disappeared**.

3. Third Phase: Adoption by the Government and Judiciary

The success of a few of these private ODR platforms drew the **interest of governments** towards this emerging addition to the dispute resolution ecosystem. One of the first steps towards this adoption was taken in 2004 when the **City of New York adopted an ODR system** developed by Cybersettle to clear their backlog and expedite the settlement of personal injury claims.³¹ This has resulted in reduction of settlement time by 85 per cent and an impressive 66 per cent settlement rate within 30 days of submission of the dispute.³²

Subsequently, governments across jurisdictions have adopted ODR programs for efficient dispute redressal. The wider expansion of the Internet and innovations in ICT has fuelled these initiatives. The development of **Consumidor.gov in Brazil³³** and **European Online Dispute Resolution platform** in the European Union³⁴ are some of the examples of initiatives being taken to resolve consumer disputes.

Recognising the efficiency of ODR, some governments also undertook initiatives to integrate ODR into their judicial structure. Some of the most notable examples of court annexed ODR include Rechtwijzer 2.0 in Netherlands,³⁵ Civil Resolution Tribunal in British Columbia,³⁶ Canada, Money Claim Online in United Kingdom,³⁷ and the New Mexico Courts Online Dispute Resolution Center in the US.³⁸ **Detailed explanations** of the method followed to resolve disputes and the frameworks used to regulate them are provided in **Chapter III** of this report.

The above traces the development of ODR across the world over the past two decades. It is however important to note that developments under each phase have been carried forward and the three prongs that have emerged:

1. **in-house ODR** platforms run by individual businesses;

<<https://reader.elsevier.com/reader/sd/pii/S2351667415000074?token=BBB407137E939C8EFA3FE8086DDDB69DF06E40EB05FE7E083FFC7635FC4B36509D1A767098ECED87D9A7E79482EBE67E>> accessed 14 October 2020

³¹ Daniel Hays, ‘New York City Settling Claims via the Web’ (*NU Property Casualty 360*, 10 March 2020) <<https://www.propertycasualty360.com/2004/03/10/new-york-city-settling-claims-via-the-web/?ref=navbar-next>> accessed 1 September 2020

³² Online Dispute Resolution Advisory Group, ‘Online Dispute Resolution for Low Value Civil Claims’ (2015) 15 <<https://www.judiciary.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>> accessed 31 August 2020

³³ ‘Consumidor.gov.br’ <<https://www.consumidor.gov.br/pages/principal/?1598987311319>> accessed 1 September 2020

³⁴ ‘Online Dispute Resolution: Why the ODR platform matters for traders’ (*European Commission*) <<https://ec.europa.eu/consumers/odr/main/?event=main.trader.register>> accessed 02 September 2020.

³⁵ Rechtwijzer, ‘Eerste Hulp Bij Oplossingen’ <<https://rechtwijzer.nl/>> accessed 1 September 2020

³⁶ Civil Dispute Tribunal, ‘Welcome to the Civil Dispute Tribunal’ <<https://civilresolutionbc.ca/>> accessed 1 September 2020

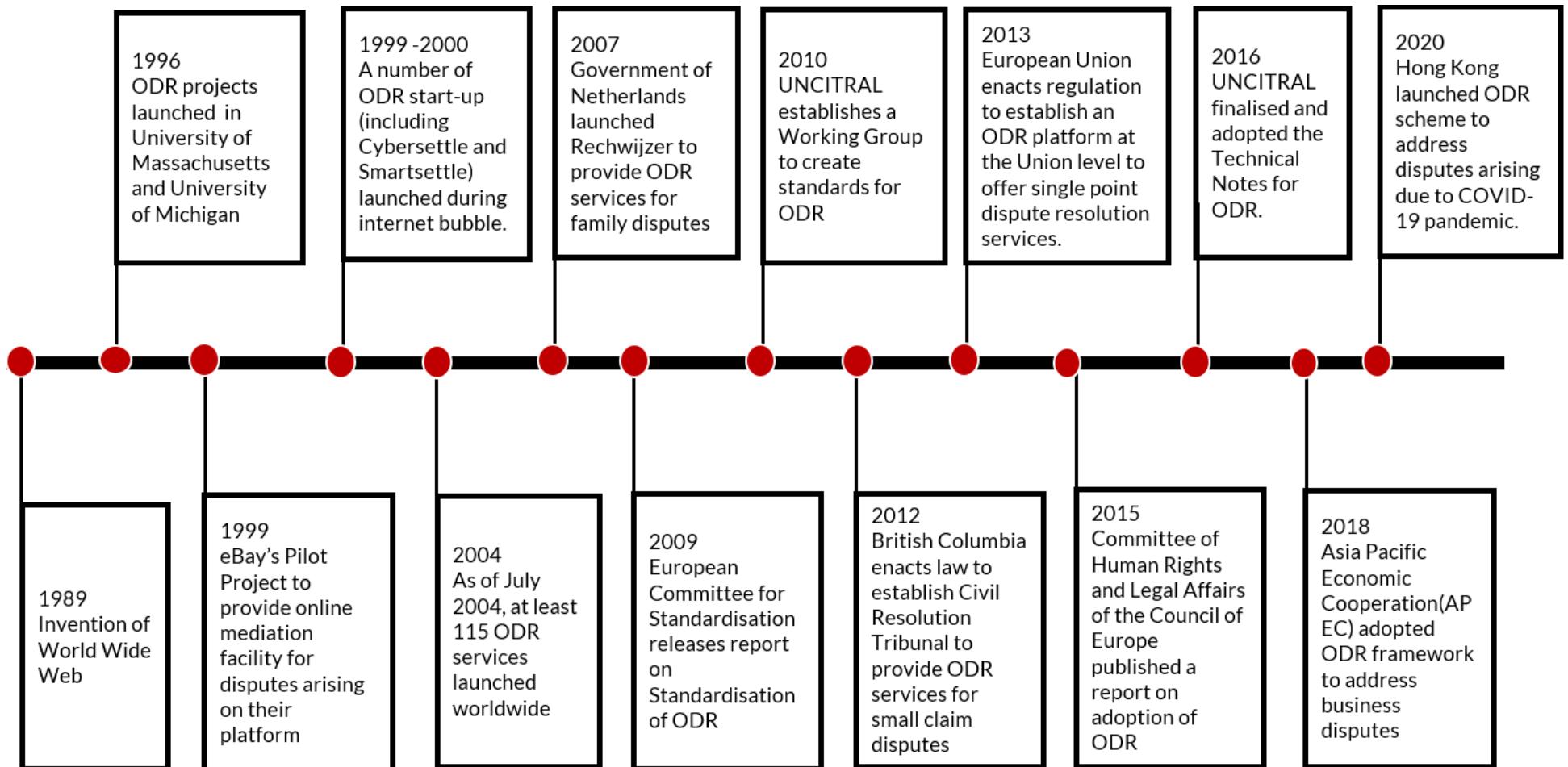
³⁷ HM Courts and Tribunal Service, ‘Money Claim Online’

<<https://www.moneyclaim.gov.uk/web/mcol/welcome>> accessed 1 September 2020

³⁸ New Mexico Courts, ‘Welcome to the New Mexico Courts Online Dispute Resolution Center’ <<https://newmexicocourtsdmd.modria.com/#home>> accessed 1 September 2020

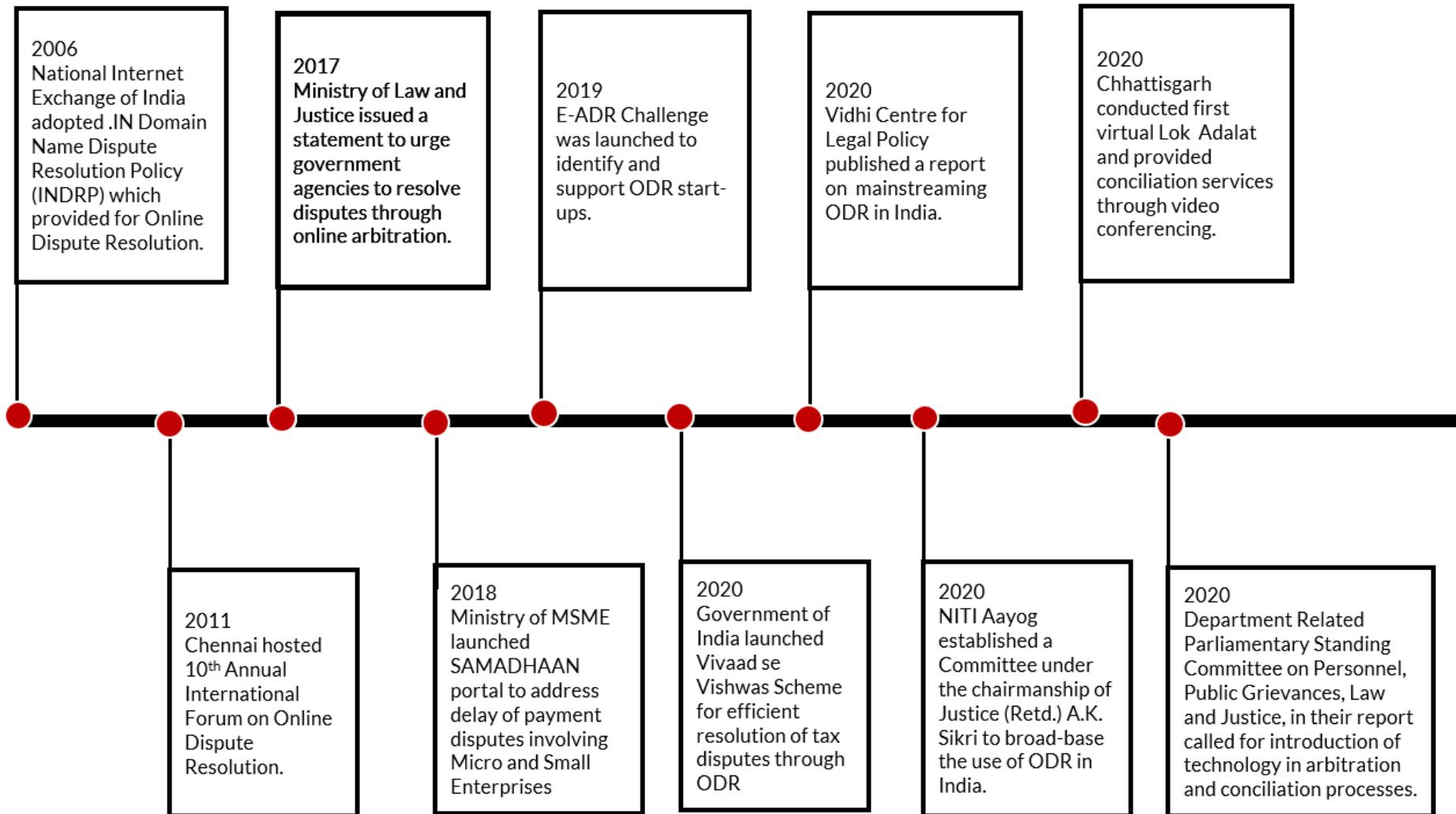
2. **private ODR platforms** catering to different categories of disputes and multiple modes of resolution; and
3. **government run and court-annexed ODR systems**, are all today running in parallel.

A timeline that identifies these stages of growth in the international context is provided below.



In the context of India, however, the development of ODR has been unique in the sense that the progression that spanned across two decades have occurred **in quick succession**, that too only in the latter half of this decade. While multiple attempts have been made over the last two decades,³⁹ it is only now that the **potential of ODR has come to be recognised** and is nearly undisputed. The following timeline identifies how ODR has grown in India.

³⁹ See Colin Rule, ‘The 2011 ODR Working Group Meeting – Chennai, India February 7-9’ The Center for Internet and Society (03 December 2010) <<http://cyberlaw.stanford.edu/blog/2010/12/2011-odr-working-group-meeting-chennai-india-february-7-9>> accessed 14 October 2020; Team YS, ‘Chennai plays host to the 10th Online Dispute Resolution Conference’ *Your Story* (07 February 2011) <<https://yourstory.com/2011/02/chennai-plays-host-to-the-10th-online-dispute-resolution-conference>> accessed 14 October 2020 and Team YS, ‘10th International Online Dispute Resolution Conference: Need to build awareness for ODR, *Your Story* (08 February 2011) <<https://yourstory.com/2011/02/10th-international-online-dispute-resolution-conference-need-to-build-awareness-for-odr>> accessed 14 October 2020.



D. Benefits of ODR

The integration of ICT into dispute resolution processes provides immense potential to overcome challenges typically associated with courts and those that have come to plague the ADR systems as well. Some of the key benefits of ODR, already felt in a few jurisdictions are indicated below:

1. Cost effective

The **economic burden** of dispute resolution often turns the process itself into a punishment and thereby hinders access to justice.⁴⁰ In this light, ODR offers a cost-effective mode of dispute resolution for the disputants as well as the neutrals⁴¹. By its very nature, ODR does not require parties to travel long distances or rent a facility to conduct the dispute resolution. Further, ODR has the potential to **reduce legal costs**. First, by way of **reduced time** for resolution and second, by doing away with the need for **legal advice** in select category of cases⁴²

2. Convenient and quick dispute resolution

The pendency of cases in courts across India has been one of the major setbacks for the justice system. As per India Justice Report, 2019, in 21 States and Union Territories, cases in district courts remain pending for **5 years on average** or more.⁴³ Excessive adjournments, vacancy in judicial and administrative staff, and complex processes involving multiple participants are some of the major reasons for such pendency.⁴⁴

ODR can address such delays by providing a faster and more convenient process for resolution of disputes. In itself, ADR employs simpler procedures and a fixed timeline for

⁴⁰ A survey conducted by DAKSH in 2017 found that on an average a litigant incurred a cost of Rs. 1049 per day while engaging with courts, with Rs. 728 per day on average as direct spending and Rs. 321 per day due to the loss of business. On the other hand, the litigants who have opted for out of court resolution of dispute have incurred 37 percent less cost per day during the dispute resolution process. See, Padmini Baruah, ‘Paths to Justice: Surveying Judicial and Non-judicial Dispute Resolution in India’ (Daksh 2017) <https://dakshindia.org/Daksh_Justice_in_India/12_chapter_02.xhtml> accessed 18 September 2020

⁴¹ Neutrals in these reports refers to a party, which provides neutral third party, consented to by the parties, to provide assistance to facilitate the resolution of a dispute. Neutrals can take the form of dispute resolution professional (DRPs) or a dispute resolution center (DRCs). Unless specified otherwise, the term neutral is used to refer to both these categories of stakeholders.

⁴² Joseph W. Goodman, ‘The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites’ (2003) 2 Duke Law & Technology Review <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1073&context=dltr>> accessed 31 August 2020

⁴³ Subrat Das and others, ‘India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid’ (Tata Trust 2019) <<https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>> accessed 18 September 2020

⁴⁴ Dushyant Mahadik, ‘Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra’ (Administrative Staff College of India 2018) <<https://doj.gov.in/sites/default/files/ASCI%20Final%20Report%20Page%20641%20to%20822.pdf>> accessed 18 September 2020.

processes leading to efficient dispute resolution. However, the benefits of ADR have been limited because it has come to face with the same inefficiencies as the court system. Through ODR, it is possible for ADR processes to fulfil their early promise and go beyond.

By definition, ODR **eliminates the need for travel and synchronisation of schedules**. Further, features such as asynchronous communication, which allows parties to submit their arguments intermittently, or '**documents-only**' process adds to the convenience of the disputants and the neutral.

Though we have only started exploring the potential of ODR, technology along with flexible processes offers limitless possibilities to transform the way we approach dispute resolution. ODR can offer **multi-door dispute resolution** through tailored processes for specific parties and their disputes. With the help of technology tools, these processes can be designed to achieve an ideal dispute resolution scenario tailored for the needs of the disputants.⁴⁵

3. Increased access to justice

As part of India's commitment and leadership to attain **Sustainable Development Goals** adopted by UN General Assembly in 2015, India is committed to ensure equal access of justice for all.⁴⁶ To this end, ODR can contribute significantly to improve access to a variety of dispute resolution processes by addressing major concerns such as lack of access to physical courts or ADR centres, cost of dispute resolution as well as the barriers due to disabilities.⁴⁷ Since ODR tools such as online negotiation and mediation are premised on **mutually arriving at an agreement**, they make the dispute resolution process less adversarial and complicated for the parties. This improvement in the overall experience encourages more parties to opt to resolve their disputes through formal means, which in turn increases access to justice.⁴⁸

4. Removes unconscious bias

With the increased awareness regarding racial, caste and gender justice, there have been some concerns regarding the impact of biases, prejudice, and stereotype on decision-making processes and outcomes. Studies have identified that **implicit bias and anxiety to**

⁴⁵ Colin Rule, 'Is ODR ADR' (2016) 3 International Journal of Online Dispute Resolution <<http://www.colinrule.com/writing/ijodr.pdf>> accessed 31 August 2020

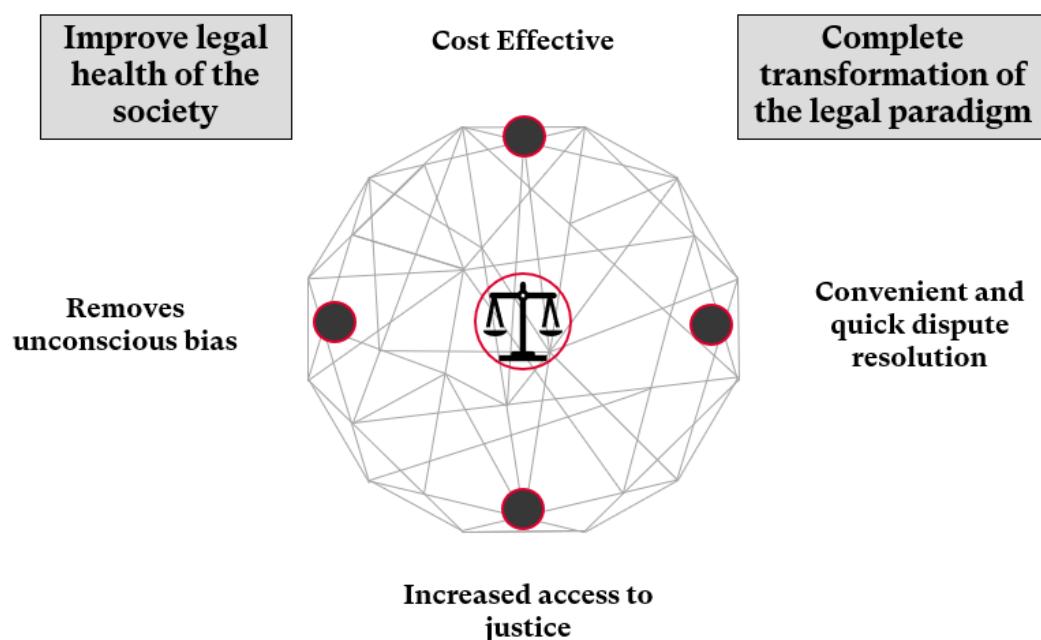
⁴⁶ Transforming our world: the 2030 Agenda for Sustainable Development, UNGA Res 70/1 (25 September 2015) UN Doc A/RES/70/1

⁴⁷ Charlotte Austin, 'Online dispute resolution – An introduction to online dispute resolution (ODR), and its benefits and drawbacks' (2017) 11 <<https://www.mbie.govt.nz/assets/00ddeb604/online-dispute-resolution-report-2018.pdf>> accessed 31 August 2020

⁴⁸ Online Dispute Resolution Advisory Group, 'Online Dispute Resolution for Low Value Civil Claims' (2015) 17 <<https://www.judiciary.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>> accessed 31 August 2020

communicate with members of different communities can influence the outcome of mediation.⁴⁹

ODR processes lessen the unconscious bias of the neutral while resolving disputes. ODR platforms, especially those based on texts and emails, detaches audio visual cues relating to the gender, social status, ethnicity, race, etc. and helps in resolving disputes based on the claims and information submitted by the disputing parties, rather than who these parties are.⁵⁰



While the above four benefits can be directly linked to ODR by its very nature, there are other indirect long-term benefits of ODR that can play a critical role in reviving the economy. Two such long-term benefits are mentioned below:

5. Improved legal heath of the society

Greater access to dispute resolution processes, and cost-effective resolution will result in improved legal health of the society where individuals and businesses are **aware of their rights and have the means to enforce them**. Thus, contracts will come to be stringently enforced improving the business environment in the country. Tangible benefits of such improvements could be felt in the form of improved ‘**Ease of Doing Business**’ rankings for India especially on the ‘enforcement of contracts’ parameter, thereby bringing in greater investment to the country.⁵¹ The European Union has taken the initiative of legal health

⁴⁹ Carol Izumi, ‘Implicit Bias and Prejudice in Mediation’ 70 SMU Law Review 681

<<https://scholar.smu.edu/cgi/viewcontent.cgi?article=4696&context=smulr>> accessed 18 September 2020

⁵⁰ Charlotte Austin, ‘Online dispute resolution – An introduction to online dispute resolution (ODR), and its benefits and drawbacks’ (2017) 14 <<https://www.mbie.govt.nz/assets/00ddeb604/online-dispute-resolution-report-2018.pdf>> accessed 31 August 2020

⁵¹ NITI Aayog, ‘Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business’ (08 August 2020) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1644465>> accessed 15 October 2020

promotion where it mandates **all merchants** in EU countries to **inform consumers** about the availability of ODR.

6. Complete transformation of the legal paradigm

ODR also has the potential to **transform the legal paradigm as a whole**.⁵² The self-explanatory table below provides the snapshot of this can be achieved. This new paradigm isn't a disruption for the few, but a sustainable transformation for every citizen. Today, access to justice has a chance to be **truly democratised** with the availability of apps, smartphones, video and voice calls, chat bots, webcasts and such easily available tools. The new paradigm provides an opportunity to **accord dignity and respect to every citizen** in an effective, efficient and expeditious manner. It allows for a comprehensive vision of justice, which is fair in its decisions and processes, transparent in its conduct, enforceable and legitimised by the State, and above all accessible to all advancing equity.

Today's Legal Paradigm	Tomorrow's Legal Paradigm
Advisory Service	Information service
One-to-One	One-to-Many
Reactive Service	Proactive Service
Restrictive	Empowering
Defensive	Pragmatic
Legal Focus	Business Focus
Legal Problem Solving	Legal Risk Management
Dispute Resolution	Dispute pre-emption
Publication of Law	Promulgation of Law
Dedicated Legal Profession	Legal Specialists and information engineers
Print based	IT-based

In light of these promising benefits, it is now upon the Committee to identify ways in which the existing framework within India can be modified and the potential of the present ecosystem harnessed by coming up with an action plan for ODR. To this end, the following chapters of the report delve into the **role of the Committee** (Chapter II), the ODR models adopted **across the globe** (Chapter III), present status in **India** (Chapter IV), the **challenges** faced in adoption of ODR (Chapter V) and finally the **recommendations** which can help mainstream ODR in India (Chapter VI).

⁵² Richard Susskind, 'Tomorrow's Lawyers: An Introduction to Your Future' Oxford University Publication (January 2013)

II. Background to the Committee

The potential for ODR was on the verge of being recognised globally when the COVID-19 pandemic hit across nations. The resulting lock-down, which brought most judiciaries to a grinding halt, has resulted in adding to the ODR momentum. The current crisis has helped put to rest any lingering doubts that may have been, that the future of dispute resolution, both in India and globally, rests in harnessing the true potential of technology to resolve disputes.

India can be at the forefront of this global ODR movement. This is possible only through a strong, **strategic partnership** between all the relevant stakeholders working towards mainstreaming ODR in India. A first step in this direction was taken by the NITI Aayog on 6th June 2020, which, in collaboration with civil society organisations, conducted a virtual consultation titled, ‘**Catalyzing Online Dispute Resolution in India**’. The objective was to bring together key stakeholders to discuss the manner in which ODR mechanisms can be introduced in India.⁵³ The event included senior judges of the Supreme Court, secretaries from key Government Ministries, industrialists, legal experts, and general counsels of leading enterprises. The CEO of NITI Aayog, Mr. Amitabh Kant recognised the need for **progressive and disruptive changes** in justice delivery and their potential to increase access to justice in an unprecedented way.⁵⁴ The session also saw recognition from members of the Judiciary, the details of which can be found in the judicial acceptance section of Chapter IV. There was also **common consensus** amongst all the stakeholders that the key to ODR development in India was through **collaboration between the various stakeholders** from the Government to the industry.⁵⁵

In furtherance of this goal to broad base ODR in India, the NITI Aayog held another session on the 8th of August on ‘Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business’.⁵⁶ The session saw representation from **top businesses** in India, heads of law firms and leading general counsels. The CEO of NITI Aayog, Mr. Amitabh Kant observed that the COVID-19 induced crisis is likely to see a **deluge of disputes** in courts, most notably in lending credit, property, commerce and retail that will require **expedient resolution**. It is for this reason that new innovation models such as Online Dispute Resolution need **explicit support**.⁵⁷ The session also highlighted the need to have transparency to generate trust in the system and push innovation to have a diverse set of ODR application across sectors.

⁵³ NITI Aayog, ‘Catalyzing Online Dispute Resolution in India’ (07 June 2020) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1630080>> accessed 20 October 2020

⁵⁴ Amitabh Kant, ‘Part 1: Setting the Context’, ‘Catalyzing Online Dispute Resolution in India’ (NITI Aayog, 12 June 2020) <<https://niti.gov.in/catalyzing-online-dispute-resolution-india#p1>> accessed 20 October 2020

⁵⁵ NITI Aayog, ‘Catalyzing Online Dispute Resolution in India’ (12 June 2020) <<https://niti.gov.in/catalyzing-online-dispute-resolution-india>> accessed 20 October 2020

⁵⁶ NITI Aayog, ‘Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business’ (25 August 2020) <<https://niti.gov.in/unlocking-online-dispute-resolution-enhance-ease-doing-business>> accessed 20 October 2020

⁵⁷ NITI Aayog, ‘Catalyzing Online Dispute Resolution in India’ (12 June 2020) <<https://niti.gov.in/catalyzing-online-dispute-resolution-india>> accessed 20 October 2020

To consolidate the ideas gained during these consultations and to create an effective implementation framework for ODR in India, a Committee was set up by the NITI Aayog under the Chairmanship of Hon'ble Justice (retd.) A K Sikri.

A. Composition of the Committee

To ensure that a **comprehensive action plan** is developed by the Committee, NITI Aayog sought representation from various Departments and Ministries of the Government of India, which can contribute towards mainstreaming ODR and in-turn benefit from it. The Departments and Ministries represented in the Committee are:

1. The Department of Consumer Affairs,
2. The Department of Legal Affairs,
3. The Department of Justice,
4. The Department for Promotion of Industry and Internal Trade,
5. The Ministry of Corporate Affairs and
6. The Ministry of Micro, Small & Medium Enterprises

The Committee also consists of the Convener and the Administrative Secretariat to provide research and drafting assistance and co-ordinate the consultations across all stakeholders.

B. Terms of Reference

The overarching goal of the committee is to develop an action plan that can aid in mainstreaming ODR in India. The following are the specific objectives with which the committee has been set up:

1. Identifying and **amending existing laws/regulations/rules** to enable ODR;
2. Identifying and **facilitating strategies** to adopt ODR as a means of dispute resolution in relevant sectors;
3. Analysing **global best practices** in ODR, specifically for dispute avoidance, containment and resolution to recommend suitable models for justice delivery;
4. **Collaborating** with the judiciary, industry, and the ecosystem as a whole for ODR; and
5. Any other matter referred to the Committee by the Chairperson in the interests of access to justice.

C. Process Followed

The Committee has conducted **wide consultations** to make the action plan for ODR inclusive and comprehensive. The Committee conducted consultations and solicited comments at two

phases of the drafting process – before the release of the first draft and after the release of the first draft. Before the release of the first draft it:

- a. **Conducted 12 sets of consultations** with key stakeholders. These consultations were held for stakeholder groups and through one-on-one consultations with domain experts. A total of 57 people were consulted.
- b. Views were also solicited in the form of **written submissions to questionnaires** that were curated based on the stakeholder. A total of 61 written responses were received.

The Committee is now going to publish the report for public comments. Further, the Committee also intends to conduct **round tables with domain experts** and members of the **Judiciary** to obtain further comments on the draft report.

This report provides a reflection of the inputs received from stakeholder consultations, public comments and round table conferences. These consultations have significantly contributed to the work that has been put out in this report.

A snapshot of the **inclusive approach** followed by the Committee is provided below.

Inclusive approach followed by the Committee



III. International Experience in ODR

Last two decades have witnessed an exponential development in ODR. ODR platforms and institutions have emerged across the globe to provide efficient redressal to a variety of disputes. These ODR platforms have not only been effective in resolving disputes arising from online transactions, but also, traditional disputes such as labour disputes, tenancy disputes, etc. This section studies the prominent ODR initiatives around the world to analyse the services provided by them and its effectiveness. These ODR platforms can be divided under three categories:

- 1. Government-run ODR platforms:** This category includes the ODR platforms that are established by Government Departments to ensure efficient dispute resolution in the sectors regulated by them. These platforms have been successful in providing fast and cost-effective dispute resolution, especially for consumer and labour disputes.
- 2. Court-annexed ODR platforms:** ODR holds potential to supplement the efforts of the Judiciary and reduce the case burden on the courts. This can be achieved by integrating technology in court annexed ADR initiatives and building ODR capacity. Building ODR capacity in court-annexed centres creates symbiotic partnership between ODR and the Judiciary- where ODR receives legitimacy because of the partnership with the Judiciary and the Judiciary benefits in the form of reduced case-load since the disputes are resolved outside the court system.
- 3. Private ODR platforms:** This category includes ODR service providers in the private domain, as well as, platforms established by private enterprises such as e-commerce entities to resolve the disputes arising during the course of their business.

The table below provides details of some of the ODR initiatives across the world. These case studies provide an understanding of the ways in which ODR ecosystem is developing around the world. The table offers insights into the variety of partnerships and regulation models that currently exist, from which India can learn and adapt. Since there are many such use cases globally, the following case studies are not intended to be exhaustive. Instead, they identify some of the key initiatives that have provided impetus to the ODR movement across the globe.

A. Government-run ODR Platforms

S. No.	ODR Service	Nature of Disputes	Mechanism for dispute resolution	Partnership and Regulation
1.	Hong Kong: COVID-19 Online Dispute Resolution (ODR) Scheme	The scheme aims to resolve disputes that are, <ul style="list-style-type: none"> a. arising due to COVID-19 pandemic b. where the amount claimed is HKD 500,000 or less, and c. where at least one of the parties is a Hong Kong resident.⁵⁸ 	<p>The scheme offers multi-tiered dispute resolution process:</p> <ol style="list-style-type: none"> 1. Initially parties try to negotiate the dispute, 2. If negotiation unsuccessful, then mediation is attempted, 3. In case the mediation process is unsuccessful, parties proceed to arbitration for resolving their disputes. <p>Parties are free to appoint their own mediator and arbitrator for the process.⁵⁹</p>	<p>eBRAM, an independent not-for-profit organisation established in 2018 under Hong Kong law, has been appointed as the service provider for this ODR scheme.⁶⁰</p> <p>The proceedings under the scheme are regulated by the rules framed by eBRAM.⁶¹</p>
2.	United States: Technology	Labour Disputes	FCMS has employed TAGS to help mediators resolve labour-management disputes efficiently. It	TAGS uses a combination of technology tools including eRoom,

⁵⁸ Matthew Love, ‘Hong Kong Announces Its New Online Dispute Resolution Scheme’ (Hugill and Ip, 22 April 2020) <<https://www.hugillandip.com/2020/04/hong-kong-announces-its-new-online-dispute-resolution-scheme/>> accessed 16 August 2020.

⁵⁹ Online mediation and arbitration are both provided by Court Mediators or Judge Mediators from the official judicial system.

⁶⁰ eBRAM, ‘Covid-19 ODR Scheme’ <https://www.ebram.org/covid_19_odr.html> accessed 5 September 2020

⁶¹ eBRAM, ‘Rules for the Covid-19 ODR Scheme’ (eBRAM) <[https://www.ebram.org/download/Covid-19+Rules+\(draft\).pdf](https://www.ebram.org/download/Covid-19+Rules+(draft).pdf)> accessed 16 August 2020.

	Assisted Group Solutions (TAGS) by Federal Mediation and Conciliation Service (FMCS)		uses technology tools for efficient group problem-solving, decision-making, improving the facilitation of meetings and conducting online surveys. ⁶²	mimio, FacilitatePro and NetMeeting to enable online meeting, caucuses and provide efficient internet based dispute resolution. ⁶³
3.	Mexico: Concilianet ⁶⁴ by the Federal Consumer Prosecutor's Office (PROFECO).	Consumer disputes: Consumers can file complaints against manufacturers and service providers that have entered into a collaboration with the office of Attorney General to resolve their disputes through Concilianet. ⁶⁵	<p>The process for dispute resolution through Concilianet is provided below:</p> <ol style="list-style-type: none"> 1. The consumer is required to register an account with Concilianet with proper identification documents. 2. The consumer can submit their complaint along with relevant documents on the ODR platform. 3. PROFECO analyses the complaint and determines its competence to resolve the dispute. After such analysis, it sends a reply to the complainant within 10 days. 4. Post such analysis, online conciliation hearing is arranged with the consumer, manufacturer, and a 	Concilianet provides a free ODR platform for consumer dispute resolution. If a consumer files a complaint regarding a product or a service, the manufacturer or the service provider are mandated to appear for conciliation, failing which a fine may be imposed. ⁶⁷

⁶² P Shank, ‘EServices-TAGS’ (*Federal Mediation and Conciliation Service*) <www.fmcs.gov/services/resolving-labor-management-disputes/eservices-tags/> accessed 19 August 2020.

⁶³ Facilitate Pro, ‘Transforming Dispute Mediation Through Technology: FMCS’ <<https://www.facilitate.com/article/11275-transforming-dispute-mediation-through-technology-fmcs>> accessed 5 September 2020

⁶⁴ ‘Concilianet’ (*Concilianet*) <<http://concilianet.profeco.gob.mx/Concilianet/inicio.jsp>> accessed 18 August 2020.

⁶⁵ ‘Participating Providers’ (*Concilianet*) <https://concilianet.profeco.gob.mx/Concilianet/proveedores_que_concilian.jsp> accessed 16 August 2020

			<p>conciliator.</p> <p>5. After the conciliation, the consumer can provide feedback on their level of satisfaction with the service received.⁶⁶</p>	
4.	Brazil: Consumidor.gov ⁶⁸	<p>Consumer disputes: Consumer can use the ODR platform to resolve disputes against companies registered with the Consumidor.gov.⁶⁹</p>	<p>The process for dispute resolution through Consumidor.gov is provided below:</p> <ol style="list-style-type: none"> 1. The consumer can file their complaint against the company registered on the ODR platform. 2. The company is given 10 days to analyse and respond to the complaint. 3. After the response from the company, the consumer is required to comment and classify the company's response, stating whether their complaint has been resolved or not resolved, within 20 days.⁷⁰ 	<p>Consumidor.gov platform is integrated with State and municipal consumer rights protection bodies, 'Procons' (an institution linked to the Secretariat of Justice and Defense of Citizenship, State of São Paulo), Courts of Justice, Office of Public Prosecutor, Public Defenders, Regulatory Agencies and the Ministry of National Consumer Secretariat. The guidelines for the platform provide data protection framework and prohibits activities such as defamation, harassment, etc.⁷¹</p>

⁶⁷ OECD, 'OECD Telecommunication and Broadcasting Review of Mexico' (2017) 206 <<https://www.oecd-ilibrary.org/docserver/9789264278011-8-en.pdf?expires=1599262418&id=id&accname=guest&checksum=5992870D7665A6851F7C569A14C4E424>> accessed 5 September 2020

⁶⁶ 'What is Concilianet?' (*Concilianet*) <<https://concilianet.profeco.gob.mx/Concilianet/comoconciliar.jsp>> accessed 16 August 2020

⁶⁸ 'Home' (*Consumidor*) <<https://consumidor.gov.br/pages/principal/?1597747439986>> accessed 16 August 2020.

⁶⁹ MJ Schmidt-Kessen, R Nogueira & M Cantero Gamito, 'Success or Failure?—Effectiveness of Consumer ODR Platforms in Brazil and in the EU' (*Journal of Consumer Policy*) 659-686 <<https://link.springer.com/article/10.1007/s10603-020-09448-y>> accessed 16 August 2020.

⁷⁰ 'About the Service' (*Consumidor*) <<https://consumidor.gov.br/pages/conteudo/sobre-servico>> accessed 16 August 2020

⁷¹ Consumidor.gov.br, 'Terms of Use of Consumidor.gov.br' <<https://www.consumidor.gov.br/pages/conteudo/publico/7/>> accessed 5 September 2020

				Further, ODR services under the platform are provided for free. ⁷²
5.	European Union: The European Online Dispute Resolution Platform by the European Commission.	Consumer disputes	<ol style="list-style-type: none"> 1. All online traders are mandated to provide a link to the ODR platform on their website. 2. Once a consumer files a complaint on the ODR platform the trader receives a notification. 3. The complainant may resolve the dispute directly on the platform or submit the complaint to an ODR service provider listed on the ODR platform. 4. Disputes can be resolved directly on the ODR platform - if the trader is willing to talk, then direct messages can be exchanged on the dashboard along with photographs to resolve the dispute. 5. Resolution of dispute through ODR service provider - The ODR service provider, listed on the platform offers efficient dispute resolution. Both parties are provided 30 days to agree on an ODR service provider to handle their case. 6. If the parties cannot decide upon the ODR service provider, the consumer is advised by the 	<p>The European Union has partnered with more than 750 ODR service providers across Europe to provide ODR services to the consumers.⁷⁴</p> <p>The ODR service providers are recognised and accredited by the sector-specific regulators of the member countries of EU. The ODR service providers are also required to undergo yearly audits and publish annual reports.⁷⁵</p>

⁷² Consumidor.gov.br, ‘Get to know your Consumidor.gov.br’ <<https://www.consumidor.gov.br/pages/conteudo/publico/1>> accessed 5 September 2020

			ODR platform to adopt other modes for dispute resolution. ⁷³	
6.	United Kingdom: UK Financial Ombudsman⁷⁶	Disputes between financial businesses and customers.⁷⁷	<p>The mechanism for dispute resolution⁷⁸ is provided below.</p> <ol style="list-style-type: none"> 1. The consumer is required to give the business an opportunity to resolve the claim themselves. The business should address the issue within 8-weeks.⁷⁹ If the business fails to resolve the issue, the consumer can file a complaint before UK Financial Ombudsman. 2. Initial assessment – Every complaint is assigned a case handler who reviews the complaint and shares their initial thoughts with both the sides. 3. Review by ombudsman – If the parties disagree with the initial assessment, they can ask ombudsman to conduct a formal review of the complaint. The ombudsman reviews all facts 	<p>The Financial Ombudsman is regulated as per the rules published by Financial Conduct Authority. The rules provide the procedure for handling the disputes, fee for the ombudsman services and jurisdiction of the ombudsman office.⁸⁰</p>

⁷⁴ European Commission, ‘Dispute Resolution Bodies’ <<https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>> accessed 5 September 2020

⁷⁵ European Commission, ‘Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee’ (2019) 7 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0425&from=EN>> accessed 21 October 2020

⁷³ European Commission, ‘Online Dispute Resolution’ <<https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>> accessed 5 September 2020

⁷⁶ ‘Home’ (*Financial Ombudsman Service*) <<https://www.financial-ombudsman.org.uk/>> accessed 18 August 2020

⁷⁷ Complaints we can help with (*Financial Ombudsman Service*) <<https://www.financial-ombudsman.org.uk/consumers/complaints-can-help>> accessed 19 August 2020

⁷⁸ ‘How we make decisions’ (*Financial Ombudsman Service*) <<https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>> accessed 18 August 2020.

⁷⁹ ‘Financial Ombudsman Service’ (*The European Timeshare Law Institute*) <<https://www.tetli-institute.com/financial-ombudsman-service>> accessed 19 August 2020.

⁸⁰ Financial Conduct Authority, ‘FCA Handbook’ <<https://www.handbook.fca.org.uk/handbook/DISP/INTRO/?view=chapter>> accessed 5 September 2020

			<p>and evidences and decides the case.</p> <p>4. Binding nature of the decision - The consumer has the option to withdraw from the process at any stage or decline the outcome of the process. However, if the consumer accepts the outcome, then it is legally binding on the businesses.</p>	
7.	South Korea: E-Commerce Mediation Committee (ECMC)	E-commerce and E-transactions disputes.	<p>The committee offers dispute resolution through different modes of communication, including face-to-face, online, written, and phone call.</p> <ul style="list-style-type: none"> 1. For face-to-face coordination, disputes are resolved with a mediator, the disputing parties, and an investigator present in one meeting place. It is considered more appropriate for complex disputes. 2. For online coordination, a party can access the online coordination centre (chatting.ecmc.or.kr) to resolve a dispute. 3. Written coordination is another means available to disputing parties who are unable to engage in a face-to-face dispute resolution process. This process is considered more appropriate for cases 	<p>The mediation proceedings under ECMC are regulated by the Framework Act on Electronic Documents and Commerce.⁸² The Act includes provisions for the appointment of mediators and conducting mediation proceedings.</p>

			<p>involving specific details and evidences.</p> <p>4. Phone call coordination involves phone calls between a mediator, the disputing parties, and an investigator for resolution of a dispute.⁸¹</p>	
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B. Court-annexed ODR Platforms

S. No.	Who is the service provider?	Nature of Disputes (eg: MSME, small value, e-commerce)	Mechanism for dispute resolution	Regulation of the ODR Platform	Additional information
1.	China: Zhejiang Province's Online Dispute Diversification Resolution Platform (ODDRP) ⁸³	E-commerce (sales, copyright, trademark, and small claims of internet financing), divorce and	<p>The platform offers a tiered model of dispute resolution:⁸⁵</p> <p>1. Legal Consultation provides intelligent online consultation through relevant laws and cases. Such consultations are then followed by manual consultations.</p>		As on January 2019, the success rate of mediation proceedings on the platform was 90.66 percent

⁸² Framework Act on Electronic Documents and Commerce, 1999 (ROK)

⁸¹ Yeong-Kwan Song, 'Korea's E-Commerce Policy Experiences' (Ministry of Strategy and Finance, Republic of Korea, 2016) 106

<[http://www.ksp.go.kr/api/file/download/11457?downloadFilename=Korea%20E-commerce%20Policy%20Experiences%20\(English\).pdf](http://www.ksp.go.kr/api/file/download/11457?downloadFilename=Korea%20E-commerce%20Policy%20Experiences%20(English).pdf)> accessed 5 September 2020

⁸³ Lifan Yang and Jianzheng Yang, 'Online Diversified Dispute Resolution Platform' <<https://www.yundr.gov.cn/>> accessed 16 August 2020

		maintenance, road accident liabilities, contractual disputes. ⁸⁴	<p>2. Online evaluation evaluates litigation risk by relying on data on judgments.</p> <p>3. Online Mediation offers professional mediation service by combining both online and offline channels.</p> <p>4. Online Arbitration is provided by 11 arbitration institution in the province. The full process from application to conclusion of arbitration is conducted online.</p> <p>5. Online Litigation provides litigation services like filing, evidence, hearing and sentencing through High People's Court of Zhejiang Province Legal Service Official Website.</p>		and the platform has successfully mediated 355,973 cases. ⁸⁶
2.	Singapore: Singapore State Courts e-negotiation and	Disputes before the Small Claims Tribunal (SCT), Community	<p>1. E-negotiation: Each party can make multiple offers (three in case of small value claims and five rounds in case of employment claims) in the negotiation</p>	<p>1. The Practice Directions issued by the State Courts have a dedicated section on using ADR avenues for</p>	

⁸⁵ Lifan Yang and Jianzheng Yang, 'The Drafting Idea of UNCITRAL ODR Rules and ODR Enforcement Practice in China' (30 November 2018) <<http://klri.re.kr:9090/bitstream/2017.oak/6480/1/The%20Drafting%20Idea%20of%20UNCITRAL%20ODR%20Rules%20and%20ODR%20Enforcement%20Practice%20in%20China.pdf>> 152-153, accessed 16 August 2020

⁸⁴ Alison Xu, 'Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China' (2016) 68 Information & Communications Technology Law <<https://www.tandfonline.com/doi/pdf/10.1080/13600834.2017.1269873>> accessed 16 August 2020

⁸⁶ ibid

	e-mediation platforms ⁸⁷	Disputes Claims Tribunal (CDCT) and Employment Claims Tribunal (ECT) ⁸⁸	<p>process. If no settlement is reached through such offers, the parties are directed to attend the consultation on the provided date and time.⁸⁹</p> <p>2. E-mediation: Parties may resolve their dispute online with the help of a court mediator. If both parties agree, then the respective tribunal schedules an online mediation session with parties and a court mediator.⁹⁰</p>	<p>dispute redressal. No amendments have been made to these sections to include ODR. However, there is a presumption of ADR for all cases i.e. the court encourages parties to consider the appropriate Court of Dispute Resolution (CDR) or ADR processes as a ‘first stop’ for civil disputes.⁹¹</p> <p>2. The settlement agreement require consent of the respective tribunal where the case was first filed.</p>	
3.	United States: New Mexico Courts Online	Debt & money due cases	<p>1. Parties are provided with a platform to negotiate and arrive to a settlement.</p> <p>2. Either party can request the help of a</p>		

⁸⁷ State Courts of Singapore, Community Justice and Claims Tribunal <<https://www.Statecourts.gov.sg/CJTS/#!/index1>> accessed 05 September 2020

⁸⁸ State Courts Singapore, ‘Filing a Claim at the Small Claims Tribunals: E-Negotiation’ <<https://www.Statecourts.gov.sg/cws/SmallClaims/Pages/e-Negotiation.aspx>> accessed 16 August 2020

⁸⁹ ibid

⁹⁰ State Courts of Singapore, Resolving an ECT Dispute Online <<https://www.Statecourts.gov.sg/cws/ECT/Pages/Resolving-an-ECT-Dispute-Online.aspx>> accessed 05 September 2020 and Sanjana Hattotuwa and Melissa Conley Tyler, ‘An Asian Perspective on Online Mediation’ (2005) 7 Asian Journal on Mediation Vol. 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=925159> accessed 16 August 2020

⁹¹ Singapore State Courts, ‘State Court Practice Directions’ (effective 20 July 2020) <<https://www.Statecourts.gov.sg/cws/Resources/Documents/Master%20PDs%20-%20effective%20PD%203%20of%202020.pdf>>

	Dispute Resolution Center ⁹²		<p>mediator for dispute resolution during the first 14 days of the process.</p> <p>3. Parties are given 30 days to reach a settlement. In case parties fail to settle the dispute within 30 days, the case is registered for trial⁹³</p> <p>4. If parties reach an agreement, a stipulated agreement is automatically prepared for the parties to sign. Parallelly, the ODR platform prepares a Stipulation of Dismissal to withdraw the case and automatically submits it to the court. The agreement reached between parties is legally binding and automatically enforceable.⁹⁴</p>		
4.	United States: Utah Courts	Small value claims (less than \$11,000)	<p>The court offers mandatory ODR service for small claims disputes unless a party to the dispute demonstrates that they will not be able to use the ODR system. The ODR is conducted in 4 stages</p> <p>1. Communication: Parties are encouraged to use the chat function to</p>		Over the course of one year, about 2,000 cases were resolved. The number of hearings per

⁹² ‘New Mexico Courts Online Dispute Resolution Center’ <<https://adr.nmcourts.gov/odr.aspx>> accessed 19 August 2020.

⁹³ New Mexico Courts, ‘New Mexico Courts Online Dispute Resolution (ODR)’ <https://www.ncsc.org/_data/assets/pdf_file/0028/39088/Modria-New-Mexico-Courts-Poster.pdf> accessed 19 August 2020

⁹⁴ New Mexico Courts, Online Dispute Resolution FAQs <<https://adr.nmcourts.gov/faq.aspx>> accessed 05 September 2020

		<p>arrive at a possible solution to the dispute. If parties reach a settlement, the facilitator assists them to generate a settlement agreement to be signed and filed. In case the settlement agreement is not signed and filed in 35 days, the case proceeds to the next stage.</p> <p>2. Facilitation and trial preparation: At this stage, the ODR facilitator assist parties in creating Trial Preparation Document outlining the claims and defences, as well as facts and evidences of the case.</p> <p>3. Adjudication: A judge is assigned to adjudicate the case. The trial must be scheduled within 7-21 days when conducted in person. If conducted online, the trial should begin as soon as the parties submit Trial Preparation Document.</p> <p>4. Post judgment: After the court issues an order, parties can access Post Judgement Section of the ODR platform for</p>	<p>case for those that do end up in court is down by 44% and court staff time per case is down by 45%. ⁹⁸</p>
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			<p>information regarding appeal, enforcement, etc.⁹⁵</p> <p>If the parties reach a settlement, the facilitator or either of the parties fills an automatically generated settlement agreement. The facilitator submits it to the court where it is entered in the record. The parties can decide whether the settlement should be entered as a judgment of the court.⁹⁶</p> <p>The parties also retain a complete de novo right of appeal to the District Court.⁹⁷</p>		
5.	United States: Ohio's Franklin County Municipal Court (FCMC)	Small value claims (up to \$6,000)	<ol style="list-style-type: none"> 1. The court offers a platform for conversation and negotiation between parties to reach a settlement. Parties can document their agreement when a settlement is reached through this negotiation process. If there is no agreement, either party can terminate the 		The FCMC's ODR has shown that an increase in mediation reduces the number of default

⁹⁸ JTC Resource Bulletin, ‘Case Studies in ODR for Courts’ (28 January 2020) <https://www.ncsc.org/__data/assets/pdf_file/0020/16517/2020-01-28-odr-case-studies-v2-final.pdf> accessed 19 August 2020.

⁹⁵ Utah Online Dispute Resolution Pilot Project, ‘Technical Assistance Grant: Final Report’(December 2017) <<https://ncsc.contentdm.oclc.org/digital/api/collection/adr/id/63/download>> accessed 05 September 2020

⁹⁶ Bob Ambrogi, ‘Utah Courts Begin Unique ODR Pilot for Small Claims Cases Tomorrow’ *LawSites* (04 September 2018) <<https://www.lawsitesblog.com/2018/09/utah-courts-begin-unique-odr-pilot-small-claims-cases-tomorrow.html>> accessed 05 September 2020

⁹⁷ Vivi Tan, ‘Online Dispute Resolution for Small Civil Claims in Victoria: A New Paradigm in Civil Justice’ (August 30, 2019) 24 Deakin L Rev 1 <<https://ssrn.com/abstract=3452952>> accessed 19 August 2020.

			<p>negotiation and pursue other legal options.⁹⁹</p> <p>2. Settlement reached through the ODR platform are not automatically enforceable. The parties can enforce the settlement through court by converting it into a written agreement and submitting it to the court. It can also be used as a guide that will prevent future disagreements or lawsuits. This agreement can also be amended in the future with the help of a mediator.¹⁰⁰</p>		<p>judgments or negative case dispositions (i.e. cases that still require further judicial intervention).¹⁰¹</p>
6.	Canada: British Columbia Civil Resolution Tribunal ¹⁰²	<ul style="list-style-type: none"> 1. Motor vehicle injury disputes up to \$50,000, 2. Small claim disputes up to \$5,000, 3. Strata property (condominium) disputes of any amount, 	<p>The entire process of dispute resolution is conducted online.</p> <p>1. Negotiation - Once an application is accepted, parties may use the CRT platform to negotiate and resolve some or all of the issues.</p> <p>2. Facilitation - In this process a Neutral is appointed to clarify the claims of the parties and facilitate mediation to reach a</p>	<ul style="list-style-type: none"> 1. The Civil Resolution Tribunal has been established under the Civil Resolution Tribunal Act.¹⁰⁶ 2. Agreements arrived at through negotiation and facilitation can be turned into a ‘consent resolution order’. Consent Resolution Order is enforceable 	

⁹⁹ Online Dispute Resolution Franklin County Municipal Court, ‘Frequently Asked Questions’, <<https://sc.courtinnovations.com/OHFCMC/help>> accessed 19 August 2020.

¹⁰⁰ ibid

¹⁰¹ FCMC Data Project, ‘About the Court’ <<https://sites.google.com/view/fcmcdataproject/about>> accessed 19 August 2020.

¹⁰² ‘Home’ (*Civil Resolution Tribunal*) <<https://civilresolutionbc.ca/>> accessed 18 August 2020.

		<p>and</p> <p>4. Societies and cooperative associations disputes of any amount.¹⁰³</p>	<p>settlement.</p> <p>3. Tribunal Decision Process - If the parties are unsuccessful in resolving disputes, an independent CRT member adjudicates the dispute.¹⁰⁴</p> <p>The decisions of taken by the CRT members are binding and can be enforced like a court order.¹⁰⁵</p>	<p>through courts like a court order.¹⁰⁷</p>	
7.	<p>United States: Michigan Courts MI-Resolve¹⁰⁸</p>	Civil Disputes	<p>The processes for resolution of disputes through MI Resolve platform includes following steps:¹⁰⁹</p> <ul style="list-style-type: none"> - Parties are required to register with their contact details to resolve the dispute on the MI-Resolve platform. 	<p>Mediators are trained through programs approved by the Michigan Supreme Court Administrative Office.¹¹⁰</p>	<p>About 80% of the people who use mediation to resolve a dispute reach an agreement they</p>

¹⁰⁶ Civil Resolution Tribunal Act 2012 (CA) <https://www.bclaws.ca/civix/document/id/complete/statreg/12025_01> accessed 19 August 2020.

¹⁰³ ibid

¹⁰⁴ ‘Tribunal Decision Process’ (*Civil Resolution Tribunal*) <<https://civilresolutionbc.ca/tribunal-process/tribunal-decision-process/>> accessed 16 August 2020

¹⁰⁵ ‘Tribunal Decision Process’ (*Civil Resolution Tribunal*) <<https://civilresolutionbc.ca/tribunal-process/tribunal-decision-process/>> accessed 16 August 2020

¹⁰⁷ The CRT Process <<https://civilresolutionbc.ca/faq/#we-reached-an-agreement-about-the-dispute-what-happens-next>> accessed 20 October 2020

¹⁰⁸ ‘Resolve a Dispute Online with MI-Resolve’ (*Courts of Michigan*) <<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/MI-Resolve.aspx>> accessed 19 August 2020.

¹⁰⁹ Dunrie Greiling, ‘Michigan’s MI-Resolve ODR an Outside the Box Strategy (Transcript)’ (*Matterhorn*, 26 May 2020) <<https://getmatterhorn.com/michigans-mi-resolve-odr-an-outside-the-box-strategy-transcript/>> accessed 21 October 2020

¹¹⁰ ‘Resolve a Dispute Online with MI-Resolve’ (*Courts of Michigan*) <<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/ODR/Pages/MI-Resolve.aspx>> accessed 19 August 2020.

			<ul style="list-style-type: none"> - If the parties have not filed the case in the court, they are provided seven days to negotiate and reach a settlement. - If the dispute is pending in court, mediator is assigned immediately. If resolution cannot be reached through negotiation, a mediator is appointed. - The ODR platform provides services like direct access to legal information, document sharing facility, asynchronous communication, and video conferencing for efficient resolution of disputes. 		are comfortable with. ¹¹¹
8.	United Kingdom: Money Claim Online ¹¹²	Money claims below £100,000	<p>The following procedure followed by Money Claim Online to resolve disputes:¹¹³</p> <ol style="list-style-type: none"> 1. The claimant is required to register with the platform and issue claim against the defendant/s through Money Claim Online. 2. Defendant/s are provided 14 days from 	The procedure for Money Claim Online is governed through Practice Direction 7E. ¹¹⁴	

¹¹¹ Dispute Resolution Center, ‘15th District Court Small Claims Mediation Program Description Using MI-RESOLVE’ <<https://www.a2gov.org/departments/15D/Documents/15dc-DRC-MI-Resolve-Information-Sheet.pdf>> accessed 14 October 2020

¹¹² HM Courts & Tribunal Service, ‘Money Claim Online (MCOL) – User Guide for Claimants’ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762843/mcol-userguide-eng.pdf accessed 21 October 2020

¹¹³ HM Courts & Tribunal Service, ‘Money Claim Online (MCOL) – User Guide for Claimants’

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762843/mcol-userguide-eng.pdf accessed 21 October 2020

¹¹⁴ CPR PD 7E (Money Claim Online)

			<p>the date of service to file a response to the claim.</p> <p>3. If the defendant/s admits the claim, the claimant can proceed to request judgment online.</p> <p>4. If the defendant/s has defended the claim, the case is referred to mediation after the consent of the parties. Alternatively, the dispute is filed before a court for its resolution.</p> <p>5. After a settlement is reached between parties, they can file request for online or manual judgment.</p>		
9.	UAE: Dubai International Finance Centre Courts (DIFC) ¹¹⁵	Commercial disputes, filings, wills etc.	<p>1. The DIFC Courts are manned by judges who are appointed by the Government.</p> <p>2. The courts function as courts of first instance and appeal.</p> <p>3. The DIFC Courts also work as supervisory courts.</p> <p>4. Hearings are being held through teleconferencing and filing is done through ‘e-Registry’. The will service</p>	Arbitration is conducted based on DIFC Arbitration law based on the UNCITRAL model.	The first half of 2020 the courts saw a 96% year on year increase in the number of cases filed. ¹¹⁶

¹¹⁵ About the DIFC Courts (Dubai Internal Finance Centre Courts) <<https://www.difccourts.ae/about-courts-2/>> accessed September 5 2020.

¹¹⁶ Press Releases, ‘DIFC Courts leverages digital infrastructure to accommodate rapid rise in commercial claims’ (DIFC Courts, 24 August 2020)

<<https://www.difccourts.ae/2020/08/24/difc-courts-leverages-digital-infrastructure-to-accommodate-rapid-rise-in-commercial-claims/>> accessed September 5 2020.

			centre facilitates the drafting of wills online.		
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C. Private ODR Platforms

S. No.	Name of the platform and organisation introducing the platform	Industry and types of disputes	Mechanism for dispute resolution	No. of disputes resolved
1.	Europe: YOUSTICE ¹¹⁷	Consumer disputes The service has been expanded to include travel, gambling, and car-rental disputes.	The ODR platform follows a two-level dispute resolution mechanism: (i) Direct negotiations between traders and consumers (ii) Submission to resolve: In case of failure of step (i), parties approach an ADR platform that assigns the case to a neutral third party.	The platform has partnered with Nubelo, an online directory, and offers services to over 300,000 service providers. ¹¹⁸

¹¹⁷ Homepage (Youstice) <<https://www.youstice.com/en/>> accessed September 5 2020.

¹¹⁸ Youstice News, ‘Youstice - Youstice Partners With Nubelo, Offering 300,000 Service Providers Fast And Efficient Customer Care Tool’ (Youstice)

<<https://www.youstice.com/en/news/3191-youstice-partners-with-nubelo-offering-300-000-service-providers-fast-and-efficient-customer-care-tool>> accessed September 5 2020.

2.	United States: PayPal	E-commerce, consumer disputes	<p>Follows a two-tiered dispute resolution system.¹¹⁹</p> <p>(i) Dispute: The buyer or the seller can institute the dispute. The time period offered for resolution of the dispute is 20 days. Until the dispute is resolved, PayPal puts a hold on the transaction funds.</p> <p>(ii) Claim: In case the dispute has not been resolved within 20 days, either of the parties can escalate the dispute to a claim. PayPal will then intervene, investigate the case, and offer a solution. A limited appeals process follows where the seller is the only party allowed to appeal under three circumstances: (1) item is returned to seller, but not in the same condition as the buyer first received it; (2) no item was returned at all; or (3) wrong item was returned.</p>	
3.	United States: eBay	E-commerce, consumer disputes	<p>The platform developed by eBay follows five steps for efficient dispute redressal:</p> <ol style="list-style-type: none"> 1. The parties are required to file the dispute at the Resolution Centre (RC). 2. RC confirms whether 	In 2010, the platform resolved approximately 60 million cases a year. ¹²⁰

¹¹⁹ Mullineaux T, ‘Library Guides: Online Dispute Resolution: Companies Implementing ODR’ <<https://libraryguides.missouri.edu/c.php?g=557240&p=3832247>> accessed 27 August 2020.

¹²⁰ Colin Rule, ‘Using Technology to Manage High Volume Caseloads: The eBay/PayPal Experience’ (National Archives, 2010) <<https://www.archives.gov/files/ogis/events-presentations/acus-colin.pdf>> accessed 25 August 2020.

			<ul style="list-style-type: none"> - The dispute falls within eBay's coverage for a money-back guarantee - The buyer selected 'pay now' - Asserted the complaint within 30 days of estimated or actual date of delivery <ol style="list-style-type: none"> 3. RC gathers the proposed resolution and encourages both parties to resolve the dispute via the messaging facility on eBay. 4. RC re-evaluates in case of failure to resolve within 3 days of step (3). 5. Resolution Services team contacts the seller and informs the buyer if they are eligible for a refund. Refunds are enforced through chargebacks. 	
4.	United States: Smartsettle	Family disputes, insurance disputes, real estate disputes, small claims disputes and disputes regarding domain names.	Smartsettle provide asynchronous communication facility to resolve disputes through negotiation. ¹²¹ It involves three steps: <ol style="list-style-type: none"> 1. Modelling the problem, 2. Identifying preferences and trade-offs, and 3. Providing optimal solution through algorithm.¹²² 	
5.	United States:	Monetary Claims	The platform uses blind bidding to resolve monetary disputes between the parties. The online blind bidding service offered	In 2014, Cybersettle has

¹²¹ University of Missouri Libraries, 'Online Dispute Resolution: Other ODR Software' <<https://libraryguides.missouri.edu/c.php?g=557240&p=3832248>> accessed 5 September 2020

¹²² Smartsettle, 'Ways to use Smartsettle' <<https://info.smartsettle.com/resources/articles/ways-to-use-smartsettle/>> accessed 31 August 2020

	Cybersettle		by the platform requires the disputants to submit the highest and lowest settlement figures acceptable to them. Based on this information, the platform provides optimal resolution for both parties. ¹²³	facilitated settlement of \$1.9 billion in claim-based transactions. ¹²⁴
6.	Australia: Australian Disputes Centre ¹²⁵	The platform is a non-profit that caters to commercial entities, Government and individuals. It is not dedicated to a specific sector.	<p>The centre offers efficient dispute resolution through mediation, arbitration, expert determination, and conciliation. It also provides access to custom designed virtual courtrooms for better dispute resolution experience.</p> <p>Arbitration: One can register and send an e-notification online to the other party. After the other party serves a notice of response, the parties try to resolve the dispute amongst themselves. If the same fails, then a Neutral is appointed by the parties based on a list provided by ADC. The final award is binding on the parties.</p>	
7.	Canada: Platform to Assist in the Resolution of	Consumer disputes	<ol style="list-style-type: none"> 1. The platform encourages the consumer to settle their dispute with the merchant on their own through negotiation. If no settlement is reached within 20 days 	Dispute settlement rate of 70% and user satisfaction

¹²³ Jeremy Barnett and Philip Treleaven, ‘Algorithmic Dispute Resolution—The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies’ (2018) 61 *The Computer Journal* <<https://academic.oup.com/comjnl/article/61/3/399/4608879>> accessed 31 August 2018

¹²⁴ Elizabeth B. Juliano, ‘The Evolution, Benefits, and Challenges of Alternative Dispute Resolution and Online Dispute Resolution’ (*LMI*, 10 June 2019) <<https://www.lmiweb.com/article/evolution-benefits-and-challenges-alternative-dispute-resolution-and-online-dispute>> accessed 5 September 2020

¹²⁵ Homepage (ADC) <<https://www.disputescentre.com.au/>> accessed 5 September 2020.

	Litigation Electronically (PARLe) ¹²⁶		<p>from the start of negotiation, then a mediator is automatically appointed to intervene in the dispute resolution process. The consumer and trader can request for a mediator soon after submission of proposal and counter-proposal as well.</p> <p>2. Consumers are provided with resource tools such as case law summaries and explainers on statutes to help them through the process of dispute resolution.</p>	rate of 90% ¹²⁷
8.	UAE: Dubai Chamber of Commerce and Industry ¹²⁸	Primarily includes disputes around non-payment and defects in goods	<ol style="list-style-type: none"> 1. To initiate the dispute resolution process, one of the parties must be a member of Dubai Chamber of Commerce and Industry 2. Applicants can submit their mediation requests and relevant documents followed by payment 3. They also have the option to track new and previous applications electronically 4. The platform offers a smart mediation application, through which users can submit applications, upload documents and pay the prescribed fee. It also enables the user to keep track of their application. 	

¹²⁶ About The Office (PARLe)<<https://www.opc.gouv.qc.ca/en/opc/parle/description/>> accessed 05 September 2020.

¹²⁷ ibid

¹²⁸ Dubai Chamber of Commerce and Industry, ‘What we do’ <<https://www.dubaichamber.com/what-we-do/legal-and-policy-support/legal-services>> accessed 16 October 2020

D. Brief Analysis of the Trends

The above case studies highlight some important trends emerging across the globe which serve as good reference points for India. The three major themes for these trends include:

- 1. Structure and model of ODR**
- 2. Role of private sector in ODR**
- 3. Good practices in ODR**

- 4. Structure and models of ODR**

a) Tiered dispute resolution models for ODR

To maximise the benefits of ODR and enable effective resolution of disputes, institutions across the globe have adopted multi-tiered dispute resolutions models. These tiered models provide disputing parties with an alternative ODR solution when the prior ODR process fails to achieve a settlement. However, the components of these tiered models vary across the ODR institutions. For example, the COVID-19 related scheme in Hong Kong offers a three-tiered model for dispute resolution where the disputing parties can negotiate, mediate and then arbitrate to effectively resolve the dispute. Alternatively, the Online Dispute Diversification Resolution Platform (ODDRP) at Zhejiang, China provides five tier comprehensive model for dispute resolution, where the platform offers online consultation, online evaluation, mediation both online and offline, online arbitration and online litigation. These models filter the disputes through multiple ODR processes offer an end-to-end solution to resolve the disputes. The types of disputes which are being resolved are most likely to govern which tiered model will be adopted.

b) Hybrid models of dispute resolution

The goal of ODR tools is not to completely supplant but to supplement existing models of dispute resolutions. For example, the Online Dispute Diversification Resolution Platform (ODDRP) at Zhejiang has integrated many ICT tools such as artificial intelligence, cloud computing, and other information technologies into its ODR mechanism. It has also in parallel introduced ICT innovations to optimise traditional offline resources and new online resources to improve docking mechanism in litigation and alternative dispute resolution mechanisms. This allows for synergetic functioning of ODR platforms with existing offline systems. With the help of such synergetic systems, the platform allows parties to both mediate online and mediate in person for the convenience of the parties.

c) Primacy of Consumer Disputes Redressal in ODR

Consumer disputes have been identified as one of the most suitable categories of disputes where ODR can be adopted. To this end, dedicated Government-run ODR platforms have been developed by the Government of Brazil, Mexico, European Commission etc. to provide efficient consumer dispute redressal.

In the private sector, companies like PayPal and eBay have been the pioneers in instituting in-house mechanisms and technology solutions for resolving customer disputes. Further, a large

segment of private ODR platforms are primarily, if not exclusively, dedicated to resolving consumer disputes.

d) ODR is not limited to e-ADR

The ODR initiatives taken by the governments and the judiciary are currently limited to transitioning offline ADR processes onto an ODR platform. However, in the private sector, instances such as Smartsettle and Cybersettle have moved onto innovative mechanisms such as blind-bidding, algorithmic resolutions, which indicate that ODR has as much potential for growth and expansion through technological innovations in this field.

5. Role of private sector

a) Rise in private players in ODR

Private enterprises, especially those working in e-commerce and other internet-based sectors, are increasingly resorting to ODR to save on time and money in resolving disputes that are arising during the course of their business. While some of these private enterprises, such as eBay and PayPal, have incorporated ODR mechanisms within their own structure, others have partnered with private ODR platforms for these services. As a logical consequence to this demand, several private ODR service providers have been established across the world.

b) Collaboration with private actors can be beneficial

Given the initial requirement for technical expertise, many Government run and court-annexed ODR platforms have partnered with private ODR service providers and have incorporated off-the-shelf technology solutions to establish a comprehensive ODR framework.

Some of the notable examples of this include:

- i. The e-Mediation platforms in China were built in collaboration with Sina Corporation, a Chinese technology company,
- ii. Franklin County Municipal Court in Columbus, Ohio (US) has launched an ODR service based on Matterhorn ODR platform to provide efficient dispute redressal.¹²⁹
- iii. New Mexico Courts Online Resolution Center (US) is powered by Modria to resolve its ODR disputes,¹³⁰ and
- iv. Federal Mediation and Conciliation Services uses technology solutions developed by eRoom, mimio, FacilitatePro and NetMeeting¹³¹ to support their ODR platform.

¹²⁹ Alex Sanchez and Paul Embley, 'Access Empowers: How ODR Increased Participation and Positive Outcomes in Ohio' (*NCSC Trends in State Court*)
<https://www.ncsc.org/__data/assets/pdf_file/0019/42166/access_empowers_Sanchez-Embley.pdf> accessed 5 September 2020

¹³⁰ Business Wire, 'New Mexico Works to Improve Access to Justice with Tyler Technologies' Modria Solution' (*Bloomberg*, 3 June 2019) <<https://www.bloomberg.com/press-releases/2019-06-03/new-mexico-works-to-improve-access-to-justice-with-tyler-technologies-modria-solution>> accessed 5 September 2020

6. Good Practices in ODR mechanisms

a) Education and evaluation are key stages of ODR

While ODR is often seen to be an online version of ADR, it has a lot more to offer. The first stage of the Utah Small Claims Court ODR process is called ‘Education and Evaluation’. The stage is intended to inform users about their claims and potential defences. Singapore Mediation Centre provides for neutral evaluation of the case as a mechanism separate from, and in addition to, arbitration and mediation. Similarly, Australian Disputes Resolution Centre conducts expert determination where parties present their arguments and evidences to a practitioner who possesses specialist qualifications or experience in the subject matter. These evaluations create better awareness among the disputing parties about their legal position and expedite the dispute resolution process. Educating both the plaintiff and the defendants regarding the methods of dispute resolution, providing detailed Frequently Asked Questions (FAQs), chat and negotiation features, and document preparation can help individuals navigate the dispute resolution process better.

b) Technological solutions need to be geared towards cyber security

Confidentiality of proceedings is one of the primary concerns for companies while using independent ODR platforms for dispute resolution. It is probably for this reason that many private companies use in-house mechanisms for maintaining control over their security and confidentiality. Cyber security and safety of the documents submitted to the platform and during virtual proceedings, are some of basic requirements that independent platforms must ensure to generate trust in the ODR processes.

c) Important to have clarity on the enforcement of final agreements

Determining methods of enforceability of ODR agreements has time and again been cited as a key challenge that an ODR framework will have to resolve. However, there is no one size fits all model for enforcement. Three key models have emerged.

- i. **Not automatically enforceable:** Successful resolutions under the Ohio’s Online Dispute Resolution Franklin County Municipal Court are not automatically enforceable. These resolutions are enforceable only when the disputing parties document the ODR agreement in writing and submit it to the court for enforceability. Alternatively, parties can also use the agreement as a guiding framework to prevent future disagreements or lawsuits.¹³²
- ii. **Enforceable on consent of the court:** In the Singapore State Courts ODR programs, agreements require the consent of the court in the form of consent orders. If the

¹³¹ Facilitate Pro, ‘Transforming Dispute Mediation Through Technology: FMCS’
<<https://www.facilitate.com/article/11275-transforming-dispute-mediation-through-technology-fmcs>> accessed 5 September 2020

¹³² ‘Online Dispute Resolution Franklin County Municipal Court’
<<https://sc.courtinnovations.com/OHFCMC/help>> accessed 5 September 2020

Tribunals do not approve an application for a consent order, parties are required to attend the consultation at the Tribunals.

- iii. **Automatically enforceable:** In the New Mexico Courts, United States of America if parties reach an agreement, a stipulated agreement is automatically prepared and signed online by both parties. This agreement is automatically submitted to the court and becomes legally binding and enforceable.¹³³

As seen above, there are different models of collaboration between the Judiciary and ODR platforms; varying levels of regulations and standards; and evolving best practices across the globe. This thorough evaluation of trends highlights the need for a customised ODR framework for India, which while learning from the experiences across the world, provides for the unique opportunities and limitations in India.

d) Open principles to guide the developments in ODR

At present we are witnessing rapid growth of ODR around the world. The adoption of ODR requires sustained efforts to promote and improve the ODR processes. To this end, there is a need for rapid development and scholarship in both theoretical and practical aspects of ODR.

National Centre for Technology and Dispute Resolution (NCTDR), University of Massachusetts Amherst has been leading this movement with constant efforts to develop the processes and systems that forms the basis of ODR. In 2017, fellows of NCTDR created International Council for Online Dispute Resolution to promote ODR and promulgate standards and best practices for ODR.¹³⁴ ICODR has since published ethical standards for design, structure, practices, and implementation of ODR,¹³⁵ ODR training standards,¹³⁶ video mediation guidelines,¹³⁷ and video arbitration guidelines¹³⁸ to guide the development of ODR worldwide. Even though these open standards are not binding, it encourages ODR platforms and ODR service providers to incorporate these standards and best practices for efficient functioning. At the same time, this approach aims to stimulate continuous innovations in ODR.

¹³³ New Mexico Courts, ‘ADR Path to Settlement’ <<https://adr.nmcourts.gov/faq.aspx>> accessed 5 September 2020

¹³⁴ ICODR, ‘About ICODR’ <<https://icodr.org/sample-page/>> accessed 14 October 2020

¹³⁵ ICODR, ‘ICODR Standards’ <<https://icodr.org/standards/>> accessed 14 October 2020

¹³⁶ ICODR, ‘ICODR ODR Training Components’ <<https://icodr.org/guides/training.pdf>> accessed 14 October 2020

¹³⁷ ICODR, ‘ICODR Video Mediation Guidelines’ <<https://icodr.org/guides/videomed.pdf>> accessed 14 October 2020

¹³⁸ ICODR, ‘ICODR Video Arbitration Guidelines’ <<https://icodr.org/guides/videoarb.pdf>> accessed 14 October 2020

IV. Present Status in India

As highlighted in the section above, the ODR ecosystem has witnessed an exponential growth across the world in the last two decades.¹³⁹ India, though in its nascent stages of ODR development, has shown early promise in ODR integration at all three levels - the Judiciary, Government and the private sector. Some of the early developments have come to be of great value during the unexpected COVID-19 induced lockdown where the functioning of brick and mortar courts and dispute resolution bodies came to be severely restricted.¹⁴⁰ For instance, in April 2020, the Supreme Court was able to list 357 matters for hearing, which amounts to only 2.48 percent of the number of cases listed before the Supreme Court in April 2019 (14381 cases).¹⁴¹ Therefore, while the courts and to some extent, ADR centres, have been quick to adopt ICT tools, a lot more needs to be done to ensure that the systems do not come to a grinding halt..

The coming section analyses the present status of ODR in India and where we are now with respect to integration of technology into our dispute resolution system. It analyses the preparedness of the Government in incorporating ODR, the legislative position vis-a-vis ODR, acceptance of ODR by the judiciary and the rapid innovations in the private sector.

A. Role of the Executive

1. Adoption of ODR by Government Departments and Ministries

In the recent past, Ministries and Departments within the Government have acknowledged the potential of ODR and launched programmes that help resolve disputes in the sectors regulated by them. Some of such instances are identified below:

a) National Internet Exchange of India's (NIXI) Domain Dispute Settlement Mechanism

National Internet Exchange of India (NIXI) have adopted .In Domain Name Dispute Resolution Policy (INDRP), which sets out the terms and conditions for resolving a dispute arising out of the registration and use of the .in Internet Domain Name.¹⁴² Under its procedure, complaints can be filed online and disputes are decided by an arbitrator/s on the

¹³⁹ Text in ch III p 24

¹⁴⁰ Supreme Court of India, 'Circular' (March 26, 2020) <https://main.sci.gov.in/pdf/cir/26032020_134544.pdf> accessed 2 October 2020

¹⁴¹ Shreya Tripathy and Tarika Jain, 'Caseload During COVID-19 (April 2020): A Look at the Numbers' (Vidhi Centre for Legal Policy 2020) <<https://vidhilegalpolicy.in/research/supreme-courts-caseload-during-covid-19-april-2020-a-look-at-the-numbers/>> accessed 23 September 2020

¹⁴² National Internet Exchange of India, '.In Domain Name Dispute Resolution Policy' (16 September 2020) <<https://www.registry.in/IN%20Domain%20Name%20Dispute%20Resolution%20Policy%20%28INDRP%29>> accessed 14 October 2020

basis of written submissions.¹⁴³ The procedure does not require any in-person hearings to resolve the dispute.

b) Initiative by Department of Justice:

In 2017, the Department of Justice initiated the discourse on the use of ODR to address disputes involving Government bodies by releasing a list of ODR platforms and urging Government Departments to resolve their disputes online.¹⁴⁴

c) SAMADHAAN Portal:

In October 2017, Ministry of Micro, Small and Medium Enterprises launched the **SAMADHAAN portal**, with facilities for e-filing and online settlement of Micro and Small Enterprises' (MSE) dues against Public Sector Enterprises, Union Ministries, Departments and State Governments,¹⁴⁵ which accounts for nearly 94 percent of the dues payable to MSEs.¹⁴⁶ The platform can also be used by MSEs to file payment due applications against private enterprises, proprietorship and others in State specific MSE Facilitation Councils. Since its launch, SAMADHAAN portal has assisted disposal of 3982 payment due complaints worth Rs. 721.59 Crores.¹⁴⁷

d) RBI's ODR Policy on Digital Payments

In 2019, the Nandan Nilekani led **High level Committee on Deepening Digital Payments**, established by Reserve Bank of India recommended the setting up of a two-tiered ODR system to handle complaints arising out of digital payments.¹⁴⁸ The Committee recommended that the first tier of such ODR system should be based on an automated system driven by machine learning and the second tier should be based on human intervention. It also recommended providing disputing parties with an option to appeal against the outcome of ODR process to an ombudsman body.

As a consequence, on 6 August 2020 through a Statement on Developmental and Regulatory Policies the RBI introduced ODR for resolving customer disputes and grievances pertaining

¹⁴³ INDRP Rules of Procedure, Rule 11 <<https://www.registry.in/INDRP%20Rules%20of%20Procedure>> accessed 14 October 2020 and 'ODR Opportunities in India (Agami and Sama, December 2019) 6 <https://static1.squarespace.com/static/5bc39a39b7c92c53642fc951/t/5e13302088456a2a6f7e4c35/1578315811604/Updated_ODR+Opportunities+in+India.pdf> accessed 14 October 2020

¹⁴⁴ Department of Justice, 'Online Dispute Resolution through Mediation, Arbitration and Negotiation' (2017) <<https://doj.gov.in/sites/default/files/firm%20details.pdf>> accessed 24 September 2020

¹⁴⁵ PIB Delhi, 'Major policy initiatives and achievements of the Micro, Small & Medium Enterprises (MSME) in 2017' (PIB, 21 December 2017) <<https://pib.gov.in/PressReleseDetail.aspx?PRID=1513711>> accessed 24 September 2020

¹⁴⁶ Subhayan Chakraborty, 'Govt accounts for nearly 94% of Rs 1,819 cr dues payable to MSMEs: CII poll' (*Business Standard*, 19 May 2020) <https://www.business-standard.com/article/economy-policy/govt-accounts-for-nearly-94-of-rs-1-819-dues-payable-to-msmes-cii-poll-120051801158_1.html> accessed 27 September 2020

¹⁴⁷ Ministry of Micro, Small and Medium Enterprises, 'Cases filed in MSE Facilitation Council (MSEFC) after 30/10/2017 (i.e. after Launch of MSME-Samadhaan)' <https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx> accessed 2 October 2020

¹⁴⁸ Committee on Deepening of Digital Payments, 'Report of the High Level Committee on Deepening of Digital Payments' (May 2019) 97 <<https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/CDDP03062019634B0EEF3F7144C3B65360B280E420AC.PDF>> accessed 28 September 2020

to digital payments, using a system driven and rule-based mechanism with zero or minimal manual intervention.¹⁴⁹ Subsequently, Payment System Operators (PSOs) have been advised to put in place ODR processes for resolving disputes involving failed transactions.¹⁵⁰ Over time the RBI aims to extend the ambit of ODR to cover other kinds of disputes and grievances as well.¹⁵¹

e) Draft National e-Commerce Policy:

In February 2019, the Department for Promotion of Industry and Internal Trade (DPIIT) released the Draft National e-Commerce Policy. The policy suggests the use of an electronic grievance redressal system including dissemination of compensation electronically for disputes arising from e-commerce.¹⁵² The draft policy states, “*It is only rational that a transaction completed online should have an online system of grievances redressal which will, in turn, boost consumer confidence*”.¹⁵³

f) Initiatives by the Department of Consumer Affairs:

The Department of Consumer Affairs, in 2005, launched the **National Consumer Helpline (NCH)** to disburse information on issues pertaining to consumers and promote consumer welfare. In August 2016, the Department of Consumer Affairs extended this service with the launch of **Integrated Consumer Grievance Redressal Mechanism (INGRAM)** initiative to offer a platform for consumers to get their complaints and grievances addressed directly by the companies who have voluntarily partnered with NCH.¹⁵⁴ To this end, the Department has also launched a “Consumer App” to solicit complaints from the consumers and provide prompt redressal.¹⁵⁵ The **Consumer Protection (E-Commerce) Rules, 2020** further strengthens this by encouraging e-Commerce entities to partner with National Consumer Helpline initiative on a ‘best efforts’ basis.¹⁵⁶

These instances are examples that even though ODR might be in its nascent stages of development in India, some Government Departments have started leading the way in ODR

¹⁴⁹ Reserve Bank of India, ‘Statement on Developmental and Regulatory Policies’ (06 August 2020) <https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=50176> accessed 14 October 2020

¹⁵⁰ Reserve Bank of India, ‘Online Dispute Resolution (ODR) System for Digital Payments (RBI/2020-21/21 dated 06 August 2020) <https://m.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11946> accessed 14 October 2020

¹⁵¹ ibid

¹⁵² Department of Promotion of Industry and Internal Trade, ‘Draft National e-Commerce Policy’ (2019) <https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf> accessed 28 September 2020

¹⁵³ ibid

¹⁵⁴ Department of Consumer Affairs, ‘Annual Report 2019’ (2019) 41 <https://consumeraffairs.nic.in/sites/default/files/file-uploads/annualreports/1596167686_Annual%20Report%202019-20.pdf> accessed 27 September 2020

¹⁵⁵ ibid

¹⁵⁶ Consumer Protection (E-Commerce) Rules 2020, r 4(7)

integration. The e-assessment of the Income Tax Department¹⁵⁷ and the e-challan¹⁵⁸ system introduced by the Ministry of Road Transport & Highways are some key examples of how technology has been used to for easier containment and resolution of disputes. Moving forward, such sustained efforts by the Government will be required to assist growth of ODR in India. As explained below, one such area that can see an immediate benefit from ODR is ‘Government litigation’.

2. Underutilised potential of ADR in reducing Government litigation

Government litigation contributes to about 46 percent of all litigation in the country.¹⁵⁹ Litigation by public enterprises and Government Departments contributes not only to the court’s burden, but also imposes significant costs on the public exchequer.

In 2017-18, the expenditure incurred by the Central Government in contesting cases in the Supreme Court alone was Rs. 47.99 Crore.¹⁶⁰ According to the Legal Information Management and Briefing System (LIMBS) portal, as on 23 September 2020, the Government has 5,80,132 cases pending in different courts across the country. Given the numbers, it is worth considering any small impact that ODR may have on Government litigation.

Apart from the initiative by the Department of Justice highlighted above, there have been a few other attempts in the past to tackle Government litigation. In 1991, the Government had set up the High Powered Committee with an objective to prevent litigation by offering in-house conciliation services.¹⁶¹ However, the Committee was decommissioned in 2011 for failing in its objective to prevent litigation and causing delays in filing cases.¹⁶² The Government has also established the ‘Permanent Machinery of Arbitrators’ in the Department of Public Enterprises to expedite the settlement of commercial disputes between Public

¹⁵⁷ Divya Baweja, ‘How E-assessment makes dealing with the tax department a smooth affair’, *Money Control* (20 July 2020) <<https://www.moneycontrol.com/news/business/personal-finance/how-e-assessment-makes-dealing-with-the-tax-department-a-smooth-affair-4795041.html>> accessed 04 October 2020

¹⁵⁸ Ministry of Road Transport & Highways, Government of India ‘E-Challan – Digital Traffic/Transport Enforcement Solutions’ <<https://echallan.parivahan.gov.in/index/accused-challan>> accessed 04 October 2020

¹⁵⁹ Department of Justice, ‘Action Plan to reduce Government Litigation’ (13 June 2017) <<http://doj.gov.in/page/action-plan-reduce-Government-litigation>> accessed 27 September 2020

¹⁶⁰ Lok Sabha, ‘Expenditure Incurred in Contesting Court Cases’ (Unstarred Question No 228, 18 July 2018) <<http://164.100.24.220/loksabhaquestions/annex/15/AU228.pdf>> accessed 23 September 2020

¹⁶¹ *ONGC v Collector of Central Excise* 1995 Supp (4) SCC 541; *ONGC v Collector of Central Excise* (2004) 6 SCC 437

¹⁶² The Cabinet Secretariat, ‘Settlement of Disputes Between One Central Government Department and Another and One Central Government Department and Central Government Public Enterprises and Public Enterprises and Another’ (1 September 2011) <<https://cabsec.gov.in/files/committeondisputes/codsep2011.pdf>> accessed 27 September 2020

Sector Enterprises and Government Departments. However, this process has faced delay in settlements due to non-submission of documents by the parties.¹⁶³

Thus, while the Government has seen some merit in adopting ADR mechanisms to resolve its disputes, it has not fully utilised its potential in addressing the large number of cases where the Government is a party.

It is therefore the endeavour of this Committee to identify ways in which Government Departments and Public Sector Enterprises can derive benefit from ODR. Mainstreaming ODR as the preferred mode of dispute resolution for the Government will help unclog the courts for citizens grievances while also unlocking large number of Government projects stuck due to litigation.¹⁶⁴ However, unlike the litigation management policies at the state and the national levels, ODR initiatives need to be customised as per the needs of individual sectors and Departments for them to achieve the intended impact.

B. Legislative Preparedness

1. Key Legislations

In the last two decades of the 20th Century, the Government of India introduced various reforms to strengthen the ADR ecosystem in India. Most prominent of these reforms was the **Arbitration and Conciliation Act, 1996** to regulate ADR processes in India. Some other changes that supported the growth of ADR includes:

- a. **The Family Courts Act, 1984:** Family disputes are one of the most suitable dispute categories for mediation and conciliation. Section 9 of the Family Courts Act, 1984 read along with the ‘statement of object and reasons’ requires the court to assist and persuade the parties to arrive at a settlement through conciliation. Further, in *K. Srinivas Rao v D.A. Deepa*, the Supreme Court has held that mediation is an avenue that must be exhausted in matrimonial disputes.¹⁶⁵
- b. **Legal Services Authorities Act, 1987:** The Act provides conciliation services through Lok Adalats established in every district and enable access to justice to the weaker sections of the society.
- c. **The Code of Civil Procedure, 1908:** Section 89 of the code empowers the court to refer a case for resolution through one of the ADR modes recognised under the provision - arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation.

¹⁶³ Department of Public Enterprise, ‘Settlement of commercial disputes between Public Sector Enterprises inter se and Public Sector Enterprise(s) and Government Department(s) through Permanent Machinery of Arbitrators (PMA) in the Department of Public Enterprises’ (22 January 2004)

<<http://dpe.gov.in/sites/default/files/Guideline-260.pdf>> accessed 28 September 2020

¹⁶⁴ Yatish Yadav, Cabinet Secretariat steps in as mounting litigation stalls Rs 1.5 lakh cr worth of infra projects, leading to delays, cost overruns (*Firstpost*, 17 December 2018) <<https://www.firstpost.com/india/cabinet-secretariat-steps-in-as-mounting-litigation-stalls-rs-1-5-lakh-cr-worth-of-infra-projects-leading-to-delays-cost-overruns-5742401.html>> accessed 19 October 2020

¹⁶⁵ *K. Srinivas Rao v D.A. Deepa* (2013) 5 SCC 226

In recent years, the Government has renewed its efforts to strengthen and scale up ADR ecosystem in India. Several amendments and legislations have been introduced to develop human resources and infrastructure capacity for ADR. Some of such legislative measures are mentioned below:

- a. **Commercial Court Act, 2015:** The Commercial Courts Act, 2015 introduced mandatory pre-litigation mediation in India. Mandatory pre-litigation mediation has been successful across countries such as Italy in significantly reducing the litigation burden on the civil courts.¹⁶⁶ A similar attempt is seen in the form of Section 12A of the Commercial Courts Act which mandates parties to initiate mediation before filing a suit unless a party to the dispute requires an urgent interim relief.
- b. **Arbitration and Conciliation (Amendment) Act, 2019:** The Government enacted the Arbitration and Conciliation (Amendment) Act, 2019 to strengthen and promote institutional arbitration in India. The amendment establishes an Arbitration Council with the function to frame policies for governing arbitral institutions and provide grading to these institutions.¹⁶⁷ It also vests powers in arbitral institutions to appoint arbitrators when the parties fail to agree on such an appointment.¹⁶⁸
- c. **Consumer Protection Act, 2019:** The Act takes a big step towards building capacity for mediation in India. Section 74 provides for the establishment of Consumer Mediation Cells in every district to broad-base mediation facilities for consumers. Chapter V of the Act encourages parties to undergo mediation at any stage of the proceeding.¹⁶⁹
- d. **Companies Act, 2013 and the Companies (Mediation and Conciliation) Rules, 2016:** Section 442 of the Act requires the Central Government to maintain a panel of experts called the ‘Mediation and Conciliation Panel’. The Act empowers any party to proceedings before the Central Government, National Company Law Tribunal (NCLT) or National Company Law Appellate Tribunal (NCLAT) to request for the dispute to be referred to mediation. In furtherance of this provision, the Ministry of Corporate Affairs has also released the Companies (Mediation and Conciliation) Rules, 2016, for regulating the empanelment of mediators and prescribing the procedure for the mediation proceedings.

Even though these legislations have been introduced, India can still take further strides in terms of legislative preparedness for ODR. The Supreme Court, in *M.R. Krishna Murthi v.*

¹⁶⁶ Bridging the Gap between Mandatory and Voluntary Mediation’ (*Alternative*, 4 April 2018) <<https://www.adrcenterfordevelopment.com/wp-content/uploads/2020/04/Italys-Required-Initial-Mediation-Session-by-Leonardo-DUrso-5.pdf>> accessed 27 September 2020

¹⁶⁷ Arbitration and Conciliation Act 1996, ss 43D and 43I.

¹⁶⁸ Arbitration and Conciliation Act 1996, s 11.

¹⁶⁹ Consumer Protection Act 2019, s 37

*The New India Assurance Co. Ltd.*¹⁷⁰ observed the need for a mediation legislation to strengthen mediation process in India. To this end, in January 2020, the Supreme Court formed a panel to draft a law that gives legal sanctity to disputes settled through mediation.¹⁷¹ A legislative framework for mediation, as and when drafted and notified, would go a long way in augmenting the ADR ecosystem in India.

While the above paragraphs identify the strides that the legislation has taken in terms of ADR, there is another aspect of ODR that also needs to be recognised i.e. technology. To this end, there have been some legislations that have been introduced to address the technology needs of the nation. These legislations form a key aspect on which the technology aspect of ODR can rest.

a. Indian Evidence Act, 1872:

Section 65-A and 65-B of the Act recognises electronic evidence and provides conditions for its admissibility. Such provisions can provide guidance to regulate sharing of virtual documents, rec and conducting virtual hearings.

b. Information Technology Act, 2000:

Section 4 and 5 of the Information and Technology Act provides recognition to electronic records and electronic signatures. Such legal recognition can be crucial to enable end to end digitisation of justice delivery processes.

While these legislations do provide a basic framework on which ODR can be built, the development of ODR in India will require targeted legislative amendments that can increase its legitimacy and acceptability in the long run.

In particular, a robust ODR framework in India will require a comprehensive data protection law that can address both the confidentiality and security concerns that frequently arise with ODR processes. In December 2019, the Ministry of Electronics and Information Technology tabled the Personal Data Protection Bill, 2019 in Lok Sabha.¹⁷² As of today, the Bill is being analysed by a Joint Parliamentary Committee (JPC) in consultation with experts and stakeholders.¹⁷³ Further, Committee of Experts on Non-Personal Data Governance Framework, established by the Ministry of Electronics and Information Technology, has also recommended regulations for data to achieve social and economic value and encourage

¹⁷⁰ *M.R. Krishna Murthi v. The New India Assurance Co. Ltd.* Civil Appeal No. 2476-2477 of 2019, order dated 5 March 2019

¹⁷¹ Ajmer Singh, ‘Supreme Court forms committee to draft mediation law, will send to Government’ (*The Economics Times*, 19 January 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-forms-committee-to-draft-mediation-law-will-send-to-Government/articleshow/73394043.cms?from=mdr>> accessed 27 September 2020

¹⁷² The Personal Data Bill 2019

¹⁷³ PIB Delhi, Joint Committee on the Personal Data Protection Bill, 2019 seeks views and suggestions (PIB, 3 February 2020) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1601695>> accessed 28 September 2020

innovations in India.¹⁷⁴ These parallel developments can assist and foster the growth of ODR in India by providing a robust data security framework.

2. Parliamentary Standing Committee report on Virtual Courts

Recently, due to the restrictions imposed during COVID-19 pandemic, the Government and the Judiciary have actively embraced technology tools in justice delivery processes. In the past few months, technology has played a crucial role in supporting the judicial functioning.

The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its recent report on ‘Functioning of the Virtual Courts/ Courts Proceedings through Video Conferencing’ has recognised this contribution of technology.¹⁷⁵

The report noted that virtualisation of proceedings will help overcome major challenges in justice delivery, such as distance, delays and cost. It further stated that justice delivery through virtual courts will increase access to justice and result in an affordable and citizen friendly legal system.¹⁷⁶ Recognising the benefits of digital justice systems, the Committee recommended extending the concept of virtual courts to arbitration and conciliation to make justice delivery efficient and cost-effective.¹⁷⁷

3. United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018

In addition to internal legislative efforts, the Government has also adopted international obligations and accepted standards of global best practices to strengthen ADR in India. One of the recent steps in this direction is the adoption of the **United Nations Convention on International Settlement Agreements Resulting from Mediation** (also referred to as the ‘Singapore Convention’).¹⁷⁸ The Convention came into force in India on 12 September

¹⁷⁴ Kris Gopalakrishnan and others, ‘Report by the Committee of Experts on Non-Personal Data Governance Framework’ (Ministry of Electronics and Information Technology 2020) <<https://ourgovdotin.files.wordpress.com/2020/07/kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf>> accessed 3 October 2020

¹⁷⁵ Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, ‘Functioning of the Virtual Courts/ Courts Proceedings through Video Conferencing’ (Report no 103, 11 September 2020)

¹⁷⁶ ibid para 3.9

¹⁷⁷ ibid para 3.37

¹⁷⁸ UNGA Convention on International Settlement Agreements Resulting from Mediation (adopted on 20 December 2018) UN Doc A/73/496 <https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf> accessed 28 September 2020

2020.¹⁷⁹ It allows for direct enforcement of mediated settlement agreements and enable swift enforcement of settlement agreement arising from international mediation.¹⁸⁰

C. Judicial Preparedness and Acceptance

In addition to the executive and the legislature, the Judiciary through its judgments and practices, has created an enabling framework for ODR in India. The judiciary, through increased reliance on ICT in judicial processes and explicit recognition of the need for technology solutions to address the challenges of the judicial system gave legitimacy to similar efforts in ADR mechanisms. Further, acknowledgment of the benefits of ODR and its potential by several senior Judges have helped in establishing legitimacy of ODR in dispute redressal ecosystem.

1. ICT Integration in the judiciary

a. eCourts Mission Mode Project

The judiciary's road to ICT integration started out in 1990 with attempts at computerisation of judiciary initiated by the National Informatics Centre (NIC).¹⁸¹ However, it was in 2005, that efforts were made to integrate ICT across all levels of the judiciary from the Tehsils to the Supreme Court, in a phased manner. These efforts started off as a part of 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary',¹⁸² and culminated into one of the judiciary's flagship projects - the eCourts Mission Mode Project (eCourts Project). Under the leadership of the E-Committee for Monitoring the Use of Technology and Administrative Reforms in the Indian Judiciary (E-committee) this project continues to advocate and work towards greater reliance on ICT tools in the justice delivery process.

Over the course of the decade, among its many deliverables¹⁸³, the eCourts project has deployed technology infrastructure and standardised software in District Courts across the country. Some of its key successes include the setting up the eCourts websites, creation of the National Judicial Data Grid (NJDG) and establishment of a unified CIS (Case Information

¹⁷⁹ PTI, 'Singapore Convention on Mediation comes into force' (*The Hindu*, 13 September 2020) <<https://www.thehindu.com/business/singapore-convention-on-mediation-comes-into-force/article32589671.ece>> accessed 28 September 2020

¹⁸⁰ UNGA Convention on International Settlement Agreements Resulting from Mediation (adopted on 20 December 2018) UN Doc A/73/496 art 4

<https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf> accessed 28 September 2020

¹⁸¹ See generally Deepika Kinhal and others, 'Virtual Courts in India: A Strategy Paper' (*Vidhi Centre for Legal Policy*, 1 May 2020) 18

<<https://vidhilegalpolicy.in/research/virtual-courts-in-india-a-strategy-paper/>> accessed 23 October 2020

¹⁸² E-Committee, Supreme Court of India, National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary (2005) <<https://main.sci.gov.in/pdf/ecommittee/action-plan-ecourt.pdf>> accessed 27 September 2020

¹⁸³ E-Committee, Supreme Court of India, Objectives Accomplishment Report as per Policy Action Plan Document Phase II (2019) 5

<https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 28 September 2020

System).¹⁸⁴ It has also streamlined judicial process through litigant centric services like electronic cause lists, e-filings, e-payments and easy access to case status and daily orders.¹⁸⁵ Further, under the project, funds have also been allocated for ICT integration in District Legal Services Authority (DLSA) and Taluk Legal Services Committees (TLSC).¹⁸⁶ Additionally, CIS modules have been introduced for Lok Adalats and mediation.¹⁸⁷

b. E-filing of cases

As mentioned above, the eCourts Mission Mode Project has already launched eFiling Portal for District Courts and High Courts.¹⁸⁸ The portal has been successfully tested in majority of High Courts and resulted in more than 1000 filings in Punjab and Haryana High Court and High Court of Delhi.¹⁸⁹

However, the restriction imposed due to the COVID-19 pandemic created an urgent need for e-filing facilities for courts. To address this need, in May 2020, Supreme Court issued Practice Directions for eFiling to enable Advocates-on-record to file cases online through an e-filing platform.¹⁹⁰ Similarly, High Court of Andhra Pradesh,¹⁹¹ High Court of Delhi,¹⁹² Patna High Court,¹⁹³ and other High Courts have also issued directions to enable online filing of cases during the pandemic.

c. Electronic Signature

Electronic signature is a crucial step towards digitising legal processes. Considering the low availability of the hardware cryptographic token for eSignature on pdf documents,¹⁹⁴ the eFiling Portal launched under eCourts Mission Mode Project also provides facility for eSigning.¹⁹⁵

¹⁸⁴E-Committee, Supreme Court of India, Objectives Accomplishment Report as per Policy Action Plan Document Phase II (2019) 5
<https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 28 September 2020

¹⁸⁵ ibid

¹⁸⁶ ibid p 13

¹⁸⁷R. Arulmozhiselvi, ‘Case Management through CIS 3.0’ (eCommittee, Supreme Court of India, August 2018) 50, 52 <https://doj.gov.in/sites/default/files/CIS%203.0%20final_0.pdf> accessed 16 October 2020

¹⁸⁸ eCommittee, Supreme Court of India, ‘eCourts Project Phase II Objective Accomplishment Report As per Policy Action Plan Document’

<https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 14 October 2020

¹⁸⁹ ibid

¹⁹⁰ Supreme Court of India, ‘Practice Direction for E-Filing (Phase-II) in The Supreme Court of India’ <https://main.sci.gov.in/php/FAQ/5_6246991526434439183.pdf> accessed 14 October 2020

¹⁹¹ High Court of Andhra Pradesh, ‘E-Filing and Video Conferencing Guidelines for the High Court of Andhra Pradesh’ <<http://hc.ap.nic.in/docs/efilingandvc.pdf>> accessed 14 October 2020

¹⁹² High Court of Delhi, ‘Practice Direction for Online Electronic Filing (E-Filing) in the High Court of Delhi’ (Direction No 01/IT/DHC, 13 June 2020) <<http://delhihighcourt.nic.in/pdf/efilingpracticedirection.pdf>> accessed 14 October 2020

¹⁹³ E-Filing Rules 2020 (Patna High Court)

¹⁹⁴ Controller of Certifying Authorities, ‘Introduction’ <<http://cca.gov.in/eSign.html>> accessed 16 October 2020

¹⁹⁵ eCommittee, Supreme Court of India, ‘eCourts Project Phase II Objective Accomplishment Report As per Policy Action Plan Document’

d. Integration of Artificial Intelligence

Taking ICT integration one step further, the Supreme Court has now harnessed the potential of artificial intelligence through the development of SUVAS i.e. Supreme Court Vidhik Anuvaad Software. This artificial intelligence powered software has the capability to translates judgments, orders and judicial documents from English to nine vernacular language scripts (Marathi, Hindi, Kannada, Tamil, Telugu, Punjabi, Gujarati, Malayalam and Bengali) and vice versa.¹⁹⁶

2. Recognition for technology solutions through judicial precedents

e. Recognition of online arbitration

The Supreme Court, in *Shakti Bhog v Kola Shipping*,¹⁹⁷ and in *Trimex International v Vedanta Aluminium Ltd.*,¹⁹⁸ recognised the validity of use of technology in the arbitration process. The court also upheld that the validity of online arbitration agreements through emails, telegram or other means of telecommunication which provide the record of agreement.

f. Recognition of video conferencing

The Supreme Court in *Grid Corporation of Orissa Ltd. v AES Corporation*¹⁹⁹ allowed consultation amongst people through electronic media and remote conferencing for the purpose of appointing arbitrator. In the case of *State of Maharashtra v Praful Desai*²⁰⁰ the court extended this recognition for modern modes of communication and upheld video-conferencing as a valid mode for recording evidence and testimony of witnesses. Further, in *Balram Prasad v Kunal Saha and Ors*, the Supreme Court upheld the use video conferencing as a means to obtain the expert opinion of a foreign doctor.²⁰¹

g. Recognition of electronic summons

The Supreme Court in *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd*²⁰² allowed service of summons through email along with other modes. Further, Delhi High Court in *Tata Sons Ltd v John Doe*²⁰³ and Bombay High Court in

<https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 14 October 2020

¹⁹⁶ Supreme Court of India, Press Release 25 November 2019

<<https://main.sci.gov.in/pdf/Press/press%20release%20for%20law%20day%20celebratoin.pdf>> Also see Ajmer Singh, ‘Supreme Court develops software to make all its 17 benches paperless’ (Economic Times, 26 May 2020) <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-develops-software-to-make-all-its-17-benches-paperless/articleshow/75989143.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 28 September 2020

¹⁹⁷ *Shakti Bhog v Kola Shipping* (2009) 2 SCC 134

¹⁹⁸ *Trimex International v Vedanta Aluminum Ltd* 2010(1) SCALE574

¹⁹⁹ *Grid Corporation of Orissa Ltd. v AES Corporation* (2002) 7 SCC 736

²⁰⁰ *State of Maharashtra v Praful Desai* (2003) 4 SCC 601

²⁰¹ *Balram Prasad v Kunal Saha and Ors* (2014) 1 SCC (Civ) 327

²⁰² *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd.* (2010) 10 SCC 280

²⁰³ *Tata Sons Limited & Ors v John Doe* 2017 SCC OnLine Del 8335

*Kross Television India Pvt Ltd v Vikhyat Chitra Production*²⁰⁴ has recognised service through instant messaging applications and permitted service of summons through WhatsApp.

Recently, considering the restrictions in physical service of summons during the lockdown period, the Supreme Court, in a suo moto writ petition *In re Cognizance for Extension of Limitation*²⁰⁵ directed all service of summons, notices and pleading to be effected by email, facsimile and commonly used instant messaging applications, such as WhatsApp, Telegram and Signal.

h. Admissibility of electronic records as evidence

Section 65B of the Indian Evidence Act, 1872 provides for admissibility of electronic evidence. In recent years, the Supreme Court, through judicial precedents has strengthened this procedure for admissibility electronic records.

In 2005, the Supreme Court in *State of NCT Delhi v Navjyot Singh*²⁰⁶ held that electronic evidence can be admitted as secondary evidence, regardless of compliance with section 65B. However, in 2014, in *Anvar P.V. v P.K. Basheer*,²⁰⁷ the Supreme Court overruled this position and held that compliance with the conditions mentioned in section 65B at the time of proving the record is necessary for the admissibility of any electronic evidence. In July 2020, Supreme Court in *Arjun Padittrao Khotkar v Kailash Kushanrao Gorantyal and Ors*²⁰⁸ further clarified the principle laid down in *Anvar P.V.* and strengthened the procedure for admission of electronic evidence.

i. Virtual Courts for traffic challenges and cheque bouncing cases

The Supreme Court in *M/S Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta*²⁰⁹ identified that complete reliance could be placed on technology tools to resolve disputes. The court observed that some cases could partly or entirely be concluded ‘online’ and recommended the resolution of simple cases like those concerning traffic challans and cheque bouncing through online mechanisms.

3. Explicit Recognition of ODR’s Potential

a) Recognition by judicial members

In a stakeholders’ meeting titled “Catalyzing Online Dispute Resolution in India”²¹⁰ organised by NITI Aayog on June 12 2020, Justice Indu Malhotra spoke about the advantages of ODR as an expeditious and cost-effective mechanism for dispute resolution. She observed its potential for commercial disputes, particularly concerning Micro, Small and Medium

²⁰⁴ *Kross Television India Pvt. Ltd. v Vikhyat Chitra Production* 2017 SCC OnLine Bom 1433

²⁰⁵ *In re Cognizance for Extension of Limitation* Suo Moto Writ Petition (C) No. 3/2020

²⁰⁶ *State of NCT Delhi v Navjyot Singh* (2005) 11 SCC 600

²⁰⁷ *Anvar P.V. v P.K. Basheer* (2014) 10 SCC 473

²⁰⁸ *Arjun Padittrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 3 SCC 216.

²⁰⁹ *M/s Meters and Instrument Private Limited v Kanchan Mehta* 2017(4) RCR (Criminal) 476

²¹⁰ NITI Aayog, ‘Catalyzing Online Dispute Resolution in India’ (12 June 2020) <<https://niti.gov.in/catalyzing-online-dispute-resolution-india>> accessed 20 October 2020

Enterprises and disputes under the Insolvency and Bankruptcy Code, 2016. At the same meeting, Justice D.Y. Chandrachud observed the utility of ODR as a service to avail justice and thereby use technology to promote a sense of inclusive justice. He noted that ODR can also provide dispute containment and dispute avoidance services, in addition to dispute resolution. Further, while discussing the nationwide implementation of ODR, Justice Sanjay Kishan Kaul acknowledged the potential of ODR to address disputes arising due to COVID-19 pandemic as well as other personal and commercial disputes.

In another stakeholder meeting organised by NITI Aayog, titled ‘Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business’ Justice (Retd.) B.N. Srikrishna noted that ODR systems will prevent cluttering of courts by resolving a large number of disputes.²¹¹

b) Conducting e-Lok Adalats

The COVID-19 pandemic has provided an impetus to the authorities to use online mechanisms in their daily functioning. As a consequence, India saw the organisation of various e-Lok Adalats across States. The first e-Lok Adalat organised by the Chhattisgarh High Court and State Legal Services Authority, on 13 July 2020, settled 2,270 cases in a single day through video conferencing.²¹² Following this success, e-Lok Adalats have been organised in Karnataka²¹³, Chhattisgarh,²¹⁴ Delhi,²¹⁵ Jammu and Kashmir²¹⁶ and Rajasthan²¹⁷ and will soon be replicated across different states.²¹⁸ Some State Legal Service Authorities have taken technical assistance from ODR service providers such as Sama to organise e-Lok Adalats.²¹⁹

²¹¹NITI Aayog, ‘Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business’ (25 August 2020) <<https://niti.gov.in/unlocking-online-dispute-resolution-enhance-ease-doing-business>> accessed 3 October 2020

²¹² Ejaz Kaiser, ‘Chhattisgarh organises India’s first e-Lok Adalat’ (*The New Indian Express*, 11 July 2020) <<https://www.newindianexpress.com/nation/2020/jul/11/chhattisgarh-organises-indias-first-e-lok-adalat-2168331.html>> accessed 28 September 2020

²¹³ P Vasanth Kumar, Karnataka: Statewide mega e-lok adalat on September 19’ (*Times of India*, 28 August 2020) <<https://timesofindia.indiatimes.com/city/bengaluru/karnataka-State-wide-mega-e-lok-adalat-on-september-19/articleshow/77808845.cms>> accessed 28 September 2020

²¹⁴ Live Law News Network, ‘Chhattisgarh Organizes India’s First E-Lok Adalat; Settles 2270 Cases Via Video Conferencing’ (*Live Law*, 12 July 2020) <<https://www.livelaw.in/news-updates/chhattisgarh-organizes-indias-first-e-lok-adalat-settles-2270-cases-via-video-conferencing-159768>> accessed 15 September 2020

²¹⁵ Delhi State Legal Service Authority, ‘E-Lok Adalat- 8th August Report’ (2020) <<https://drive.google.com/file/d/1ZaffZv2Y0SJxdJuIIUVNWdxzcrFIId24K/view>> accessed 28 September 2020

²¹⁶ Mohsin Dar, ‘Jammu & Kashmir Legal Services Authority organises first e-Lok Adalat amid COVID-19’ (*Bar & Bench*, 23 August 2020) <<https://www.barandbench.com/news/jammu-kashmir-legal-services-authority-organises-first-e-lok-adalat-amid-covid-19>> accessed 15 September 2020

²¹⁷ PTI, ‘COVID-19: Online Lok Adalat to be held in Rajasthan’ (*Outlook*, 4 August 2020)

<<https://www.outlookindia.com/newsscroll/covid19-online-lok-adalat-to-be-held-in-rajasthan/1909110>>

²¹⁸ Special Correspondent, ‘Online Lok Adalat in October’ (*The Hindu*, 2 September 2020) <<https://www.thehindu.com/news/national/kerala/online-lok-adalat-in-october/article32505231.ece>> accessed 28 September 2020

²¹⁹ Richa Banka, ‘Lok Adalat held online’ (*Hindustan Times*, 10 August 2020)

<<https://www.hindustantimes.com/cities/lok-adalat-held-online/story-6HtKmag2TJDkWAPJkYkm2L.html>> accessed 19 October 2020

D. Ecosystem's Eagerness

While ODR has seen some potential and success within the legislature, executive and the Judiciary, the biggest potential for growth in ODR is seen in early innovations and adoption in the private sector. The private sector ODR ecosystem constitutes of variety of actors including start-up that provide ODR services, dispute resolution centres (DRCs) that have expanded their traditional modes of service to include ODR, dispute resolutions professionals (DRPs) who are now adopting technology tools to provide their services, and most importantly, businesses which are adopting ODR processes for resolving disputes arising out of their course of business. This section identifies some of the key developments across different actors in the private sector in India, especially in the last couple of years.

1. Growth of Start-ups providing ODR platforms and services

For a few years now, legal technology start-ups have been attempting to make a difference to the justice delivery systems in India. One of the key impetus to such attempts came in 2019 when an ‘E-ADR Challenge’ was organised by a non-profit organisation Agami in collaboration with the ICICI Bank.²²⁰ The goal of the challenge was to identify the most promising start-ups that could solve millions of disputes online. As a part of this, ICICI Bank pledged to send 10,000 of its disputes, below the value of Rs. 20 lakhs, for resolution through an ODR start-up ‘Sama’, the winner of the challenge.²²¹ Continuing its efforts in the field of ODR, Agami also conducted an ODR week, which brought together stakeholders from different sectors to discuss the ways in which ODR could be mainstreamed in India.²²² Today, there are multiple start-ups in the country following a variety of models and continuing to innovate on a daily basis with an aim to provide accessible and affordable ODR services to individuals, businesses, Governments and the Judiciary. In a welcome move to provide recognition and legitimacy to such start-ups, the Department of Legal Affairs has recently invited applications from institutes providing ADR/ ODR services in the country to host such list of service providers on its website.²²³

2. Dispute Resolution Centres adopting ODR

Even dispute resolution centres which have traditionally been providing ADR services, have shown eagerness in expanding their modes to include ODR processes. For example,

²²⁰ Agami, ‘Creating Online Dispute Resolution (ODR) solutions to resolve millions of disputes outside the courts’<<https://agami.in/odr/>> accessed 28 September 2020

²²¹ Soumyajit Saha, ‘Online Dispute Resolution of Banking Disputes in the wake of COVID-19’ (*Bar & Bench*, 13 June 2020) <https://www.barandbench.com/apprentice-lawyer/online-dispute-resolution-of-banking-disputes-in-the-wake-of-covid-19>

²²² Agami, ‘Learning from the Startups | ODR Week, Day One’ (*Youtube*, 13 April 2020) <https://www.youtube.com/watch?v=_0o0_6M0G_Q> accessed 28 September 2020

²²³ Hosting of List of Institutions Offering Alternate Dispute Resolution Mechanisms (Including ODR) on the Website of Department of Legal Affairs <<https://legalaffairs.gov.in/sectiondivision/hosting-list-institutions-offering-alternate-dispute-resolution-mechanisms-including>> accessed 12 October 2020

- a) the Indian Institute for Arbitration and Mediation has developed an ODR platform called Peacegate, which hopes to integrate all facets of ADR ranging from filing to back-office support.²²⁴
- b) Bangalore Mediation, Arbitration and Conciliation Centre offers online arbitration, conciliation, mediation services since 2013.
- c) Mumbai Centre for International Arbitration offers video conferencing facility to enable online arbitration proceedings.
- d) In 2020, the Delhi Dispute Resolution Society has introduced an initiative called SEHMATI, which is dedicated solely to ODR.²²⁵

3. Businesses adopting ODR

ODR has seen success not only in the realm of private service providers but also at the end of businesses which have established in-house ODR platforms to resolve disputes. For example, NestAway began with resolving their disputes via email, and eventually went on to incubate an ODR platform — CADRE or Centre for Alternate Dispute Resolution Excellence.²²⁶

Recently, while addressing concerns regarding Ease of Doing Business, the Confederation of Indian Industries (CII) recommended strengthening of ADR along with digitisation of judiciary to facilitate a business-friendly environment in India.²²⁷

The above instances are evidence that private innovation and eagerness amongst businesses to adopt ODR are going hand in hand. This momentum towards ODR is driven as much by both necessity stemming from the stalemate in the judiciary as well as an opportunity to create a dispute resolution ecosystem that works for the benefit of all. Moving forward, an important question that will need to be addressed is how the growth and innovation in the private sector can be facilitated while balancing the need for adherence to principles of natural justice, and basic standards in data protection, privacy and confidentiality. Chapter VI addresses focuses on this issue in greater detail.

²²⁴ IIAM, ‘PeaceGate App’ <<https://www.arbitrationindia.com/peacegate.html>> accessed 28 September 2020

²²⁵ DDRS, ‘Sehmati’ <https://www.sehmati.org> accessed 28 September 2020

²²⁶ Indulekha Arvind, ‘Online dispute resolution is beginning to find takers in India’ (*The Economic Times*, 12 January 2020) <<https://economictimes.indiatimes.com/small-biz/startups/features/online-dispute-resolution-is-beginning-to-find-takers-in-india/articleshow/73206371.cms>> accessed 28 September 2020

²²⁷ CII, ‘Easing Doing Business for Cost Competitiveness’ (20 June 2020) <<https://www.mycii.in/KmResourceApplication/66255.EoDB.pdf>> accessed 28 September 2020

V. Challenges Faced in Adoption of ODR

Though ODR holds immense potential to provide for efficient and effective dispute resolution, its integration in the mainstream dispute resolution ecosystem holds several challenges. A successful implementation of ODR depends on several factors such as availability of a reliable and secure technology tools, digital infrastructure to enable usage, willingness of parties to adopt to a new way of resolution, co-operation and support from lawyers, Judiciary, Government to ensure enforcement of awards and agreements etc.²²⁸ The interests and incentives for each of the different stakeholders involved in the process needs to be considered and addressed to enable widespread adoption of ODR.

Based on extensive literature review and consultations with key stakeholders in India, the Committee has identified the following challenges that need to be addressed in a phased manner for successful implementation of ODR.

A. Structural Challenges

1. Digital literacy

ODR requires a basic level of digital literacy as a prerequisite. In India, digital literacy often varies across age, ethnicity and geography. This digital divide needs to be addressed to ensure that ODR is adopted by the society at large and not remain limited to urban areas.²²⁹

Recently, the Central Government has taken initiated measures to impart digital literacy amongst citizens. In March 2019, the Government launched Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA) with an objective to expand digital literacy in rural India and make 6 million people in rural India digitally literate.²³⁰ Under the initiative, the Government has set up 3,06,975 training centres and has conducted 2,98,00,507 digital literacy trainings.

Similar programmes combined with dedicated initiatives to popularise basic skill sets required to access ODR services will go a long way to ensure access to justice in even the remotest and the most marginalised sections of the society.

2. Digital infrastructure

A broad base adoption of ODR will require essential technology infrastructure across the country. This includes access to computers, smart phones and medium to high bandwidth

²²⁸ Roger Smith, ‘Rechtwijzer: why online supported dispute resolution is hard to implement’ (*Law, Technology and Access to Justice*, 20 June 2017) <<https://law-tech-a2j.org/odr/rechtwijzer-why-online-supported-dispute-resolution-is-hard-to-implement/>> accessed 31 August 2020

²²⁹ Charlotte Austin, ‘Online dispute resolution – An introduction to online dispute resolution (ODR), and its benefits and drawbacks’ (2017) 18 <<https://www.mbie.govt.nz/assets/00ddeb604/online-dispute-resolution-report-2018.pdf>> accessed 31 August 2020

²³⁰ PMGDISHA, ‘Objective’ <<https://www.pmgdisha.in/about-pmgdisha/>> accessed 3 October 2020.

internet connection for atleast the length of time it takes to conduct meaningful hearings. These requirements may disadvantage those who have limited access to digital infrastructure.²³¹

Currently, efforts to expand digital infrastructure have been taken under the National Digital Communication Policy, 2018 which aims to provide universal broadband connectivity and facilitate effective participation in global digital economy.²³² Working towards this goal, in December 2019, the Central Government launched National Broadband Mission with an objective to provide broadband access to all villages by 2022.²³³ Further details on the initiatives taken by the Government and the mechanism through which it can be achieved can be found in the recommendations chapter of the report.²³⁴

3. Gender divide in access to technology

In India, there exists a gender divide with respect to the access to technology. As per Internet India Report 2019, women constitute only 1/3rd of internet users in India.²³⁵ The situation is even worse in rural India where women constitute only 28 percent of the internet users. Such gender divide in accessing the internet might result in uneven access to ODR services, thereby exacerbating the gender divide that already exists in terms of access to justice through traditional courts. It is essential that targeted attempts are made to bridge this divide to truly be able to deliver the benefits of ODR to all citizens.

B. Behavioural Challenges

1. Lack of awareness regarding ODR

ODR, atleast in its early phase, mirrors off-line ADR mechanisms, albeit through a technology interface. Even then, such usage of technology to connect disputing parties with Neutrals and resolve disputes, is at a very nascent stage in India. Therefore, it is essential that apart from strengthening ADR processes that people are already familiar with, initiatives should be taken to build awareness regarding ODR. At present, the lack of awareness regarding ODR translates into litigants and businesses having low confidence in ODR

²³¹ Joseph W. Goodman, ‘The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites’ (2003) 2 Duke Law & Technology Review

<<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1073&context=dltr>> accessed 9 September 2020

²³² Department of Telecommunication, ‘National Digital Communication Policy 2018’ (2018) 6

<<https://dot.gov.in/sites/default/files/EnglishPolicy-NDCP.pdf>> accessed 3 October 2020

²³³ DD News, ‘Govt. launches National Broadband Mission, aims to provide broadband for all’ (DD News, 18 December 2020)

<<http://ddnews.gov.in/node/39578#:~:text=The%20government%20yesterday%20launched%20the,to%20all%20villages%20by%202022.>> accessed 3 October 2020

²³⁴ Text in ch VI p 71

²³⁵ IAMAI, ‘India Internet 2019’(2019) <<https://cms.iamai.in/Content/ResearchPapers/d3654bcc-002f-4fc7-ab39-e1fbef00005d.pdf>> accessed 27 September 2020

processes and restricted application of ODR in sectors with huge potential for such as MSME, consumer disputes etc.

As with any technology services, comfort and trust is built overtime with continuous usage. Our consultations revealed that individuals become accustomed to ODR with its increased usage. Therefore, apart from increasing awareness through systematic campaigns, there is an equal need to provide more avenues for continuous usage of ODR.

2. Lack of trust in ODR services

Linked to the above point is the issue of lack of trust in ODR. This mistrust stems at several levels – from scepticism regarding technology to questions regarding enforceability of ODR outcomes. The endeavour towards mainstreaming ODR needs to address the issue of trust at every levels.²³⁶ Like other emerging technologies, ODR is bound to be met with scepticism from potential users, especially regarding its effectiveness given the lack of in-person interactions, as well as regarding data security and confidentiality.²³⁷

In the coming chapters, the report lays down a governance framework aimed at addressing these concerns to ensure that ODR service providers are functioning ethically and meeting certain standards required of any system functioning in the ‘justice space’.²³⁸

3. Legal culture

It is often difficult to introduce ODR in countries where people rely more on courts and there is low percolation of ADR mechanisms for dispute resolution.²³⁹ Lack of reliance on ADR despite the costs and delays associated with the judiciary is due to multiple reasons which have already been elaborated elsewhere.²⁴⁰ However, going forward, it is necessary to create capacity to provide quality ADR services through mediation and arbitration. This will help in transitioning faster towards ODR. Specific measures to strengthen ADR are provided in the coming chapters.²⁴¹

4. Role of the government and the PSUs

The Government and Public Sector Undertakings are amongst the biggest litigants in India. Adoption of ODR to resolve inter and intra Governmental disputes would be a key step in

²³⁶ Charlotte Austin, ‘Online dispute resolution – An introduction to online dispute resolution (ODR), and its benefits and drawbacks’ (2017) 22 <<https://www.mbie.govt.nz/assets/00ddeb604/online-dispute-resolution-report-2018.pdf>> accessed 31 August 2020

²³⁷ Louise Ellen Teitz, ‘Providing Legal Services for the Middle Class in Cyberspace: The Promise and Challenge of On-Line Dispute Resolution’ (2001) 70 Fordham Law Review 1009 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3777&context=flr>> accessed 1 September 2020

²³⁸ Text in ch VI p 86

²³⁹ Judit Glavanits, ‘Obstacles of ODR in Developing Countries’ (2017) UNCITRAL Furthering the Progressive harmonization and Modernization of International Trade Law Conference working paper <https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/> accessed 1 September 2020

²⁴⁰ Bibek Debroy and Suparna Jain, ‘Strengthening Arbitration and its Enforcement in India – resolve in India’ (NITI Aayog) <https://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf> accessed 20 October 2020

²⁴¹ Text in ch VI p 87

boosting confidence in the process. This will automatically address the issue of trust in ODR processes and outcomes. For this, the officials in Government Departments and PSUs need to be trained and empowered to effectively participate in ODR processes. This is essential to unlock the potential of ODR to significantly reduce the burden on courts.

C. Operational Challenges

1. Privacy and confidentiality concerns

Greater integration of technology and reduced face to face interactions create new challenges for privacy and confidentiality, especially in dispute resolution.²⁴² These challenges include online impersonation, breach of confidentiality by circulation of documents and data shared during ODR processes, tampering of digital evidence or digitally delivered awards/agreements. ODR service providers should be extremely mindful of building robust data storage and management frameworks to address these concerns. Digital signatures,²⁴³ encryption of documents to ensure confidentiality²⁴⁴ etc. are some of the measures that need to be taken to sustainably integrate ODR for large scale of disputes. The principles framework detailed in the coming chapter²⁴⁵ seeks to guide ODR service providers in this aspect while being mindful of the need to not view these challenges as barriers to integrate ODR itself.

2. Availability of Neutrals

The adoption of ODR will likely generate a huge demand for Neutrals who are comfortable with technology and trained to effectively guide the parties through the ODR process.²⁴⁶ A robust training ecosystem for ADR/ ODR professionals that caters to this demand is necessary while pushing towards integration of ODR as a preferred dispute resolution mechanism. The coming chapter identifies certain standards for training and certification of Neutrals, to help foster this ecosystem.²⁴⁷

3. Archaic Legal Processes

The Supreme Court in *Garware Walls Ropes Ltd. v Coastal Marine Constructions & Engineering Ltd.*²⁴⁸ held that arbitration agreement cannot be given effect unless the stamp duty is paid. Though, the Central Government has simplified the process for payment of

²⁴² Charlotte Austin, ‘Online dispute resolution – An introduction to online dispute resolution (ODR), and its benefits and drawbacks’ (2017) 19 <<https://www.mbie.govt.nz/assets/00ddeb604/online-dispute-resolution-report-2018.pdf>> accessed 31 August 2020

²⁴³ Esther van der Heuvel, ‘Online Dispute Resolution as a Solution to Cross Border e-Disputes’ (2000) OECD <<https://www.oecd.org/internet/consumer/1878940.pdf>> accessed 1 September 2020

²⁴⁴ ibid

²⁴⁵ Text in ch VI p 91

²⁴⁶ Graham Ross, ‘Challenges and Opportunities in Implementing ODR’ in *Proceedings of the UNECE Forum on ODR* (2003) <<https://www.mediate.com/Integrating/docs/ross.pdf>> accessed 9 September 2020

²⁴⁷ Text in ch VI p 74

²⁴⁸ *Garware Walls Ropes Ltd. v Coastal Marine Constructions & Engineering Ltd.* 2019 SCC Online SC 515

stamp duty through e-Stamps and online payment²⁴⁹ the rules framed by the State Governments still require parties to attach a copy of eStamp certificate to the agreement as a proof of payment of stamp duty.²⁵⁰ The archaic process does not work well with the end-to-end online process of dispute resolution and create barriers for ODR.

Further, in India there are no provision for online notarisation of documents. As per the Notaries Rule 1956, notarisation of documents can only be done in person²⁵¹ and hence, require physical action on the part of parties. Such processes should be digitised to ensure an end-to-end ODR process.

4. Enforcement of the outcome of ODR process

A key challenge towards meeting the objectives of this report itself is the existing uncertainty regarding enforcement of ODR outcomes. There has been uncertainty regarding enforcement of mediation settlements for a long time now. The Supreme Court in *Afcons Infrastructure Ltd v Cherian Varkey Construction* held that the court-initiated mediation proceedings will be deemed as Lok Adalat and hence settlements reached through such proceedings are enforceable under S. 21 of Legal Services Authorities Act, 1987.²⁵² However, there seems to be a legal vacuum when we consider mediation processes that are not initiated by the courts. For these proceedings, settlements can only be enforced as an agreement between the parties and any breach of such agreement will result in further judicial processes.

Further, the process for enforcement of arbitral award India is complex and burdensome. Firstly, arbitration awards require stamp duties in most of the states.²⁵³ As mentioned above, the archaic requirement to attach eStamp certificate to the document create barriers in an otherwise end-to-end online process.

Secondly, Arbitration and Conciliation Act, 1996 provides for enforcement of the arbitral award in the same manner as if it were a decree of the court.²⁵⁴ While deciding upon the jurisdiction of the court to execute arbitral award, the Supreme Court in *Sundaram Finance Limited v Abdul Samad*²⁵⁵ allowed the execution proceedings to be filed anywhere in the country, where such decree can be executed. However, the process of execution of awards through courts can be cumbersome for the parties and may result in delays. Such a complex process acts contrary to the objectives of ODR to provide convenient and efficient dispute redressal.

²⁴⁹ Shoaib Zaman, ‘Duly Stamped’ (*Money Today*, January 2014) <<https://www.businessstoday.in/moneytoday/financial-planning/electronic-stamping-is-a-convenient-way-to-pay-stamp-duty/story/201780.html#:~:text=The%20Indian%20government%20introduced%20e,be%20paid%20through%20e%20dstamping.>> accessed 6 October 2020

²⁵⁰ Chhattisgarh Stamp (Payment of Duty by Means of e-Stamp Certificate) Rules 2016, r 33. See, Karnataka Stamp (Payment of Duty by Means of e-stamping) Rules 2009, r 27(1)

²⁵¹ Notaries Rule 1956.

²⁵² *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24

²⁵³ See Stamp (Delhi Amendment) Act 2001, sch 1A art 12

²⁵⁴ Arbitration and Conciliation Act 1996, s 36

²⁵⁵ *Sundaram Finance Limited v. Abdul Samad* 2018 SCC OnLine SC 121

VI. Recommendations

While a myriad of challenges have been identified in the previous chapter, the future of ODR in India is not a bleak one. In fact, the Department related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its recent report on the functioning of virtual courts, recognised ODR is one of the key components of this vision to modernise and digitalise dispute resolution in India.²⁵⁶ However, to make this a reality will require co-ordinated efforts from all stakeholders. It is for this reason that the list of recommendations that have been identified are addressed not just towards the Government but a various list of stakeholders that have the capacity and influence to usher in change and provide impetus to and broad base ODR in India.

To enable a speedy integration, some of the recommendations that have been identified build on existing capabilities and policies that have already been introduced by the Government such as the SAMADHAAN initiative and the National Broadband Mission. Others are novel introductions, in the Indian context, such as introducing an opt-out model for mandatory pre-litigation mediation in India.

The following section provides a step-by-step narrative of how access to infrastructure can be increased, capacity can be built and trust can be increased in ODR. It also recommends a soft touch regulatory model which identifies the ways to strengthen the current legislative framework and introduces principles that should voluntarily be adopted by stakeholders such as ODR platforms, centres and Neutrals. The phased manner in which ODR should be executed and implemented has also been identified.

A. Increase Access to Digital Infrastructure

A pre-condition for an ODR enabled nation, is widespread access to digital infrastructure. Such access should not just be understood to mean **physical access to technology** and its tools but also methods of utilising it in the form of **digital literacy**. Additionally, it is important that such access **address gaps** created by differences in class, caste, gender and age and include those individuals who are often on the **margins**. While the task is a mammoth one, there is hope that this can be realised as the Government has already introduced some initiatives that can bridge these gaps. This section identifies ways in which they can be capitalised upon and strengthened; ways to increase digital literary and initiatives that can reduce the digital divide that might continue to persist.

1. Increase physical access to infrastructure

Increased physical access to technology and infrastructure can only be achieved by the combined efforts of two key stakeholders – the Government and the Judiciary. Fortunately,

²⁵⁶ Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, 'Functioning of the Virtual Courts/ Courts Proceedings through Video Conferencing' (Report no 103, 11 September 2020)

key initiatives by both these stakeholders are already underway and can be further leveraged to increase access to ODR.

All of the **Governments' initiatives** come in light of its flagship '**Digital India**' project, which hopes to transform the entire ecosystem of public services through the use of information technology.²⁵⁷ To extend digital infrastructure to rural India and provide Internet connectivity to every citizen, the Government launched the **BharatNet Project**, in 2011. Formerly known as the National Optic Fibre Network (NOFN), this hoped to provide optic fibre connectivity to 2.5 Lakh Gram Panchayats by 2019.²⁵⁸ However, the project was delayed due to a lack of funds and slow implementation.²⁵⁹ To remedy this delay, in 2019 the Government launched the **National Broadband Mission**.²⁶⁰ The Prime Minister in his Independence Day speech announced that the Government would extend Internet connectivity to all 6 Lakh villages in India within 1000 days.²⁶¹ The successful implementation of these initiatives will augur well for ODR usage.

The **Judiciary's efforts** have been initiated through the **eCourts Mission Mode Project**, which has been discussed in detail in chapter IV of the report.²⁶² **Phase III** of the Project can be leveraged to build ODR infrastructure. **Court-annexed ADR** centres can be equipped with digital technology and **Legal Services Authorities** and ADR Centers can be used as nodal agencies to spread awareness regarding ODR. All further development of ODR in the nation will be contingent on the foundation laid out by these combined efforts of the Government and Judiciary.

2. Increase digital literacy

Physical access to technology and infrastructure is only one aspect of access to digital infrastructure. To unlock its true potential, users of such technology should be digitally literate. Fortunately, the Government has already taken steps towards increasing digital literacy through its initiative - the **Pradhan Mantri Gramin Digital Saksharta Abhiyan** (PMGDISHA). Launched in March 2019, the initiative has successfully trained more than **2 crore individuals** and certified them as digitally literate. Through this initiative, the

²⁵⁷ Government of India, 'About Digital India' <<https://digitalindia.gov.in/content/about-digital-india>> accessed 18 October 2020

²⁵⁸ Department of Electrical Engineering, IIT Bombay, 'Planning for BharatNet Phase 2' (Bharat Broadband Network Limited, September 2016) <http://bbnl.nic.in/WriteReadData/LINKS/Rpt_Nw_Plug_tool6cad24a7-eea8-4adc-91ff-468d7119eeb0.pdf> accessed 8 October 2020

²⁵⁹ Sumyesh Srivastava, 'Bharatnet Implementation has Been Slow, Riddled with Shortcomings; Needs Urgent Remedial Action to Democratise Internet Access' (*Firstpost*, 26 December 2019) <<https://www.firstpost.com/tech/india/bharat-net-implementation-has-been-slow-riddled-with-shortcomings-needs-urgent-remedial-action-to-democratise-internet-access-7827681.html>> accessed 8 October 2020

²⁶⁰ Department of Telecommunications, Ministry of Communications, Government of India , 'National Broadband Mission' <https://dot.gov.in/sites/default/files/National%20Broadband%20Mission%20-20Booklet_0.pdf?download=1> accessed 18 October 2020

²⁶¹ PTI, 'All villages to be connected with optical fibre in 1,000 days: PM Modi' (*The Hindu*, 15 August 2020) <<https://www.thehindu.com/news/national/all-villages-to-be-connected-with-optical-fibre-in-1000-days-pm-modi/article32361806.ece>> accessed 8 October 2020

²⁶² Text in ch IV p 58

Government has also established more than **30 lakh training centres** to promote digital literacy in rural India.²⁶³ This initiative can be leveraged to inform individuals about basic tools that are used in ODR – such as audio, video and text communication. A dedicated section in this chapter identifies other ways in which awareness can be generated about ODR in India.²⁶⁴

3. Reduce digital divide

Very often the benefits of policies and initiatives, such as the ones above, fail to reach classes and communities that exist on the **margins of society**.²⁶⁵ This stands true even in the use of the Internet and access to technology, which differs according to geographies, age groups, genders, etc. The following numbers from a survey conducted by the Internet and Mobile Association of India point out these **disparities**.²⁶⁶

- i. **Women** constitute only **one-third** of the Internet users in the country.
- ii. The majority of Internet users in India are younger individuals and those above 40 years constitute only 15 percent of the Internet users.
- iii. **99 percent** of the Internet users in India access it through **mobile phones**.
- iv. Percolation of desktop and laptop computers is 10 percent in cities and 3 percent in rural parts of the country.

In light of these numbers, it is therefore important that the success of the above mentioned initiatives be measured by their successful reach to these classes of individuals and not just in whole numbers that include one and all. Some ways in which this can be achieved are:

- a) **Design platforms that maximise access:** It is recommended that these platforms be **mobile friendly** to enable their wide adoption. The Government can also incentivise platforms to develop interfaces that cater to **differently abled persons**.
- b) **Encourage the use of technology among women and elders:** It is recommended that the Legal Service Authorities, with the support of the Judiciary, civil society organisations and self-help groups, design special campaigns to encourage use of **technology among women and elders**. Such campaigns should run in parallel to the digital literacy programmes to make individuals comfortable with the use of technology and in turn increase ease of use of ODR tools.

B. Increase Capacity

²⁶³ ‘PMGDISHA’ <<https://www.pmgdisha.in/>> accessed 8 October 2020

²⁶⁴ Text in ch VI p 84

²⁶⁵ Joachim von Braun and Franz W. Gatzweiler ‘Marginality - An Overview and Implications for Policy’ in Joachim von Braun and Franz W. Gatzweiler (ed) *Marginality – Addressing the Nexus of Poverty, Exclusion and Ecology* (Springer, Dordrecht 2014) <https://link.springer.com/chapter/10.1007/978-94-007-7061-4_1> accessed 18 October 2020

²⁶⁶ IAMAI, ‘Internet Report 2019’ (2019) <<https://cms.iamai.in/Content/ResearchPapers/d3654bcc-002f-4fc7-ab39-e1fbbe00005d.pdf>> accessed 8 October 2020

While access to digital infrastructure is necessary for the inclusion of the end user, increase in capacity of the **professionals and the service providers** is necessary if ODR is to be scaled up in India. This can be achieved only through systematic and **co-ordinated engagement** of all concerned stakeholders ranging from the Government to the businesses and the Judiciary. To achieve this, there is a need to introduce training programmes, strengthen paralegal services within communities, encourage growth within the private sector, increase capacity of court-annexed ADR centres and co-opt ODR into specific government sectors. Through pointed recommendations, this section explains how the increase in capacity can be realised.

1. Up-skill neutrals and train future professionals

To have **well trained professionals** is a prerequisite for a well-developed ODR framework. It is their existence that can raise the confidence in the end users - individuals, businesses and Governments. Data from NALSA suggests that there already **does exist sufficient capacity** in trained mediators to scale up mediation in the country.²⁶⁷ However, the data is not very helpful when it comes to assessing the quality of this capacity or of other types of ADR professionals. To ensure that the capacity is increased while the **quality is maintained**, some of the following initiatives can be undertaken.

a) Collaborate to expand training capacities

The onus to ensure growth of the ODR sector and the undertake training of professionals does not have to be fulfilled by the Government alone. Instead, it is important that various actors undertake collaborative efforts to introduce **training and certification programmes**. To this end, some actors such as state institutions²⁶⁸ and universities²⁶⁹ have already introduced training programmes. Moving forward, **Bar Councils, District Legal Services Authority and Judicial Academies** can be encouraged to impart training for lawyers and other domain experts to become ODR professionals. To ensure that the standards across these institutes are maintained, the Government can introduce uniform training standards like the ones mentioned in **Section C**.

b) Expand the scope of Neutrals to include other professionals through training

Especially in the context of mediation, the need to expand the scope of mediators to **include other domain professionals** has been recognised on multiple occasions. For instance, in

²⁶⁷ National Legal Service Authority, ‘Statistical Information in Respect of Cases Settled Through Mediation in Mediation Centers/ADR Centers’

<<https://nalsa.gov.in/lams/nologin/lamsMediationInformationReportGenerateView.action>> accessed 8 October 2020

²⁶⁸ Indian Institute of Corporate Affairs, ‘Be a Commercial, Consumer and Financial Mediator’ <<http://www.mediationiica.in/>> accessed 8 October 2020

²⁶⁹ Maharashtra National Law University, ‘MA Mediation and Conflict Resolution’ <<http://mnlumbai.edu.in/Mediation.php>> accessed 10 October 2020

*Daramic Battery Separator India Pvt. Ltd.*²⁷⁰ NALSA was unable to find a suitable commercial mediator within its pool of mediators. Similarly, some commercial disputes before the Legal Service Authorities have seen a **lack of domain specific experts**.²⁷¹ This problem can be addressed by including professionals such as retired bankers, chartered accountants, company secretaries etc. into the fold of mediators by providing them suitable training on the requirements of the process of mediation and arbitration.

Specifically for mediation, in addition to basic subject matter knowledge, it is key that mediators have process expertise, adequate communication skills for effective problem solving and skills to diffuse tension during impasses. Thus, training for such soft skills should therefore be a part of the training curriculum.

c) Introduce uniform training standards

Diversifying institutes that can provide training necessitates a corollary need to have uniform standards so that the quality of professionals is maintained. The requirement to meet these standards should be **in addition to the pre-existing** requirements set out by legislations or rules for that type of professional. For instance, an arbitrator seeking to provide e-arbitration services should be required to meet the standards set out by the Arbitration Council of India, the requirements under the respective rules of the various High Court annexed centres or private dispute resolution centre and the below mentioned ODR training standards. These standards should be **uniform across all ODR professionals**. It is recommended that the following components form a part of the training standards for ODR professionals²⁷²:

- i) **Basic training:**
 - Basic knowledge of all types of ODR: eADR and algorithmic resolutions
 - Basic knowledge of communication through ODR: both synchronous and asynchronous
 - Adapting offline ADR techniques to online environment
- ii) **Training on ethics:**
 - Familiarise neutrals on the ethical standards²⁷³
 - Party psychology and common online behaviours
 - Diversity and cross-cultural communication
 - Methods to increase accessibility and accommodate disability

²⁷⁰ BN Srikrishna and Ashok Barat, ‘VIEW: Resolving Commercial Disputes during Coronavirus (*CNBC TV 18*, 24 April 2020) <<https://www.cnbcv18.com/views/view-resolving-commercial-disputes-during-coronavirus-5767711.htm>> accessed 8 October 2020

²⁷¹ ibid

²⁷² International Council on Online Dispute Resolution, ‘ICODR ODR Training Components’ <<https://www.icodr.org/guides/training.pdf>> accessed 14 October 2020; The Mediation Room, ‘Training in Online Dispute Resolution’ <<https://themEDIATIONROOM.teachable.com/>> accessed 14 October 2020; ADR Institute of Canada, ‘ODR – A Practical Program for Practitioners’ <<https://adric.ca/online-dispute-resolution-course/>> accessed 14 October 2020

²⁷³ Ethical standards set out in Ethical Principles for Neutrals. See text in ch VI p 100

iii) Training on best practices:

- Prepare and conduct online mediation and arbitration
- Overview of various platforms, processes and tools
- Address pitfalls when communicating online
- Privacy, security, data protection and legal issues in ODR
- Methods to ensure quality in ODR

iv) Training on practical skills through demonstrations and simulations on:

- Techniques for audio, video and text based communication
- How to manage party expectations and encourage participation
- Time management in asynchronous online conversations

Uniform implementation of these standards will ensure that even though the training is being provided by a variety of stakeholders and institutes, the quality of ODR professionals across the nation is ensured.

d) Introduce remote teaching courses

Like training, which is being provided by various institutes, the method of imparting this training can also be diverse. They can thus take the form of **remote courses**. Due to the COVID-19 induced crises; universities across the country now are provide courses through video conferencing.²⁷⁴ Given the unique nature of ODR, **Judicial Academies, Bar Councils, and universities** can be encouraged to provide training through such remote courses.

e) Use SWAYAM to introduce multilingual courses

To ensure that training is not limited to just English or some regional languages, the Government initiative Study Webs of Active-Learning for Young Aspiring Minds (SWAYAM) can be harnessed. SWAYAM is an **open online course** (MOOC) platform launched by the Government of India under the Digital India initiative.²⁷⁵ Courses available on the platform are free of cost and available in multiple languages.²⁷⁶ **ODR courses and ODR training** can be provided by this platform.

f) Introduce ODR in legal education and continuing legal education

²⁷⁴ Goutam Das, ‘How NIIT University pivoted to digital, minimized COVID-19 disruption’ (*Livemint*, 23 March 2020) <<https://www.livemint.com/news/india/how-niit-university-pivoted-to-digital-minimized-covid-19-disruption-11584960267257.html>> accessed 8 October 2020

²⁷⁵ ‘Swayam’ <<https://swayam.gov.in/about>> accessed 8 October 2020

²⁷⁶ Srinivas G Roopi, ‘Swayam to introduce courses in 8 Indian languages including Hindi and Telugu’ (*Economic Times*, 19 May 2020) <<https://government.economictimes.indiatimes.com/news/education/swayam-to-introduce-courses-in-8-indian-languages-including-hindi-and-telugu/75819347#:~:text=Swayam%20to%20introduce%20courses%20in%208%20Indian%20languages%20including%20Hindi%20and%20Telugu,->> accessed 8 October 2020

The%20courses%20on&text=National%20online%20education%20portal%20Swayam,languages%20including%20Hindi%20and%20Telugu.> accessed 8 October 2020

Training does not have to start after individuals become professionals. Instead, it can be initiated right at the level of law students. Even though the Bar Council mandates alternative dispute resolution to be a compulsory subject for legal education, the requirements provided under the rules to conduct it through simulations and case studies are sparsely followed across universities. The **University Grants Commission** and the **Department of Justice**, can issue circulars to universities to encourage them to have multiple elective subjects on ADR including ODR. **State Bar Councils** and **Judicial Academies** can also be encouraged to introduce continuing legal education through curated curriculums and certificate courses that emphasize on first hand experience with technology and up-skilling advocates before they take up the roles of Neutrals.

2. Strengthen paralegal services within communities

The concept of Para-Legal Volunteers (PLVs) can be traced back to 2009, when the National Legal Services Authority (NALSA) recognizing the need to bridge the gap between the common people and the Legal Services Institutions (LSIs)²⁷⁷ introduced the Para-Legal Volunteers Scheme.²⁷⁸ The objective of the scheme was to impart legal training to PLVs who in turn provide people, in their locality, **information about the free legal facilities** available at the LSIs. In addition to **bridging this gap**, the PLVs also play the critical role of generating awareness about the benefits of settlement of disputes at the **pre-litigation stage** through Lok Adalats, conciliation, mediation and arbitration. Therefore, they are a major resource that can increase the reach of ODR in rural areas and remote locations.

However, the current status of PLVs in India, is sub-par. Under the scheme, every DLSA was to ideally have 50 active PLVs.²⁷⁹ To this end, most states complied with the numbers, with about 27 states/UTs seeing more than twice the number of PLVs and nine states/UTs having less than the required numbers.²⁸⁰ However, further research shows a less promising picture. States with high populations (such as Maharashtra, Uttar Pradesh and Bihar among others) show a figure of **less than 5 PLVs per lakh** of the population.²⁸¹ These numbers are entirely inadequate to cater to the needs of the population, especially during the introduction of an unfamiliar initiative such as ODR. Apart from the sheer numbers, various other issues such as the **lack of clarity on the criteria for qualifications**, inadequate training and monitoring mechanism, have limited the success of the scheme.

Investment in PLVs should be thought as an investment in building a community asset whose impact will not just be an increase in the **possible reach of ODR to rural areas**, but also

²⁷⁷ Such as the State Legal Services Authority (SLSA), District Legal Services Authority (DLSA), Taluk Legal Services Committee (TLSC), High Court Legal Services Committee (HCLSC) and Supreme Court Legal Services Committee (SCLSC)

²⁷⁸ National Legal Services Authority, Scheme for Para-Legal Volunteer (Revised) & Module for the Orientation – Induction – Refresher Courses for PLV Training <<https://nals.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers>> accessed 8 October 2020

²⁷⁹ ibid

²⁸⁰ 'India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid', Tata Trusts, New Delhi, India (2019) <<https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>> accessed 8 October 2020

²⁸¹ ibid

address larger access to justice issues. NLSA can take some of the following measures to address the problems in a phased manner.

- i. Ensure that the numbers of PLVs are **assigned proportionate to the population** of the District as opposed to a designated quota per DLSA.
- ii. Use PLVs services to assess the legal needs of the community in a planned and structured manner.
- iii. Provide targeted and **curated curriculums with simulations** in contrast to the current four days induction course and three days advance training course, which cover a very wide range of legislations in a short period of time.
- iv. Ensure **continuous training** to respond to the contemporary issues faced by the community.
- v. Providing step-by-step, **script-based solutions** to recurring problems such as filing FIRs, motor vehicle claims and cheque bouncing cases.
- vi. Introduce a continuous and streamlined **monitoring system**.
- vii. Provide adequate and fair compensation.
- viii. Reassess the qualification of minimum education.
- ix. Provide clarity on the criteria for selection.
- x. Provide community members information on the available ADR and ODR mechanisms through literary camps.

3. Encourage growth in the private sector

The Government does not have to build capacity for ODR in India all by itself. Instead, it can **co-opt the existing** platforms, innovations and service providers in the private sector to help resolve the disputes that arise in the future. To truly harness the private sector's potential, the Government has to encourage growth through **targeted initiatives** that encourage innovations and new entrants. Some of the ways in which growth can be enabled in the private sector have been identified below.

a) Set up Legal-Tech Hubs

Another method of encourage growth is through setting up of Legal Tech Hubs across the nation. Inspiration can be drawn countries like Singapore, which have set up legal tech hubs and actively worked towards increasing their **Ease of Doing Businesses Ranking**.²⁸² For example, the Future Law Innovation Programme (FLIP) set up by the **Singapore Academy of Law (SAL)** is an industry-wide initiative to drive innovation and encourage the adoption of new technology across the legal sector.²⁸³ Through **collaboration** between the

²⁸² Dominic Wrench, 'Singapore: Why Singapore Is A Global Hub For Legal Tech' (9 August 2019) <<https://www.mondaq.com/employment-and-hr/835578/why-singapore-is-a-global-hub-for-legal-tech>> accessed 8 October 2020

²⁸³ Future Law Innovation Programme, 'About' <<https://www.flip.org.sg/about>> accessed 8 October 2020

Government, the Judiciary and the legal-tech community, a similar framework for India can be created.

b) Encourage development of different variants of ODR

Given that ODR is still in its nascent stages of development, there is a lot of scope to originate and design desirable tools and technologies. Such a freehand can be used to develop **customisable solutions** based on the **classes of disputes** or categories of parties. For instance, technologies used to resolve e-Lok Adalats disputes will be differ from that used in small value e-commerce disputes. The latter for example, can potentially be contained through a comprehensive customer service system. To encourage the development of diverse solutions, it essential that ODR should not be circumscribed by what currently exists. Instead, it should be **loosely defined** such that it fosters innovation to truly deliver on the promise of access to just, speedy and effective resolution of disputes.

c) Collaborate with the private sector to resolve COVID-19 related disputes

Owing to the COVID-19 induced pandemic, the numbers of disputes across India are likely to **see a rise in numbers**. They can be across various sectors and include disputes such as non-payment of wages, termination of employment, surge in tenancy and consumer disputes and a host of commercial disputes. To address this upsurge, the Government can introduce a **COVID-19 related scheme** that recommends resolution of these disputes through ODR. Under the scheme the government can:

- i. Introduce a **tiered dispute resolution** framework for cases, which can be resolved through negotiation, mediation and arbitration in a time-bound manner, for all disputes below a certain monetary limit. The model used in Hong Kong can be used as a reference point.²⁸⁴
- ii. Introduce a **24*7 legal help desk** for commercial and employment disputes. The help desk or curated online platform can educate the public regarding their rights and obligations under law. The model used in China can be used as a reference point.²⁸⁵,
- iii. Introduce **temporary schemes with reduced legal service fee** or free legal aid for workers to cater to a large number of displaced workers from the lower economic strata.
- iv. Collaborate and **co-opt existing** expertise and resources from **grass-root organisations and private sector ODR** service providers. The Department of Legal

²⁸⁴ ‘COVID-19 Online Dispute Resolution (ODR) Scheme’ (*SJ’s Blog*, 13 April 2020) (HK) <https://www.doj.gov.hk/eng/public/blog/20200413_blog1.html> accessed 8 October 2020

²⁸⁵ Ministry of Justice Government Network, ‘Epidemic prevention and control and public enterprises resumed production complex legal service guide’ (03 March 2020) (CN) <http://www.moj.gov.cn/government_public/content/2020-03/03/tzwj_3243112.html> accessed 8 October 2020

Affairs (DoLA) has already taken a step towards identifying all existing ADR and ODR institutions.²⁸⁶ From this list, the Department of Justice (DoJ) and the DoLA can identify service providers who satisfy the **minimum standards** and adhere to the principles laid down in Section D of this Chapter.²⁸⁷

- v. Incentivise service providers to provide **services in rural areas**. Some of such incentives are identified in Section C of this Chapter.²⁸⁸

4. Increase the capacity of court-annexed ADR centres

The concept of court annexed ADR centres is synonymous with the **amendment to Section 89** of the Code of Civil Procedure, 1908 and can be traced back to the year 1999. However, it was only in April 2005, that they were piloted at the Tis Hazari District Courts, under the supervision of the Supreme Court's Mediation and Conciliation Project Committee (MCPC).²⁸⁹ Since then, courts across the country have set up their own court annexed mediation centres, such as Samadhan by the Delhi High Court and the Bangalore Mediation Centre by the Karnataka High Court. These centres are governed by their **own set of rules** that vary across High Courts.

During the COVID-19 induced pandemic, some court annexed centres such as Samadhan have lead the way in adopting ODR, through programs like '**On-Line Mediation Project**'.²⁹⁰ This project has also seen keen interest from disputants, having received more than 90 applications between June and September 2020.²⁹¹ Similar initiatives along with some of the recommendations mentioned below will enable these centres to **cater to larger volumes**, thereby fulfil their objective to reduce the burden on the public court system.

a) Equip court annexed centres with ODR facilities

At present, **funding** of court annexed mediation centres comes from **state Governments** with High Courts exercising some control over drawing up of budgets and utilisation of funds.²⁹²

²⁸⁶ Department of Legal Affairs, 'Hosting Of List Of Institutions Offering Alternate Dispute Resolution Mechanisms (Including ODR) On The Website Of Department Of Legal Affairs.' <https://legalaffairs.gov.in/hi/sectiondivision/hosting-list-institutions-offering-alternate-dispute-resolution-mechanisms-including> accessed 8 October 2020

²⁸⁷ Text in ch VI p 83

²⁸⁸ Text in ch VI p 86

²⁸⁹ Veena Ralli and Iram Majid, 'The Court Annexed Mediation Mechanism: An Overlooked Avenue For Justice' (*LiveLaw*, 21 September 2020) <https://www.livelaw.in/law-firms/articles/the-court-annexed-mediation-mechanism-an-overlooked-avenue-for-justice-163279> accessed 8 October 2020

²⁹⁰ Samadhan, 'Samadhan Online Mediation Project' (26 June 2020) http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_Z4XCD72WY9Z.PDF accessed 8 October 2020

²⁹¹ ibid

²⁹² Alok Prasanna Kumar and others, 'Strengthening Mediation in India: A Report on Court-Connected Mediations' (Vidhi Centre for Legal Policy, December 2016)

With support from the Supreme Court through the **eCourts Project**, which currently does not fund court annexed mediation centres, **primary ICT facilities** such as video conferencing tools, WAN connectivity and hardware equipment can be provided. The existence of these facilities will form the foundation for future ODR enablement.

b) Relax criteria for empanelment of mediators and recognition of institutions for court-annexed mediation

At present, the mediation rules of the various High Courts list out the criteria for qualifications, which by design are **oriented towards judicial officers and advocates** with considerable experience.²⁹³ While these rules provide for empanelment of ‘other professionals’, they often have requirements such as 15 years’ experience or requirements to be experts in mediation. This acts a **barrier to entry** for on boarding of Neutrals and also challenges the autonomy of parties that may prefer appointment of non-experts but mutually trusted individuals as Neutrals.

Similarly, qualification criteria vary across fora, as regards recognition of mediation institutions. For instance, while some rules recognise mediation institutions²⁹⁴ other **rules only recognize persons** and professionals and not institution as qualified for empanelment²⁹⁵. Akin to professionals, they act as barriers to entry and overlook a key stakeholder in the dispute resolution process.

It is therefore recommended that the rules lay down only certain **basic standards** regarding conflict disclosure and due process and **expand the scope** of who can resolve a dispute. This will lead to the recognition and appointment of diverse Neutrals. It is also necessary to standardise the criteria for recognition of institutions, since partnership with existing ADR centres with well-equipped ODR facilities is a critical way to ensure ODR scales up faster.

c) Set up specialized court-annexed centres for certain classes of disputes

<<https://doj.gov.in/sites/default/files/Final%20Report%20of%20Vidhi%20Centre%20for%20Legal%20Policy.pdf>> accessed 8 October 2020

²⁹³ For example, Rule 3 of the Mediation and Conciliation Rules, 2004 requires that the mediators be former judicial officers such as the retired judges of the Supreme Court, High Courts or District Courts or members of the bar with atleast 10 years working experience. While the rules do allow other professionals, they are restrictive. For example, even though the rules allow for ‘other professionals’ they require 15 years of standing or require individuals to be experts in mediation.

²⁹⁴ Rule 4 of the Mediation/Conciliation Rules of Punjab and Haryana High Court, Rule 5 of the Tamil Nadu Mediation Rules 201

²⁹⁵ Rule 4 Companies (Mediation and Conciliation) Rules, 2016 and Rule 3, Mediation and Conciliation Rules 2004 (High Court of Delhi)

As noted in Chapter III²⁹⁶, globally several jurisdictions have co-opted ODR into their own public court systems by setting up court annexed ODR centres for **certain class of cases** such as motor vehicle accident cases, loan defaults, and consumer cases that have limited questions of law and fact.²⁹⁷ The Judiciary and the Government can, in collaboration, identify classes of disputes that are fit for ODR and set up specialized court annexed centres for a streamlined and targeted resolution of disputes. **Section D** of this chapter, identifies some of the disputes that can benefit from ODR.²⁹⁸

5. Adopt ODR platforms for specific government sectors

As mentioned in Chapter III, ODR has been co-opted not just by the judiciaries across the globe but also by various Government institutions seeking to contain disputes even before they can reach courts. While the initiatives that have been co-opted by the Government departments in India are mentioned in Chapter IV,²⁹⁹ this section explains how they can be further **scaled up** moving forward.

a) Strengthen MSME SAMADHAAN for all kinds of money due cases

As mentioned in Chapter IV,³⁰⁰ at present, MSME SAMADHAAN covers only **issues related to delays of payments**. However, this portal can be scaled up to incorporate settlement of all MSME related disputes, and thereby provide a **single window dispute resolution facility for MSMEs**. Further, the portal can be linked to other fora/ platforms for effective end-to-end dispute resolution. To execute this expansion, inspiration can be drawn from the **Asia-Pacific Eastern Co-operation**, which has devised a collaborative framework to resolve low value disputes involving cross-border business-to-business (B2B) disputes, to help MSMEs.³⁰¹ For disputes of an international nature, this framework can be adopted. For disputes of a domestic nature, the portal can develop a **comprehensive set of model procedural rules** and maintain a list of service providers that can resolve disputes through ODR within the procedural guidelines laid down by the Ministry.

b) Enable ODR for INGRAM and Consumer Mediation Cell

²⁹⁶ Text in ch III p 31

²⁹⁷ Deepika Kinhal, ‘Every Crisis Presents an Opportunity – It’s Time for India to Ramp Up its ODR Capabilities’ (*Live Law*, 22 March 2020) <<https://www.livelaw.in/columns/every-crisis-presents-an-opportunity-its-time-for-india-to-ramp-up-its-odr-capabilities-154196>> accessed 8 October 2020. See also, Akankshha Agrawal, ‘With judiciary embracing technology, time to push dispute resolution online’ (*Business Standard*, 29 March 2020) <https://www.business-standard.com/article/current-affairs/with-judiciary-embracing-technology-time-to-push-dispute-resolution-online-120032901023_1.html> accessed 8 October 2020

²⁹⁸ Text in ch VI p 86

²⁹⁹ Text in ch IV p 53

³⁰⁰ Text in ch IV p 51

³⁰¹ APEC, ‘APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes – Endorsed (Second Economic Committee Meeting, 26-27 August 2019) <http://mddb.apec.org/Documents/2019/EC/EC2/19_ec2_022.pdf> accessed 8 October 2020

As mentioned in Chapter IV,³⁰² the Department of Consumer Affairs has spearheaded ODR integration into government run ODR programs with the introduction of the **National Consumer Helpline (NCH)**. Further, it has laid the foundation for future ODR integration with the **Integrated Consumer Grievance Redressal Mechanism (INGRAM)** and soon to be introduced **Consumer Mediation Cells (CMCs)**. The following paragraphs explain how the latter two initiatives can be scaled up.

For Consumer Mediation Cells: Given that these cells were introduced only via the 2019 Amendment Act³⁰³, they are still in their nascent stages of development thereby providing a perfect opportunity to integrate them with ODR services. The Department can equip these cells with **relevant technology infrastructure** such as audio-visual equipment, good Internet connectivity and impart training to all **in-house mediators**. A dedicated platform for communication and document submission during the mediation process can be developed which guarantees confidentiality and privacy. **Rules can be framed** to allow for asynchronous communication as well.

For INGRAM: At present, the INGRAM portal provides a three-tier approach to dispute resolution – resolution through the platform, followed by sector specific regulatory authority and finally through the Consumer Commission. Instead, the Department can consider including an option for **online mediation** before the consumers are advised to approach the regulatory authority thereby making it a **four-tiered approach**. To this end, the Department can use the facilities of the **Consumer Mediation Cells**.

c) Use ODR to resolve Insolvency and Bankruptcy Disputes

Internationally, there have been a lot of successes in using mediation to resolve insolvency disputes like in the case of the Lehman Brothers Holdings case in the United States.³⁰⁴ Recognising such a potential, the Report of the Bankruptcy Law Reforms Committee recommended a process for **the negotiated settlement between creditors and debtors** without the active involvement of the court.³⁰⁵ Today, even though the Insolvency and Bankruptcy Code (IBC) prescribes a time limit to resolve disputes, they are seldom met due to the **delays at the National Company Law Tribunal**.³⁰⁶ To overcome such delays the

³⁰² Text in ch IV p 52

³⁰³ Consumer Protection Act 2019, s 74

³⁰⁴ Kayjal Dasan and Samuel Seow, ‘Seminar Review: Mediation in International Insolvency, *International Arbitration Asia* (20 September 2015)

<http://www.internationalarbitrationasia.com/mediation_in_international_insolvency_disputes> accessed 14 October 2020

³⁰⁵ Bankruptcy Law Reforms Committee, ‘The report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design’ *Insolvency and Bankruptcy Board of India* (November 2015)

<https://ibbi.gov.in/BLRCReportVol1_04112015.pdf> accessed 14 October 2020

³⁰⁶ Amitabh Kant, ‘IBC delayed is IBC denied’ *Economic Times Blog* (24 June 2019)

<<https://economictimes.indiatimes.com/blogs/et-commentary/ibc-delayed-is-ibc-denied/>> accessed 14 October 2020

Government can consider introducing a **mediation mechanism**, which has been successful in other jurisdictions.³⁰⁷ To further expedite the process, resolution can take place through ODR.

C. Build Trust in ODR

While the building infrastructure and ensuring adequate capacity can form the foundation for ODR, its mainstreaming will require increased trust in ODR processes from its end users - individual disputants, businesses and governments. This trust can be built only through **collaborative and coordinated efforts** from all concerned stakeholders - Neutrals, lawyers, ODR/ADR institutions, ODR platforms along with the Government and the Judiciary.

The Government through the Department of Legal Affairs has already initiated the process by inviting submissions to **recognise ADR and ODR** services providers.³⁰⁸ Even the Judiciary has taken an initiative to mainstream mediation in the country through the establishment of the **Mediation and Conciliation Planning Committee** (MCPC).³⁰⁹ The coming section identifies some of the other measures that can be taken to generate trust in ODR.

1. Adopt ODR for Government litigation

As discussed in Chapter IV³¹⁰, the Government is the biggest contributor to litigation in the country.³¹¹ As a result, the Government incurs heavy expenditures, of public money, as litigation costs.³¹² While there have been several attempts to encourage Government Departments, Ministries and Public Sector Undertakings (PSUs) to adopt ADR initiatives, they have not achieved the desired results and have in fact added to the delay.³¹³ Overtime, the Government can **mandate certain categories of disputes** be resolved through ODR before approaching courts. In fact, the 'Action Plan to reduce Government Litigation' released by the Department of Justice in 2017 also advocates for the use of ODR to resolve

³⁰⁷ Veena Mani, 'Changes in IBC will allow provision for mediation to cut costs, time' *Business Standards* (22 April 2019) <https://www.business-standard.com/article/economy-policy/changes-in-ibc-will-allow-provision-for-mediation-to-cut-costs-time-119042100645_1.html> accessed 14 October 2020

³⁰⁸ Department of Legal Affairs, 'Hosting Of List Of Institutions Offering Alternate Dispute Resolution Mechanisms (Including ODR) On The Website Of Department Of Legal Affairs' <<https://legalaffairs.gov.in/sectiondivision/hosting-list-institutions-offering-alternate-dispute-resolution-mechanisms-including>> accessed 9 October 2020

³⁰⁹ Janet Martines and others, 'Dispute System Design: A Comparative Study of India, Israel and California' (2013) 4 Cardozo Journal of Conflict Resolution 809

³¹⁰ Text in ch IV p 53

³¹¹ Department of Justice, 'Action Plan to reduce Government Litigation' (13 June 2017) <<http://doj.gov.in/page/action-plan-reduce-Government-litigation>> accessed 6 October 2020

³¹² Lok Sabha, 'Expenditure Incurred in Contesting Court Cases' (Unstarred Question No 228, 18 July 2018) <<http://164.100.24.220/loksabhaquestions/annex/15/AU228.pdf>> accessed 6 October 2020

³¹³ Department of Public Enterprise, 'Settlement of commercial disputes between Public Sector Enterprises inter se and Public Sector Enterprise(s) and Government Department(s) through Permanent Machinery of Arbitrators (PMA) in the Department of Public Enterprises' (22 January 2004) <<http://dpe.gov.in/sites/default/files/Guideline-260.pdf>> accessed 6 October 2020

disputes **between the Government and private entities**.³¹⁴ Adopting such a policy can help reduce Government litigation.

2. Introduce an awareness campaign for ODR

Introduction of new technologies, in this case ODR, often face scepticism from society. One of the ways to remedy this scepticism is to increase awareness about ODR processes, platforms and their benefits. To this end, the Government, through its various Departments can run a **comprehensive campaign** that utilises **multimedia platforms**, such as television, radio shows, publication on Government websites to guide the public on the ways to use ODR processes. The Government can also leverage its **social media** presence to highlight ODR success stories to encourage people to adopt ODR. Taking a cue from the Government's initiatives, private platforms can also **publish success stories** and hold free **awareness sessions on weekends** to increase the reach of ODR.

3. Introduce targeted incentives for stakeholders

The lack of targeted incentives for stakeholders is one of the reasons behind the limited adoption of ODR in India. Identified below are some of the initiatives that the Government and the Judiciary can introduce to encourage these stakeholders.

a) Incentives for businesses

Due to an increase in use of technology, businesses across the digital economy (like e-commerce and hospitality) as well as traditional industries (like banking and housing) have **shown an interest** in integrating technology into their dispute resolution.³¹⁵

The Government can encourage this interest by introducing dedicated schemes. In March 2020, the Government launched the 'Vivad se Vishwas' and offered incentives like **waiver of penalty and interest to the parties** who volunteer to resolve their tax disputes under the scheme.³¹⁶ As on September 8, this scheme has resulted in resolution of 35,074 disputes.³¹⁷ Similar schemes can be introduced for other sectors to resolve disputes between Government and private entities. The Government can also introduce **sector specific schemes** to resolve disputes arising due to the COVID-19 pandemic through ODR.³¹⁸

b) Incentives for lawyers

³¹⁴ Department of Justice, 'Action Plan to reduce Government Litigation' (13 June 2017)

<<https://doj.gov.in/page/action-plan-reduce-government-litigation>> accessed 6 October 2020

³¹⁵ Indulekha Aravind, 'Online dispute resolution is beginning to find takes in India' (*Economic Times* 12 January 2020) <<https://economictimes.indiatimes.com/small-biz/startups/features/online-dispute-resolution-is-beginning-to-find-takers-in-india/articleshow/73206371.cms?from=mdr>> accessed 19 October 2020

³¹⁶ ENS Economic Bureau, 'Vivad se Vishwas: Rules & forms notified; e-facility to avail scheme' (*Indian Express*, 20 March 2020) <<https://indianexpress.com/article/business/vivad-se-vishwas-rules-e-facility-to-avail-scheme-6323047/>> accessed 8 October 2020

³¹⁷ FE Bureau, 'Over 35,000 direct tax disputes resolved under Vivad se Vishwas' (*Financial Express*, 15 September 2020) <<https://www.financialexpress.com/money/income-tax/over-35000-direct-tax-disputes-resolved-under-vivad-se-vishwas/2083107/>> accessed 8 October 2020

³¹⁸ For further discussion on resolving COVID-19 related disputes through ODR please see text in ch 6 p 78

As the letter from the Bar Council to the Chief Justice mentioned, the inclusion of technology tools in dispute resolution can create **hardships for lawyers** and can disproportionately benefit lawyers from privileged backgrounds.³¹⁹ Further, given the nature of ODR, there can be a **perceived sense of threat** among lawyers, that ODR might impact their traditional sources of revenue. As a result, it might disincentivise them from recommending ODR to their clients. To address this, the Government and the Judiciary can provide lawyers easier access to technology by building digital infrastructure³²⁰ and develop necessary skills³²¹ for their effective inclusion in ODR processes as both **representatives for parties and as Neutrals**.

c) Incentives for start-ups

To encourage growth, the Government can introduce tax incentives directed at start-ups that newly enter the ecosystem. It can take a cue from the past, where the Government has provided incentives to start-ups in its **Annual Budgets**.³²² Additionally, various Government Departments such as the Department for Promotion of Industry and Internal Trade (DPIIT) have also recommended extension of tax incentives to incubators supported under **Atal Innovation Mission** or reduced GST (Goods and Services Tax) rates on AIF (alternate investment fund) management fees and tax benefits on ESOPs.³²³ Similar incentives directed at private ODR related platforms and services can be introduced.

While implementing all the above mentioned initiatives will go a long way, building trust and generating awareness is a **continuous process**. Given the fast paced nature of innovation associated with ODR, it will be essential that the growth and the success that the industry sees over time be communicated with the public at large. A platform to showcase success **stories and latest developments in ODR** can be considered as a **permanent feature** on the DoJ website.

D. Suitably Regulate ODR

Today, ODR in India, is positioned at a very delicate cusp in time. The past few years have seen rapid developments in innovations and the emergence of a variety of ODR solutions.³²⁴ As identified in the previous chapters, these innovations have garnered a lot of interest from

³¹⁹ Legal Correspondent, ‘Resume physical courts from June 1, Bar Council urges CJI’ (*The Hindu*, 27 May 2020) <<https://www.thehindu.com/news/national/resume-physical-courts-from-june-1-bar-council-urges-cji/article31689599.ece>> accessed 6 October 2020

³²⁰ Text in ch VI p 70

³²¹ Text in ch VI p 73

³²² Government of India, Ministry of Commerce and Industry, ‘Startup Recognition & Tax Exemption’ <<https://www.startupindia.gov.in/content/sih/en/startupgov/startup-recognition-page.html>> accessed 8 October 2020

³²³ PTI, ‘Govt may provide tax incentives for startups in Budget’ (*Economic Times*, 30 December 2019) <<https://auto.economictimes.indiatimes.com/news/industry/govt-may-provide-tax-incentives-for-startups-in-budget/73030763>> accessed 8 October 2020

³²⁴ Agami and Sama, ‘ODR Opportunities in India’ (December 2019) <https://static1.squarespace.com/static/5bc39a39b7c92c53642fc951/t/5e13302088456a2a6f7e4c35/1578315811604/Updated_ODR+Opportunities+in+India.pdf> accessed 13 October 2020

various stakeholders, especially during the COVID-19 pandemic.³²⁵ Given sufficient time and room for growth, India has the potential to be the **epicentre for innovation and dynamic development** of ODR. With new players entering the field and the ecosystem seeing increased activity, there will be a corollary need to ensure that the rights of the end users are protected. On the other hand, even though ODR has indeed seen new innovation, these technology solutions are still in their early stages of development. Therefore, it is necessary that the regulatory model adopted by India **protect the rights of the end users while ensuring that over-regulation does not stifle innovation.**³²⁶ To this end, a soft touch approach to regulation is well suited for India, especially during the early stages, which are likely to see immense growth and innovation of a variety of ODR solutions.³²⁷

The Government can adopt this soft touch regulatory model³²⁸ through a two-pronged approach that uses legislative and non-legislative tools. First, it can **amend the existing legislations** to incorporate ODR and introduce **mandatory pre-litigation** online mediation for certain classes of cases.³²⁹ To increase the likelihood of success, an opt-out model can be adopted.³³⁰ Second, it can introduce a set of **voluntary principles** that act as the ideal set of standards that stakeholders can follow.³³¹ These principles can govern the technology and design of ODR platforms and ethical obligations for ODR centres and Neutrals. The following two sections on - strengthen the existing framework and regulate through principles provide a detailed explanation of how this can be achieved.

³²⁵ Sanjna Pramod, 'Covid-19 and the rise of online dispute resolution' *Deccan Herald* (14 July 2020) <<https://www.deccanherald.com/opinion/panorama/covid-19-and-the-rise-of-online-dispute-resolution-861291.html>> accessed 13 October 2020

³²⁶ OECD, 'Regulatory Reform and Innovation' <<https://www.oecd.org/sti/inno/2102514.pdf>> accessed 13 October 2020

³²⁷ Eugene Clark and Arthur Hoyle, 'E-ADR: On-Line Dispute Resolution: Issues and Recent Developments' (2002) 8 <<http://www.canberra.edu.au/ncf/publications/e-adr.pdf>> accessed 13 October 2020; Noam Ebner and John Zeleznikow, 'No Sheriff in Town: Governance for Online Dispute Resolution' (2016) 32 Negotiation Journal 297 <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/nejo32&div=27&id=&page=>> accessed 13 October 2020

³²⁸ Linda Senden, 'Soft law, Self-Regulation and Co-Regulation in European Law: Where do they Meet?' 9 Electronic Journal of Comparative Law 1 (2005) <https://www.researchgate.net/publication/228322818_Soft_Law_Self-regulation_and_Co-regulation_in_European_Law_Where_do_they_Meet> accessed 13 October 2020

³²⁹ Press Trust of India, 'Time is ripe for legislation containing compulsory 'pre-litigation mediation': CJI' *Economic Times* (8 February 2020)

<<https://economictimes.indiatimes.com/news/politics-and-nation/time-is-ripe-for-legislation-containing-compulsory-pre-litigation-mediation-cji/articleshow/74026498.cms?from=mdr>> accessed 13 October 2020

³³⁰ Ruslan Mirzayev, 'After Italy And Turkey, Azerbaijan Also Follows The Opt-Out Mediation Model' (Kluwer Mediation Blog, 1 May 2019) <<http://mediationblog.kluwerarbitration.com/2019/05/01/after-italy-and-turkey-azerbaijan-also-follows-the-opt-out-mediation-model/>> accessed 13 October 2020

³³¹ See European Commission, '98/257/EC: Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (30 March 1998) <<https://op.europa.eu/en/publication-detail/-/publication/0c096a7b-99f5-4794-93e6-e2bc374308ff/language-en>> accessed 14 October 2020 and European Commission, '2001/310/EC: Recommendation on the principles for out-of-court bodies involved in the consensual resolution on consumer disputes (4 April 2001) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001H0310&from=EN>> accessed 13 October 2020

However, this **light touch regulatory model** does not need to indefinitely be adopted.³³² With an increase of entrants into the market, diversity of technology innovations & practices, a more proactive approach to regulation can be considered for the future.³³³ In the past, a similar **progressive model of regulation** has been adopted by the European Commission, which over the course of a decade transitioned from non-binding principles³³⁴ to directives³³⁵. If adopted, the timeline for such progression is likely to be determined by the extent of innovation in the country and observance of voluntary principles by the stakeholders. As is frequently the case, technology related laws often last for a short duration and require regular amendments.³³⁶ Even though these are considerations for the future, it is important that a cautious but **responsive attitude is adopted by the Government**, as opposed to one that is seeped in worry and apprehension of breach.³³⁷

1. Strengthen existing legislative framework

As mentioned in the introduction, primary ODR services tend to often mirror ADR processes and reflect the same through an online interface. Hence, regulation of ODR should start from strengthening the existing framework for ADR in India.

Arbitration and Conciliation Act, 1996 regulates the appointment of neutrals, enforcement of the outcome and the other procedures for arbitration and conciliation proceedings. This act can be **modified to include ODR** and therefore provide an efficient regulatory structure for e-ADR and especially online arbitration as it involves precise legal procedure.³³⁸ In fact, the 2006, UNCITRAL Working Group on Arbitration and Conciliation in their forty-fourth session recommended revision of UNCITRAL Model Law and Arbitration Rules to incorporate ODR.³³⁹ Such recommended amendments can be made to incorporate ODR in existing legislations. Further, **supplementary rules** can be introduced to accommodate the concerns that may arise during online arbitration and mediation processes.

³³² Sree Krishna Bharadwaj Hotur, 'The Ambivalence of Self-Regulation in ODR' (*Mediate*, May 2017) <<https://www.mediate.com/articles/Bharadwaj1.cfm#comments>> accessed 13 October 2020

³³³ Thomas Shultz, 'An Essay on the Role of Government for ODR: Theoretical Considerations about the Future of ODR' (2003) <<https://www.mediate.com/integrating/docs/schultz.pdf>> accessed 13 October 2020

³³⁴ ibid

³³⁵ European Commission, '2013/11/EU: Directive on alternative dispute resolution for consumer disputes' (21 May 2013) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0011&from=EN>> accessed 13 October 2020 and European Parliament and the Council, 'Regulation (EU) No. 524/2013 on online dispute resolution for consumer disputes (May 2013) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PD>> accessed 13 October 2020

³³⁶ Rafal Morek, 'The Regulatory Framework for Online Dispute Resolution: A Critical View' (2006) 38 *University of Toledo Law Review*

³³⁷ Mark Fenwick, Wulf Kaal and Erik Vermeulen, 'Regulation Tomorrow: What Happens When Technology Is Faster Than The Law?' (2017) 6(3) *American University Business Law Review* <<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1028&context=aublr>> accessed 13 October 2020

³³⁸ Rafal Morek, 'The Regulatory Framework for Online Dispute Resolution: A Critical View' (2006) 38 *University of Toledo Law Review*

³³⁹ Working Group on Arbitration and Conciliation, UNCITRAL 'Report of the Working Group on Arbitration and Conciliation on the work of its forty-fourth session)' (2006) <<https://undocs.org/en/A/CN.9/592>> accessed 13 October 2020.

a) Introduce a regulatory framework for mediation

At present, there is **no umbrella legislation** to govern mediation. Instead it is regulated in a piecemeal with references across various legislations. The most frequently used provision to refer parties to mediation is Section 89 of the Code of Civil Procedure, 1908. Further, there are other some other legislations, like the following, which require and encourage the use of mediation for specific categories of disputes -

- i. Family Courts Act, 1984;
- ii. Companies Act, 2013;
- iii. Commercial Courts Act, 2015 and
- iv. Consumer Protection Act, 2019.

However, the lack of umbrella legislation has lead to several issues including an **uncertainty regarding enforcement** of outcomes and empanelment of mediators. The Supreme Court, in *M.R. Krishna Murthi v. New India Insurance Co Ltd*,³⁴⁰ acknowledged the dire need for a mediation legislation in India. Subsequently, the **Supreme Court established a committee** to prepare a draft legislation for mediation.³⁴¹

A dedicated legislation for mediation can effectively address the concerns regarding enforcement of mediation settlements, address concerns that may arise in online mediation and also explicitly recognise ODR. Consequently, a strong enforcement framework will encourage parties towards mediation **eventually reduce the burden on traditional courts**.

b) Strengthen existing regulation of online interactions

As mentioned in Chapter IV, there have been some legislations which recognise and regulate the use of technology namely the Information Technology Act, 2000 and the recognition of electronic evidence under the Indian Evidence Act, 1872. However, the Government can **introduce amendments into these legislations** to accommodate ODR processes and protect the data privacy, confidentiality, security and protection of rights of all parties. Additionally, the Government should also implement the personal and non-personal data protection framework through the **Personal Data Protection Bill** along with introducing regulation for **e-Commerce** through Consumer Protection Act, 2019.

c) Digitalise legal processes

At present, the legal compliances such as affixture of stamp paper to the agreement and notarisation of documents require parties to **maintain physical copies** of the documents and be physically present for verification. This impedes ODR service providers from providing seamless end-to-end online dispute resolution at a large scale. Therefore, the following identifies how some of these processes can be digitised.

³⁴⁰ *M.R. Krishna Murthi v New India Insurance Co. Ltd.* 2019 SCC OnLine SC 315

³⁴¹ Ajmer Singh, 'Supreme Court forms committee to draft mediation law, will send to government' (*The Economic Times*, 19 January 2020) accessed 13 October 2020

- i. **Mainstream e-stamping:** In 2014, the Central Government introduced e-stamping to address counterfeiting and enable online payment of stamp duty.³⁴² However, some states still require parties to affix a physical copy of the stamp paper to the document as a proof of payment of stamp duty. This requirement creates a difficulty in resolving disputes through online arbitration and other ODR methods, especially in **inter-state disputes with different stamp-duty** and procedural requirements. Digitisation of such compliance requirements, **harmonisation of rules** and exemption from stamp duty for agreements will enable end-to-end ODR process and encourage parties to resolve their disputes through ODR.
- ii. **Allow online notarisation** In India, the process of getting documents notarised requires physical presence of the parties. Online notarisation through secure e-signature and electronic notary seal can address this challenge and provide an online mode for authentication and validation of the documents.³⁴³ Process re-engineering and digitisation of these processes are essential for the eCourts Project as well as for ODR.

d) Mandate pre-litigation mediation

At present, there has been a lot of interest in using pre-litigation mediation to reduce the burden on traditional courts.³⁴⁴ In February 2020, Chief Justice of India, Justice S.A. Bobde called for devising comprehensive legislation with **compulsory pre-litigation mediation** to address pendency and slow disposal rates in courts.³⁴⁵ As an initial start in legislation, pre-litigation mediation has been introduced through Section 12A of the **Commercial Courts Act, 2015** and Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018. However if pre-litigation mediation is to indeed be scaled up, a well-developed system will have to be devised.

Internationally, the key to such a system has come in the form of an **opt-out model** of compulsory or mandatory pre-litigation mediation. Successfully implemented in **Italy and**

³⁴² Shoaib Zaman, ‘Duly Stamped’ (*Business Today*, January 2014) <[https://www.businesstoday.in/moneytoday/financial-planning/electronic-stamping-is-a-convenient-way-to-pay-stamp-duty/story/201780.html#:~:text=The%20Indian%20government%20introduced%20e,be%20paid%20through%20e%20stamping.](https://www.businesstoday.in/moneytoday/financial-planning/electronic-stamping-is-a-convenient-way-to-pay-stamp-duty/story/201780.html#:~:text=The%20Indian%20government%20introduced%20e,be%20paid%20through%20e%20stamping.>)> accessed 6 October 2020

³⁴³ CII, ‘Use of Technology in the Justice System’ (May 2020) <<https://www.cii.in/PublicationDetail.aspx?enc=QIAAEJ5LsHNWtaL76yIUV9psxIk0dXVXqS7derhlBUsHrL2XCjIMvJ7SabwG3Frmsrtu7PPxMBXHfmn5hUUWxP15Wt+JYTj/091yOdZkfkTSVygL/I9NfOwQPMd6W08zOsUoIwJnD5DQfDCcPNDYw3dFqoZ6J1Qv0zVRG+XIkdULZbmnaMHXFIGCi3RGO0Ga0gbMHeSPhT8MOGIlubqe+CtF+U/Ye1O2GaiUff7RcHwFt1VARx5JSKV0vUydXexRNkv1vQC+Q6IDQTVC28I6Jmuu9h+jHQj7ZHClfEDw4uYhwNPgJH8n3tad7jwgKCIinfFECHhVrmQLHmK4PiGeMhC3/4g1Ybi2mMixPyXhI4=>>> accessed 8 October 2020

³⁴⁴ NITI Aayog, ‘Catalyzing Online Dispute Resolution in India’ (12 June 2020) <<https://niti.gov.in/catalyzing-online-dispute-resolution-india>> accessed 13 October 2020

³⁴⁵ Press Trust of India, ‘Time ripe for legislation carrying compulsory pre-litigation mediation: CJI’ (*Business Standard*, 8 February 2020) <https://www.business-standard.com/article/pti-stories/time-is-ripe-for-legislation-containing-compulsory-pre-litigation-mediation-cji-120020800624_1.html> accessed 13 October 2020

other jurisdictions, this process mandates parties to attend initial mediation sessions to understand the benefits of the mediation process and explore possible settlement. After this mandatory initial session, the party may decide to opt-out of the mediation process or continue with the process to resolve their disputes. Mandatory pre-litigation mediation therefore becomes a **necessary step before approaching courts**. Along with the opt-out option, the Italian model also prescribes **minimal mediation fee and sanction** for the parties who fail to attend the initial mediation session.³⁴⁶ This balance between incentives and sanctions has resulted in upscaling the mediation process in Italy and reducing the burden on the judiciary.³⁴⁷

Many countries, like Turkey³⁴⁸ and Brazil³⁴⁹ have successfully replicated this model to reduce the case burden on the courts. In Brazil, the Code of Civil Procedure, 2015 also allows for pre-litigation mediation and conciliation proceedings to be held electronically.³⁵⁰ However, incorporation of compulsory pre-litigation mediation in some countries, like Romania has resulted in barriers in access to courts. In Romania, the mandatory nature of the provision and lack of incentives has reduced the mediation process into a mere compliance before incorporation of cases before the court.³⁵¹ Therefore, a framework for India needs to be carefully thought out based on the **realities of India's litigation culture**, and more importantly, the ecosystem's ability to provide a large number of mediators.

If successfully introduced, the Government can **gradually mandate** it for the following dispute categories:

- a) Family disputes,
- b) Real Estate disputes,
- c) Inheritance disputes,
- d) Disputes regarding division of assets,
- e) Consumer disputes,
- f) Tenancy disputes,
- g) Labour and employment disputes,
- h) Disputes regarding bailments,
- i) Disputes arising from business or commercial leases, and
- j) Insurance, banking and financial disputes.

³⁴⁶ Leonardo d'Urso, 'Italy's 'Required Initial Mediation Session': Bridging The Gap between Mandatory and Voluntary Mediation' (*Alternatives*, 4 April 2018) <<https://www.adrcenterfordevelopment.com/wp-content/uploads/2020/04/Italys-Required-Initial-Mediation-Session-by-Leonardo-DUrso-5.pdf>> accessed 13 October 2020

³⁴⁷ ibid

³⁴⁸ Leonardo d'Urso, 'How Turkey Went from Virtually Zero to 30,828 Mediation in Just One Month' (*Mediate*, February 2018) <<https://www.mediate.com/articles/depalog20180222.cfm>> accessed 13 October 2020

³⁴⁹ Code of Civil Procedure 2015, art 334 (BRA)

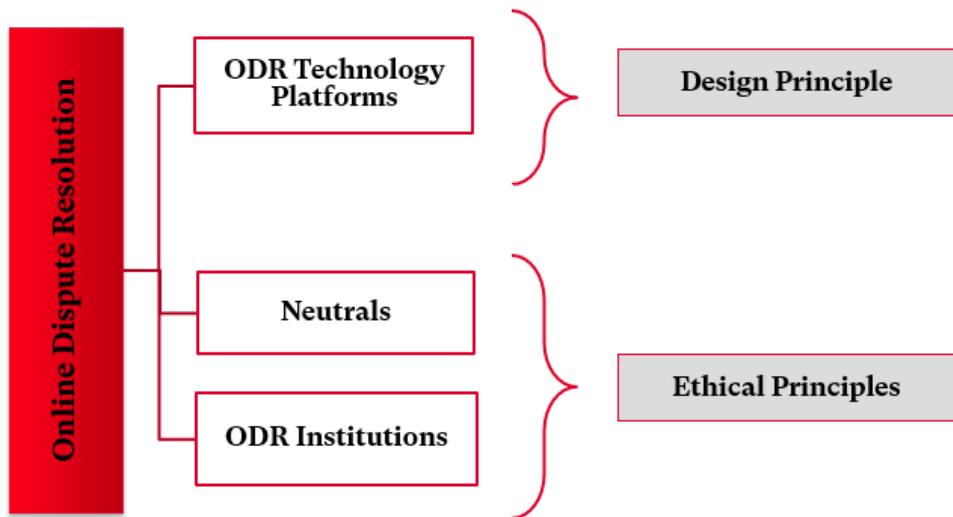
³⁵⁰ Code of Civil Procedure 2015, art 334 para 7 (BRA)

³⁵¹ Constantin-Adi Gavrilă and Christian-Radu Chereji, 'Don't Rush' (*Kluwer Mediation Blog*, 2 March 2015) <http://mediationblog.kluwerarbitration.com/2015/03/02/dont-rush/?doing_wp_cron=1589283508.1908419132232666015625> accessed 13 October 2020

It is important that the expansion in classes of disputes see **reciprocal increase in capacity** and quality of dispute resolution centres and neutrals. Only then can it be ensured that pre-litigation mediation does not fall prey to the pitfalls it faced internationally. In this context, given ODR's many benefits that lead to an increase in access to justice, it can be relied on as the **preferred method of dispute resolution**.

2. Guidance through principles

While the previous section identifies a more permanent method to consolidate ODR into the legal framework, this section identifies how, moving forward, the ODR ecosystem should be shaped. It is recommended that this modelling be done through a **voluntary set of principles**.³⁵² They are intentionally general with the **goal of acting as guidelines** that can lead the future development of standards and best practices. They are not intended to supplant any existing or future laws.³⁵³ These principles are designed to guide and regulate various aspects of ODR processes – the technology platform used in ODR processes, the institutions providing ODR services and the neutrals that facilitate or adjudicate the dispute resolution process.



While some of these **principles overlap** between the three components, especially between Neutrals and ODR Centres, they have been included in both categories for they place separate obligations on them. These principles are intended to be **forward thinking** and address not

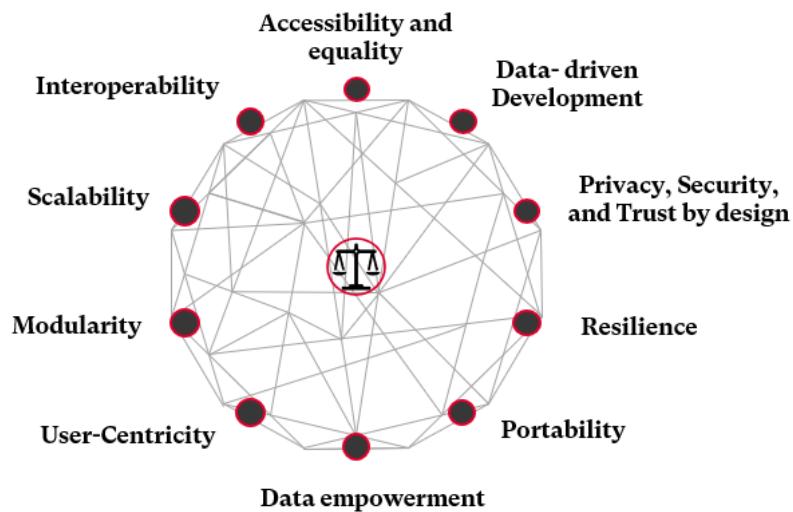
³⁵² Julia Black, 'Forms and Paradoxes of Principles Based (23 September 2008) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267722.> accessed 13 October 2020

³⁵³ International Council for Online Dispute Resolution, 'ICODR Standards' <<https://icodr.org/standards/>> accessed 13 October 2020

just e-arbitration and e-mediation but also leave room for the development of future ODR tools. That said, even though there are references to algorithmic dispute resolution, no separate sets of principles to regulate them have been identified. The Committee believes that the principles should **not pre-empt and stifle innovation** but respond and adapt to it. That said, all forms of ODR, including those introduced through AI/ML would continue to be guided by the following principles that have been identified. Further, to ensure adaptability, these principles should see timely revisions that respond to new innovations. Sources that have aided the creation of these principles have been identified in the footnotes. The whole principle or some components of the principle have been derived from these sources.

a) Design Principles for ODR Platforms

These principles apply to the technology layer in any ODR process and would be applicable irrespective of how this service is offered or used. The principles can guide **ODR start-ups and institutions** that provide ODR services and also **in-house ODR platforms** that have been integrated by specific businesses to cater to their disputes. Though these principles rely on distinct elements, they need to be **read with each other** to realise their true intent and purpose. Given the novel nature of their creation, these principles are followed with a short commentary that hopes to provide insights into their intent and expected practical application.



i. Interoperability

It is strongly recommended that ODR platforms should be designed in such a manner that independently developed components can **interact and cooperate** with internal and external

systems, networks and entities and with capabilities for integration with old and new technologies.³⁵⁴

Commentary: Designing software, tools and platforms to be interoperable will potentially allow them to be plugged into the other platforms as well as operate with ancillary systems judicial systems under the eCourts Project. For example, development of platforms for e-commerce disputes that are **cognizant of the record keeping practices** and applications developed by the Consumer Commissions will allow for data to be easily gathered and shared. This will in turn facilitate **systematic approach towards future changes** in laws and policy.

ii. Portability

It is strongly recommended that ODR platforms should be designed in such a manner that **data can be transported from one platform to another** without incurring any additional costs.

Commentary: The ODR platforms should be designed to enable easy transfer of disputes and dispute related data to another platform without any cost or the risk of leaving the data behind. Absence of data portability can create entry barriers for software developers and hence distort competition. It could also unnecessarily **inconvenience the parties** who may be dissatisfied with the services provided by one ODR platform and would prefer to shift to others. ODR ecosystem should come up with the **necessary standards to ensure portability** between different platforms and APIs to assist the ODR process.

iii. Modularity

Complex designs developed by ODR platforms should produce modular solutions that can form the building blocks for future innovations and allow for **iterative development**.

Commentary: While simple problems such as addressing refunds for ticketing can be addressed through simple solutions, automated and algorithmic resolution of disputes that involve the submission of documentation require **complex software and solutions**. To ensure that these solutions can be used for different purposes in the future, platforms can be designed to be modular.

iv. Privacy, Security and Trust by design

Platforms should take adequate safeguards to protect the privacy of its users and security and integrity of the data exchanged during the dispute resolution process. These platforms should **induce trust in every interaction**. Platforms should also be designed to **capture minimal personal** identity related data or other sensitive data, which should be stored in an

³⁵⁴ Luis M. Camarinha-Matos and Hamideh Afsarmanesh, *Processes and Foundations for Virtual Organizations* (Springer 2004) <https://link.springer.com/content/pdf/10.1007/978-0-387-35704-1_34.pdf> 323- 330

anonymised way with only relevant attributes being displayed on the user interface.³⁵⁵ For information that is stored, platforms should **develop policies** for access, retention and destruction of data and publish such policies on their websites and applications.³⁵⁶

Commentary: Platforms that are designed should be intrinsically secure and protect the security of the data and privacy of the individuals. They should also be supported by adequate and robust policy measures. Privacy can be ensured through **data minimalism**, informed consent, security through **encryption**, trust via registries, signatures, digital attestation, frequent internal system audits, measures for **management of assets** such as trade secrets and confidential information disclosed during proceedings and limiting access of information to authorised personnel.³⁵⁷

v. User centricity

Platforms must be designed to keep the **primary users at the center** and ensure choice of access, ensure accountability among actors on the platform, and be transparent about rules, pricing, participation, processes etc. Platforms should be designed to be **affordable** and users should have the ability to interact without **needing a middleman** is critical.

Commentary: Read along with the principle of accessibility, platforms should be designed keeping the user in mind. In the context of India, they should especially be affordable to cater to all classes of individuals.

vi. Accessibility and equality

ODR services should be designed in such a manner that they can effectively used by individuals from different communities, classes and backgrounds. They should be designed to cater to **diversity across language, context, device, connectivity, capacity** etc. and ensure

³⁵⁵ Information Commissioners Office, ‘Security’ <<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/#:~:text=At%20a%20glance,and%20physical%20and%20technical%20measures.>> accessed 13 October 2020

³⁵⁶ International Council of Commercial Arbitration, New York City Bar Association and International Institute for Conflict Prevention and Resolution, ‘Protocol on Cyber Security in International Arbitration’ (2020) <https://www.arbitration-icca.org/media/14/76788479244143/icca-nyc_bar-cpr_cybersecurity_protocol_for_international_arbitration_-_print_version.pdf> accessed 13 October 2020 ; Deborah Bodeau and Richard Graubart, ‘Cyber Resiliency Design Principles’ (2017) <<https://www.mitre.org/sites/default/files/publications/PR%202017-0103%20Cyber%20Resiliency%20Design%20Principles%20MTR17001.pdf>> accessed 13 October 2020

³⁵⁷ International Council of Commercial Arbitration, New York City Bar Association and International Institute for Conflict Prevention and Resolution, ‘Protocol on Cyber Security in International Arbitration’ (2020) <https://www.arbitration-icca.org/media/14/76788479244143/icca-nyc_bar-cpr_cybersecurity_protocol_for_international_arbitration_-_print_version.pdf> accessed 13 October 2020

that the system addresses users with **special needs** with tools and content.³⁵⁸ The platforms should also ensure that offline privileges and disadvantages are not replicated in the ODR process.

Commentary: The potential benefits of ODR do not have to be limited to the economically advantaged individuals from urban areas, with easy access to technology, but also to the marginalised and less privileged. It is also necessary that ODR platforms account for the **cultural diversity** of its users both within India and during cross-border ODR. The principle of accessibility encourages platforms to develop tools that can cut across and also be **responsive to the heterogeneous identities** of all its potential end users. In terms of ensuring equality, the technology should not be allowed to become a barrier for one or both the parties to present their case before the Neutrals. This would also require the entities that use the platforms ensure that the parties are given **sufficient notice and training** to effectively participate in online processes.

vii. Resilience

Platforms should have the ability to address challenges and have the capacity to adapt and incorporate new features. The services and systems that the ODR platforms provide should be **replaceable** and have the ability to respond to the **variability of ODR processes** and future changes and innovations.

Commentary: Platforms should be designed keeping the possibilities of future innovations in mind. This can be achieved by producing modular solutions and creating tools that can be easily modified.

viii. Scalability

Platforms should be scalable to keep pace with the new innovations and incorporate new technologies in its functioning. They should be designed to **handle an unexpected surge of disputes**.

Commentary: While current ODR tools might have limited users, the mainstreaming of ODR is likely to increase both awareness and access to ODR leading to a large influx of cases. To address this future likelihood, platforms, solutions and tools should be designed to be scalable.

ix. Data-driven Development

³⁵⁸ Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020
; National Center for Technology and Dispute Resolution, Ethical Principles for ODR Initiative at Accessibility <<http://odr.info/ethics-and-odr/>> accessed 11 October 2020

Platforms should be designed to **observe data and identify new behavioural patterns** and use cases. Based on such patterns, additional features and modifications should be made to the ODR platform. Such an incremental approach to changes will ensure that the ODR platforms are **responsive to the needs** of the community.

Commentary: Data driven development encourages platforms to use artificial intelligence to come up with solutions for long standing problems. To enable the development of such solutions it will be necessary for the **Governments and the Judiciary** to ascribe to principles of **open data** and publish past, present and future information.³⁵⁹ Even though the current tools adopted by the Judiciary in the form of National Judicial Data Grid, increase access to data, they do not make it available in formats that can be used for the further development of AI/ML tools.

x. Data Empowerment

Data pertaining to individuals and entities must be made **accessible to them** in a standardized, machine readable, and digitally signed way. Data protection and empowerment implemented across these platforms must be fully aligned with **data protection laws**.

Commentary: Read along with the principle of portability the data regarding the users should be available to the user at all times in an accessible format.

Since the ecosystem primarily consists of private ODR platforms, the above principles are intended to regulate them. To facilitate justice for all while also creating new avenues for innovation to help ensure ease of access to justice, the Government will likely need to be a key service provider of ODR. To enable accessible ODR services to all, countries such as China³⁶⁰ and Brazil³⁶¹ have built ODR platforms to offer trusted online negotiation and mediation facilities to the disputing parties. It is thus recommended that in addition to the above design principles, the **Government** contemplates a **scalable platform using technology** that is designed on the principle of **free and open source software** (FOSS). Inspiration for such a precedent can be taken from the Judiciary that, through the **eCourts Project**, has only relied on open source software for all its innovations.³⁶² Also, in

³⁵⁹ Vidhi Centre for Legal Policy, 'Open Courts in the Digital Age: A Prescription for an Open Data Policy' (November 2019) <https://vidhilegalpolicy.in/wp-content/uploads/2019/11/OpenCourts_digital16dec.pdf> accessed 13 October 2020

³⁶⁰ Zhang Juanjuan, 'On China Online Dispute Resolution Mechanism: Following UNCITRAL TNODR and Alibaba Experience' (2017) 4 IJODR 14

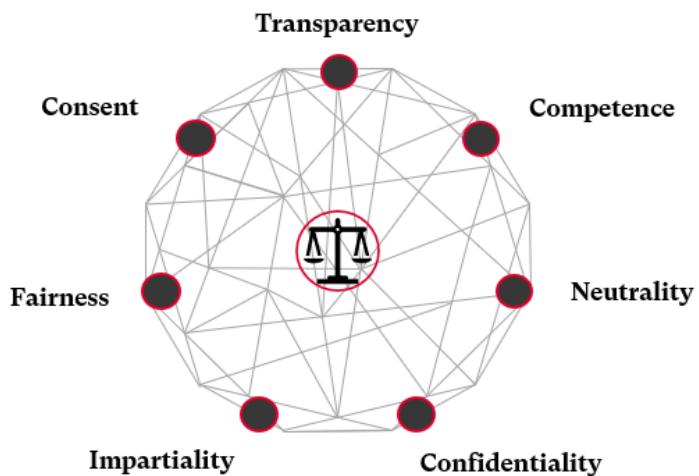
³⁶¹ Consumidor.gov.br, 'Sobre o Serviço' <<https://www.consumidor.gov.br/pages/conteudo/sobre-servico>> accessed 27 October 2020

³⁶² eCommittee, Supreme Court of India, 'eCourts Project Phase 2' <https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 13 October 2020

complementary sectors such as banking through **UPI and the India Stack**, Government has developed the largest open API in the world.³⁶³

Adoption of the open source principle will foster faster growth and long-term development not just for the Government, but for the whole ecosystem. This will allow the **stratification of services**, where justice for all goals can be targeted through the proposed Government led FOSS. At the same time, private sector participants/start ups can continue to differentiate products that **entail proprietary** components. They can then benefit from intellectual property rights they create and ensure a competitive market ecosystem that allows for profitable ventures. Therefore, a **bifurcated structure** is recommended wherein FOSS standards are not recommended for the private sector.

b) Principles for ODR Centres



i. Transparency

Parties should be aware of the risks and advantages of resolving disputes through ODR. The ODR Centre's **conflict disclosure policies**, funding structure, affiliations, **privacy and security measures** and potential impacts of incidents, should be disclosed in an easily understandable manner. Wherever possible, Centres should **publish statistics and anonymised data** of the outcome of ODR processes to illustrate lack of biasness consistent with the principles of confidentiality.

³⁶³ PP Thimmaya, 'India Stack: To serve the undeserved' *Financial Express* (24 August 2017) <<https://www.financialexpress.com/industry/technology/india-stack-to-serve-the-underserved/821926/>> accessed 16 October 2020

Commentary: The principle on transparency seeks to ensure that the end user is made aware of **all aspects of the ODR process** ranging from the use of the platform to the relationships with Neutrals, so that they can take **informed decisions** after assessing the risks involved.³⁶⁴ For instance, the user should have the opportunity to **accept or decline** situations involving conflict of interests through the disclosure of information and availability of statistics. The principle also encourages platforms to **disclose security and privacy policies** adopted by them.³⁶⁵

ii. Competence

Confidence in the ability of Neutrals to manage the disputes on ODR platforms is essential for disputing parties. The ODR platforms should provide a **comprehensive policy for selection and training of Neutrals**. The platform should also introduce an internal oversight, quality assurance and **grievance redressal process** which may help the platform ensure that both the neutral and the platform conforms with the standards it has set for itself. Assignment of competent Neutrals with sufficient training and/ or experience in dealing with disputes assigned to them is necessary for parties to repose trust in ODR platforms.³⁶⁶

Commentary: To balance the minimalist approach to regulation adopted by the Government, the principle of competence urges platforms to develop a **robust internal self-regulatory mechanism** that can ensure quality and address grievances. It encourages platforms to have comprehensive and stringent standards for training and selection of Neutrals and an **internal redressal mechanism** that the users can turn to in case of violations and breaches of these principles.³⁶⁷

iii. Consent

The ODR process should be based on **explicit, informed and continuous** consent of the parties.

³⁶⁴UNCITRAL, ‘UNCITRAL Technical Notes on Online Dispute Resolution’ (2017) <https://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf> accessed 8 October 2020 ; Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020

³⁶⁵ New York City Bar Association and International Institute for Conflict Prevention and Resolution, ‘Protocol on Cyber Security in International Arbitration’ <https://www.arbitration-icca.org/media/14/76788479244143/icca-nyc_bar-cpr_cybersecurity_protocol_for_international_arbitration_-print_version.pdf> accessed 11 October 2020

³⁶⁶ UNCITRAL, ‘UNCITRAL Technical Notes on Online Dispute Resolution’ (2017) <https://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf> accessed 8 October 2020

³⁶⁷ ibid

Commentary: In consonance with and the culmination of the principle of transparency, the platform should ensure that active and continuous consent is obtained from parties.³⁶⁸ Such consent will also ensure reduced challenge to the outcome of ODR processes, on the ground of lack of consent by the parties to such process.

iv. Neutrality

Absence of **perceived or real conflict of interests** between the platforms and Neutrals on the one hand and one or more disputing parties on the other, is important to ensure fairness in ODR proceedings. Platforms should develop a **code of ethics** to check for conflict of interests and ensure independence of Neutrals.³⁶⁹

Commentary: Platforms should ensure that they adopt a code of ethics to avoid any issues involving conflicts of interest. Read along with the principles of transparency, platforms should inform users on the **alternatives**, if available, in situations involving conflict. Consistent with the principle of consent, the final autonomy to decide on issues involving conflict **should rest on the end user**.

v. Fairness by due process

ODR platforms should facilitate and uphold due process, **without bias** for or against individuals or groups, **including in processes based on algorithms**. They should be responsive to and reflective of the concerns of the communities and stakeholders they serve.³⁷⁰

Commentary: The principle of fairness is to ensure that due process is followed and fair opportunity to be heard is provided to all involved users including situations where fair hearing is made difficult on account of **technical glitches**. The principle also hopes to address future concerns of **biases** arising from integration of **artificial intelligence** and machine learning based solutions.³⁷¹ The end goal of the platforms being responsive to communities is to ensure that any biases arising from pre-existing relationships, either in community run programs or otherwise do not replicate themselves during the ODR process.

vi. Impartiality

³⁶⁸ UNCITRAL, ‘UNCITRAL Technical Notes on Online Dispute Resolution’ (2017) <https://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf> accessed 8 October 2020

³⁶⁹ibid

³⁷⁰ National Center for Technology and Dispute Resolution, ‘Ethical Principles for ODR Initiative at Accessibility’ <<http://odr.info/ethics-and-odr/>> accessed 11 October 2020; Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020

³⁷¹ Advisory Committee of the National Centre for Technology and Dispute, ‘Online Dispute Resolution Standards of Practice’ (2009) <<https://www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf>> accessed 8 October 2020

Platforms should introduce mechanisms to ensure that the platforms themselves and the Neutrals act impartially by accounting for conditions that could **structure patterns of privilege** in processes and outcome for **repeat players**.

Commentary: The principle on impartiality places obligations on Centres to ensure that **both the platforms and the Neutrals** appointed by the Centre maintain high standards of impartiality. Mechanisms that ensure that disputes involving the same user or repeat users are addressed by different neutrals can be adopted by platforms. Additionally, following **due processes** as identified in the principle for fairness can also ensure impartiality.

vii. Confidentiality

The ODR service providers should maintain high standards of confidentiality and data protection to protect all the personal information of the parties.³⁷²

Commentary: Confidentiality forms the **cornerstone** of ADR and ODR processes. Therefore, platforms should ensure that they maintain the highest standards of both confidentiality and data protection to ensure that users have **trust and faith** in the system. In consonance with the principles of transparency and consent, platforms are to ensure that any **possibilities of disclosure** are clearly communicated to parties so that **continuous consent** can be obtained.

c) Principles for Neutrals

Akin to the **wide import** attached to the term ODR platforms, the term ODR Neutrals is also to be understood to mean all possible Neutrals or dispute resolution professionals involved in conducting ODR proceedings.

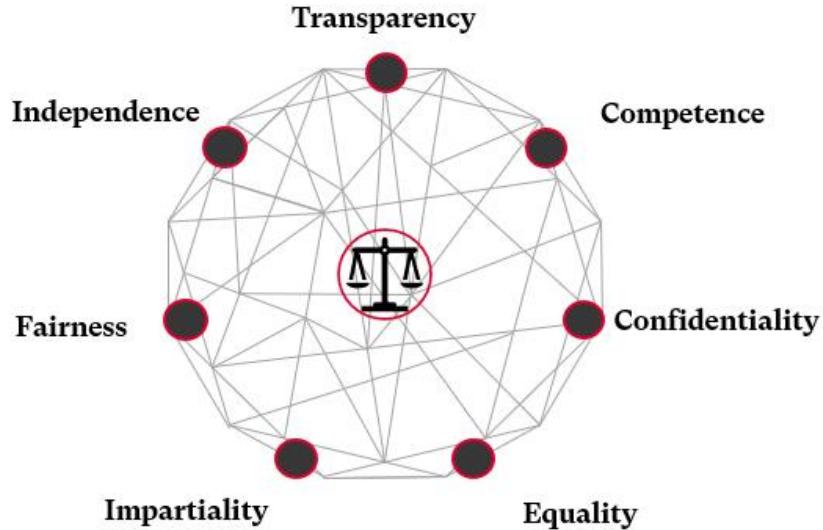
Ethical principles involving neutrals have **existed for decades** in the context of arbitrators and mediators. Therefore, they are for the most part self-explanatory. It is for this reason that no need was felt to include a commentary for this section. It is important that these ethical principles be **read along** with other ethical obligations placed on Neutrals through law or via regulations, rules, guidelines created by the affiliated institutions for different categories of Neutrals. Given the peculiar nature of ODR, which might see repeat clients, the neutral should adopt **heightened standards** of the principles mentioned below.³⁷³ It is also essential to stress on the need for ODR Centres to create frameworks, which are conducive for Neutrals to adhere to the following principles. In a sense, the ODR Centres and Neutrals have a **shared responsibility** towards the disputing parties.

³⁷² Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020

³⁷³ Advisory Committee of the National Centre for Technology and Dispute, ‘Online Dispute Resolution Standards of Practice’ (2009) <<https://www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf>> accessed 8 October 2020

It is also recommended that these principles see timely revision, especially to incorporate the **future possibility** of artificial intelligence and algorithms taking on the role of Neutrals.



i. Transparency

The Neutral should ensure that the parties are **aware of the role** that the Neutral shall undertake during the process.³⁷⁴ The Neutral should also be transparent in their conduct and inform parties about their **affiliations, privacy policy**, obligations of parties, possible **conflict of interest** and details of the systems involved in the ODR process.³⁷⁵ While dealing with repeated clients, the neutral should adopt greater transparency by compulsorily following disclosure protocols.³⁷⁶

ii. Independence

The neutral should act independently, **without any influence** of other actors, throughout the dispute resolution process and **accrue no benefits from the outcome** of the case, which may, though not exclusively, be in the form of a successful case settlement, recommendation or decision in favour of a party.³⁷⁷

³⁷⁴ JAMS Mediation Services, ‘Mediators Ethics Guidelines’ <<https://www.jamsadr.com/mediators-ethics/>> accessed 13 October 2020

³⁷⁵ Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020

³⁷⁶ Advisory Committee of the National Centre for Technology and Dispute, ‘Online Dispute Resolution Standards of Practice’ (2009) <<https://www.icann.org/en/system/files/files/odr-standards-of-practice-en.pdf>> accessed 8 October 2020

³⁷⁷ ibid

iii. Competence

The Neutral should have **technical, legal, cultural and domain** specific knowledge along with **language** skills to provide efficient dispute resolution.³⁷⁸ The Neutral should also satisfy the **qualifications criteria** set out by the relevant authority, which consists of both affiliated institutions and Government or legislative bodies.

iv. Confidentiality

The Neutral should maintain high standards of confidentiality and not disclose confidential information **without permission of all parties** or unless required by law, court rule or other legal authority.³⁷⁹ The neutral should also ensure that there are **sufficient safeguards** in place to protect the confidentiality of proceedings and its associated recordings, if any.

v. Fairness

The Neutral should uphold the **due process of law** and provide a fair hearing to all participating parties. The Neutral should also ensure that processes of the dispute resolution are **not implicitly biased** towards either of the participating parties.

vi. Impartiality

The Neutral should act impartially and be **free from favouritism** either by words or actions throughout the course of the dispute resolution process.³⁸⁰ The Neutral should also **avoid bias** based on parties' backgrounds, personal attributes, conduct or pre-existing knowledge of the dispute or disputants.³⁸¹

vii. Equality

Neutrals should treat **all parties with respect and dignity**. The neutral should ensure that the **marginalised voices** are heard during the dispute resolution process and that the privilege is not replicated during the dispute resolution process.³⁸²

The future of self-regulation

³⁷⁸ Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020 ; JAMS Mediation Services, ‘Mediators Ethics Guidelines’ <<https://www.jamsadr.com/mediators-ethics/>> accessed 13 October 2020

³⁷⁹ JAMS Mediation Services, ‘Mediators Ethics Guidelines’ <<https://www.jamsadr.com/mediators-ethics/>> accessed 13 October 2020

³⁸⁰ JAMS Mediation Services, ‘Mediators Ethics Guidelines’ <<https://www.jamsadr.com/mediators-ethics/>> accessed 13 October 2020

³⁸¹ ibid

³⁸² Leah Wing, ‘Ethical Principles for Online Dispute Resolution: A GPS Device for the Field’ (2016) 3(1) International Journal on Online Dispute Resolution <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2973278> accessed 13 October 2020

While ODR involves private actors facilitating the dispute resolution process, it is at **its core a method of justice delivery**. It is therefore important that these principles, though voluntary, be adopted by Platforms, Centres and Neutrals in form and spirit. The intent of these principles is to **divest the role** that is traditionally played by the Government **back to the ecosystem**. It would therefore only follow that the mechanisms to check compliances should also be developed by the ecosystem itself. One way in which platforms can self-regulate themselves is by self prescribing regulations based on these principles to guide their ODR processes. For example, in the e-commerce marketplace, Alibaba has introduced and published a series of rules to govern its ODR platform.³⁸³

Another, more consolidated, self-regulatory model that has seen some early success comes in the form of a **self-regulatory organisation (SRO)** in the realm of **account aggregators**.³⁸⁴ The SRO, **Sahamati** is a collective of the account aggregator ecosystem and has been set up as a not for profit private limited company.³⁸⁵ The organisation co-creates strategic goals and executes it through working groups. It is governed by a charter and regulates those organisations, which have been **recognised by the RBI**.³⁸⁶ Several sunrise sectors are also seeing the evolution of an SRO concept that fosters compliance, innovation and a broad-based ecosystem growth and expansion framework. Such a self-regulatory mechanism, that sets out **defacto standards**, as opposed to Government setting out de jure standards, can also be considered by the ODR ecosystem. To recognise those institutions that are complying with the standards, the Government can itself or through a recognised private entity consider the introduction of trust marks or recognition of these institutes on its website (akin to the invitation that has been circulated by the Department of Legal Affairs).³⁸⁷

A somewhat **more structured form of regulation** may also be considered in the future once the sector matures. This could be in consonance with the **National Payments Confederation of India**, which introduced UPI. Although it is also a confederation of banks along the same lines of Sahamati, it has been set up under the Payment and Settlement Systems Act, 2007 and promoted by the RBI. A decision on this need not be taken in the current scenario however.

³⁸³ Zhang Juanjuan, 'On China Online Dispute Resolution Mechanism: Following UNCITRAL TNODR and Alibaba Experience' (2017) 4 IJODR 14, 17

³⁸⁴ Reserve Bank of India, Master Direction- Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016 <https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10598> accessed 16 October 2020 and

Reserve Bank of India, 'Directions regarding Registration and Operations of NBFC - Account Aggregators' <https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3142> accessed 16 October 2020

³⁸⁵ Sahamati, 'About us' <<https://sahamati.org.in/about/>> accessed 16 October 2020

³⁸⁶ Pricewaterhouse Cooper, 'An overview of the account aggregator ecosystem' <<https://www.pwc.in/consulting/financial-services/fintech/fintech-insights/account-aggregators-putting-the-customer-in-charge.html#sources>> accessed 16 October 2020

³⁸⁷ Department of Legal Affairs, 'Hosting Of List Of Institutions Offering Alternate Dispute Resolution Mechanisms (Including ODR) On The Website Of Department Of Legal Affairs' <<https://legalaffairs.gov.in/sectiondivision/hosting-list-institutions-offering-alternate-dispute-resolution-mechanisms-including>> accessed 9 October 2020

The success of this model and the extent of compliance of its actors will pave the way for future modifications of the regulatory framework and the extent of governmental intervention. There have been limitations to the self-regulatory model.³⁸⁸ Moving forward, based on the requirements for the future, the Government can consider introducing an **external grievance redressal mechanism** where consumers who find a breach of these standards can file a complaint to a regulatory body. It could also introduce a method of **certification and accreditation** of service providers akin to the European Union model.³⁸⁹ This can be done at a central level or through sector specific regulatory bodies.³⁹⁰ The Government can also consider requiring the publication of annual reports or a **permanent annual auditing mechanism** to check compliance of these standards.³⁹¹ While these initiatives have been successful internationally, the question of whether and manner in which, they should be adopted in India, will be determined by how well the ecosystem is able to self-regulate.

E. Implement ODR in a Phased Manner

As mentioned in Chapter IV, the technological developments in recent years have positioned the country to stride towards **wide-scale adoption of ODR**. Implementation of the above mentioned recommendations and sustained efforts from the Government and the Judiciary is likely to unlock the true potential of ODR in India. However, keeping in mind that the capacity of the ecosystem is still largely untested, it is recommended that ODR be **progressively implemented in a phased manner**. While devising such phased roadmap, the Government should take into account the **likely upsurge in cases** that may arise due to the **COVID-19 pandemic**. Eventually the Government and the Judiciary can use ODR to address the long-standing problems of **delay** that currently impair the **judicial system**.

Phase 1: ODR for COVID-19 related disputes

³⁸⁸ For literature on the debate surrounding regulation of online dispute resolution please see Kananke Chinthaka Liyange, ‘The Regulation Of Online Dispute Resolution: Effectiveness Of Online Consumer Protection Guidelines’ (2013) 17(2) Deakin Law Review <<http://Www.Austlii.Edu.Au/Au/Journals/Deakinlrev/2012/11.Pdf>> accessed 13 October 2020; Gralf-Peter Calliess and Simon Johannes Heetkamp ‘Online Dispute Resolution: Conceptual and Regulatory Framework’ (17 December 2019) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3505635> accessed 13 October 2020

³⁸⁹ Pablo Cortes, ‘Developing Online Dispute Resolution for Consumers in The EU: A Proposal for the Regulation of Accredited Providers’ (2010) 19(1) International Journal of Law and Information Technology <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819086> accessed 13 October 2020

³⁹⁰ Alexandre Biard, ‘Impact of Directive 2013/11/EU on Consumer ADR Quality: Evidence from France and the UK’ (2018) 42(1) Journal of Consumer Policy <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6743740/>> accessed 13 October 2020

³⁹¹ An example is Belgium where the national competent authority conducts once a year ‘full audits’ of two certified ADR entities and ‘mini audits’ of all other certified ADR entities. See Alexandre Biard, ‘Towards high-quality Consumer ADR: the Belgian experience’ (2018) <https://www.researchgate.net/publication/329482685_Towards_high-quality_Consumer_ADR_the_Belgian_experience_author_copy> accessed 13 October 2020

As mentioned in earlier section of this Chapter,³⁹² due to the COVID-19 induced pandemic, there will likely be an upsurge of cases that shall present themselves to the Judiciary. These disputes range from family disputes to labour disputes and consumer disputes. Fortunately, all of these classes of disputes **can be adequately addressed through ODR** without requiring the physical presence of parties. The lists of disputes that are likely to see a rise in numbers are mentioned in the previous section of this Chapter.³⁹³ As mentioned earlier, the use of ODR to handle just COVID-19 related disputes has already been used by Hong Kong in the MSME sector.³⁹⁴ To execute and implement Phase I, the Government should aim to:

- a. Position ODR as a legitimate dispute resolution process
- b. Build capacity by training Neutrals in ODR
- c. Encourage private entities to adopt ODR
- d. Adopt ODR for resolution of Government disputes

The respective implementing bodies can take the following measures:

S. No.	Measures	Implementing Body
1.	Large scale awareness campaign	Ministry of Law and Justice
2.	Hosting a list of ODR service providers	Department of Legal Affairs
3.	Identifying the principle framework for ODR	Ministry of Law and Justice
4.	Training neutrals in ODR processes	Judicial Academies and Legal Service Authorities
5.	Establishing training standards for Neutrals	Ministry of Law and Justice
6.	Encouraging private parties to adopt ODR	Ministry of Law and Justice and sector-specific Departments
7.	Adopting ODR to resolve disputes involving Public Sector Enterprises	Public Sector Enterprises
8.	Adopting ODR for Government dispute	Ministries and Departments under the Government

Phase II: Mainstream ODR

Mainstreaming ODR will require a favourable ecosystem of law and policy to support its growth in India. It will also require initiatives from the **Government to support ODR** by

³⁹² Text in ch VI p 78

³⁹³ ibid

³⁹⁴ ‘COVID-19 Online Dispute Resolution (ODR) Scheme’ (*SJ’s Blog*, 13 April 2020) (HK) <https://www.doj.gov.hk/eng/public/blog/20200413_blog1.html> accessed 29 May 2020

deploying digital infrastructure, building trust in ODR, modifying legislations to enable ODR and training individuals to act as neutrals for ODR proceedings. The Government should work towards enriching the legal culture in the society by **incentivising out-of-court resolution of dispute**, especially through ODR processes.

Considering this, for Phase II of incorporating ODR in India, it is recommended that Government should aim to-

- a. **Spread awareness** regarding benefits of ODR,
- b. **Incentivise lawyers** and disputing parties to adopt ODR,
- c. Incorporate ODR for a **specific category** of disputes,
- d. Establish **court-annexed ODR** structures,

S. No.	Measures	Implementing Body
1.	Training lawyers and other professionals to function as Neutrals for ODR	Bar Council of India, State Bar Councils and Ministry of Law and Justice
2.	Deploying digital infrastructure in courts and Legal Service Authorities	Ministry of Law and Justice
3.	Introducing compulsory pre-litigation mediation for a specific category of disputes on a pilot basis	Sector-specific Ministries /Department
4.	Modifying Arbitration and Conciliation Act and procedural laws to incorporate ODR	Ministry of Law and Justice, Parliament
5.	Enacting legislation for mediation	Ministry of Law and Justice, Parliament
6.	Establishing court-annexed ODR centres	Ministry of Law and Justice, Supreme Court of India and High Courts
7.	Amending legislations to include ODR for specific dispute categories like personal insolvency dispute.	Sector-specific Ministry/ Department
8.	Including ODR in legal education	Bar Council of India

Phase III: ODR as a primary mode of dispute resolution

ODR has immense potential to provide a **new dimension to the dispute resolution ecosystem** in India. As mentioned in the introduction, ODR can help in promotion of legal

health in the country, the **avoidance** of disputes, the **containment** of disputes and the **resolution** of those disputes that knock on the doors of the judiciary. To extract all of the benefits that ODR has to offer, there is a need for a deep percolation of technology in the society and the expanding use of Internet and digital tools.

Therefore, in Phase III, the Government and Judiciary should focus on **fostering the ODR ecosystem** and encouraging innovations. By encouraging innovations, the Judiciary and the Government will have at its disposal an enormous set of **tools** that can be **integrated and adopted** to resolve disputes. The increase in capacity and tools to resolve disputes would also allow for the **diversion of cases** that are pending before the Judiciary to be resolved through ODR. ODR can therefore be leveraged by the Judiciary to not just resolve disputes that come before it but also to **reduce its past pendency**.

In this phase, sustained efforts will be required to build the capacity and infrastructure to leverage innovations in ODR and to enable access to these innovations across the country. Further, **regular modification and amendment** to the regulatory framework for ODR, as and when required, will enable the Government to address the challenges posed by the dynamic ODR ecosystem. The following can be considered as objectives for Phase III.

- a. **Encourage dispute avoidance** to reduce the influx of cases into the Judiciary
- b. **Legal health promotion** with the use of technology and ODR
- c. Encourage **innovations** and entrepreneurship in ODR
- d. Divert cases to ODR to **reduce judicial pendency**.

As will hopefully be conveyed by this report, ODR holds a lot of promise in addressing long-standing problems of justice delivery. Fortunately, the realisation of this promise is **not a far-fetched** one. As has become evident during the current COVID-19 induced crises, people are very **willing and accepting** of technology to ease their daily lives. In turn, technology has shown to be **responsive and adaptive** to the needs of its users. The synergy of these occurrences, in the dispute resolution ecosystem, takes the form of ODR. It would therefore only follow that there has never been a better time to harness ODR's potential than **now**. It will now depend on the various actors and stakeholders to determine the extent to which they are willing for their lives to be **truly altered**.