

Online Dispute Resolution

Shifting from disputes to resolutions



NITI Aayog

agami
IDEAS THAT SERVE JUSTICE



OMIDYAR
NETWORK
INDIA



ASHOKA

ICICI Bank

TRILEGAL

Dalberg



DVARA
Research



National Institute of
Public Finance & Policy



It takes a village

This Handbook is the collaborative work of not just the ten partners and handful of volunteers that have formally and directly worked on this but several other organisations that have been a part of birthing the ODR movement in India and stewarding it towards mainstream adoption. The insights, data, experiences and stories curated in the Handbook are the output of a set of diverse actors that includes start-up professionals, businesses, civil society players, policy advocates and government representatives.

While market forces i.e. the push of the start-ups and the pull of the enterprises, have been major drivers of ODR adoption so far, we need to recognize that ODR would not have become a national priority without the ambassadorship of senior members of the judiciary and government and the appropriate policy support of organisations such as the Vidhi Centre for Legal Policy and the Centre for Arbitration and Mediation Practice (CAMP).

The creation of the Handbook was also ably assisted by volunteers such as Rashika Narain, Nathan Menezes, and several members of the 'Autonomy' community of ODR pioneers, some of whom recognised the promise of ODR two decades ago and have pushed for its adoption ever since.

The Partners

A little bit about the organisations that have together produced this Handbook:



NITI Aayog is the policy think tank of the Government of India. NITI Aayog designs strategic and long-term policies and programmes for the Government, and also provides relevant technical advice to the Centre and States. NITI Aayog has been working towards mainstreaming ODR in India as part of their Access to Justice mission.



Agami serves as a movement and platform for powerful ideas to create new or improved systems of law and justice. In 2018, Agami began the work of realising the full potential of online dispute resolution by surfacing innovations, engaging businesses, civil society and governments, and telling the ODR story widely.



Omidyar Network India invests in bold entrepreneurs who help create a meaningful life for every Indian. Omidyar Network India makes equity investments in early stage enterprises and provides grants to non-profits working on Digital Identity, Education, Emerging Tech, Financial Inclusion, Governance & Citizen Engagement, and Property Rights.



Ashoka is the world's largest network of social entrepreneurs (-4000 in 80 countries) and ranks among the top 5 NGOs of the world. Ashoka's first ever Fellow, in 1982, was Gloria De Souza from India who revolutionised the system of classroom learning. Ashoka is actively working towards expanding social entrepreneurship in law and justice.



ICICI Bank Ltd is a leading private sector bank in India offering a diversified portfolio of financial products and services to retail, SME and corporate customers. In 2019, ICICI Bank conceptualised the E-ADR Challenge with Agami to encourage the establishment of an independent ODR institution. ICICI Bank is committed to harnessing ODR across its retail and SME businesses.



Trilegal is one of India's leading full-service law firms. As Agami's ecosystem partner, Trilegal has been working towards improving systems of law and justice, including assisting in the formation of E-ADR institution. Members of the firm are often consulted by governmental and industry bodies to help identify the path to effective policy change.



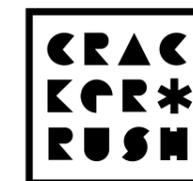
Dalberg is an impact advisory group that combines strategy consulting, design thinking, and research to address complex social challenges. Dalberg works with communities, institutions, governments, and corporations to develop solutions that create impact at scale. With 30 plus locations worldwide, Dalberg is driven by a mission to build a world where all people can reach their potential.



Dvara Research is an independent policy research institution with the mission of ensuring every individual and enterprise has complete access to financial services. The Future of Finance Initiative at Dvara Research studies the impact of technology in finance, leading from the low-income consumer perspective. Effective consumer-grievance redressal is integral to Dvara's research.



Founded in 1976, the National Institute of Public Finance and Policy (NIPFP) is a centre for research in public finance, financial markets, economics and policy. Building on its expertise in these and other areas, like consumer protection and technology, NIPFP is currently working towards understanding and improving grievance redress systems in the financial sector.



Cracker & Rush is a brand strategy and design firm focused on the services sector. It helps bring clarity and magnetism to the work of client organizations and helps create love and admiration among stakeholders. Cracker & Rush has built a strong portfolio of award winning work with clients who want to make a deep social impact through their work.

All of us are delighted to bring you this ODR Handbook

Glossary of terms

ADR

Alternative Dispute Resolution or ADR refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration.

Arbitration

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute.

Conciliation

Conciliation is a voluntary, flexible, confidential, and interest-based process using which parties seek to reach an amicable dispute settlement with the assistance of a neutral third party known as the conciliator. When they are ready, the disputing parties will ask the conciliator to provide them with a non-binding settlement proposal.

Mediation

Mediation is a procedure in which a neutral intermediary, the mediator, helps the parties reach a mutually satisfactory settlement of their dispute. The settlement is then recorded in an enforceable contract. As a matter of principle, a mediator will refrain from making any non-binding settlement proposal.

Pendency

Judicial pendency refers to the state in which legal disputes remain undecided or undetermined. It is typically used when the resolution of disputes get extensively delayed.

Online Dispute Resolution, or ODR, is a mechanism to resolve disputes through the use of electronic communications and other information and communication technology. It often uses alternate dispute resolution tools such as negotiation, mediation and arbitration.

CONTENTS

Introduction

01

WHY

Why is ODR the need of the hour?

05

WHAT

What are the truths and myths of ODR?

27

HOW

How does ODR consistently manage to offer better outcomes for everybody?

33

WHO

Who are most likely to benefit from ODR right away?

55

Conclusion

75

A Tale of Two Generations

80

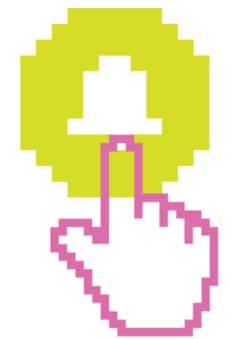
Action Roadmap

83

An idea whose time has come



Digitisation has changed the way we bank, shop, learn, stay fit, get entertained, stay connected and so much more. The list of things we do online is endless. ODR adds the phrase “resolve disputes” to this list.



Online Dispute Resolution (ODR) is built on the vision that disputes can be resolved in a seamless manner, from anywhere, by anybody, at a fraction of cost and time.

For the past few years, the ODR ecosystem has been taking shape. The tribe of ODR service-providers is growing in number and stature. Processes and technological platforms in the domain are getting early positive feedback and they continue to mature at a rapid pace.

Meanwhile, the Indian judiciary itself is gradually migrating into the digital era. One sign of this is the e-courts initiative – transactions conducted under it rose from 7 crores in 2015 to 84 crores in 2018 and during the pandemic, 25 lakh virtual hearings took place in various Indian courts, with the Supreme Court alone accounting for 9000 of them.

One could say that ODR is a rare socio-political phenomenon that isn't a zero-sum game. All stakeholders – including the corporate, the consumer, citizen and the government – win together and enjoy its benefits.

ODR is an idea whose time has come. But in order to become mainstream, it needs changemakers – those will be its champions and ambassadors. This Handbook speaks directly to those changemakers. With their help, ODR can create a future that is less conflicted and more equitable.

The story of two pioneering ideas

A quick way to recognise the potential of ODR is to recall the advent of ATMs.

When the first ATM machine was installed in 1967, many naysayers predicted the downfall of the friendly bank clerk. Their fears were unfounded.

In reality, the humble ATM machine ushered in a silent revolution in banking services. Banks were able to serve anybody and everybody from more locations all the time. Meanwhile, with more time on their hands, the friendly clerk upskilled and got involved in value-added services. Both the bank and the clerk prospered.

Today, we take the ATM for granted, but if we think about it for a moment, we realise that

it represents the first time that a banking transaction happened outside the bank's premises. It was a truly pioneering idea.

The same can be said about ODR.

The queue in front of a courthouse is many times longer than any witnessed by a bank clerk. In spite of the best efforts of the judiciary, the mountain of pending cases keeps getting higher. Clearly, it is time for all seekers of justice to be served from more locations all the time.

That is what ODR does.

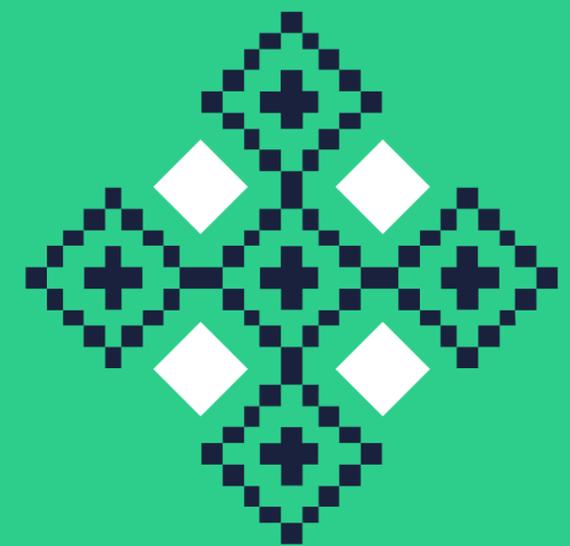


As ODR absorbs the bulk of civil cases, the judiciary gets freed up to focus on those matters that cannot and should not be moved out of our courtrooms. In other words, ODR ensures that the judiciary does not have to divert its attention from the most important disputes facing the nation.

In the long run, the human being's natural desire to skip the queue should help ODR become as ubiquitous as ATMs.

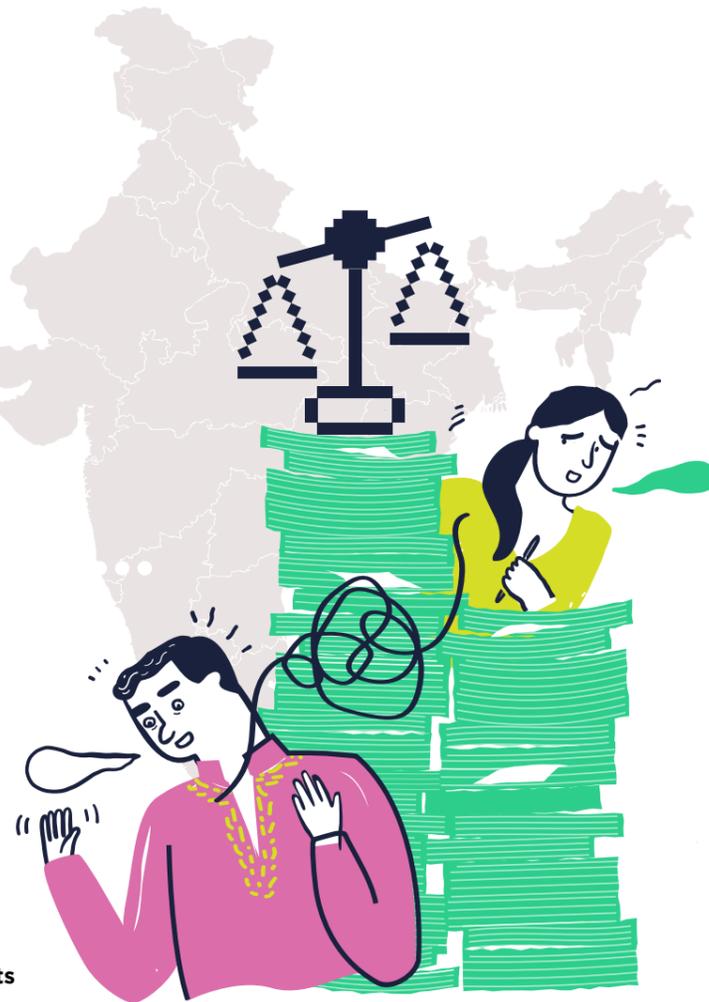


Why is ODR
the need of
the hour?

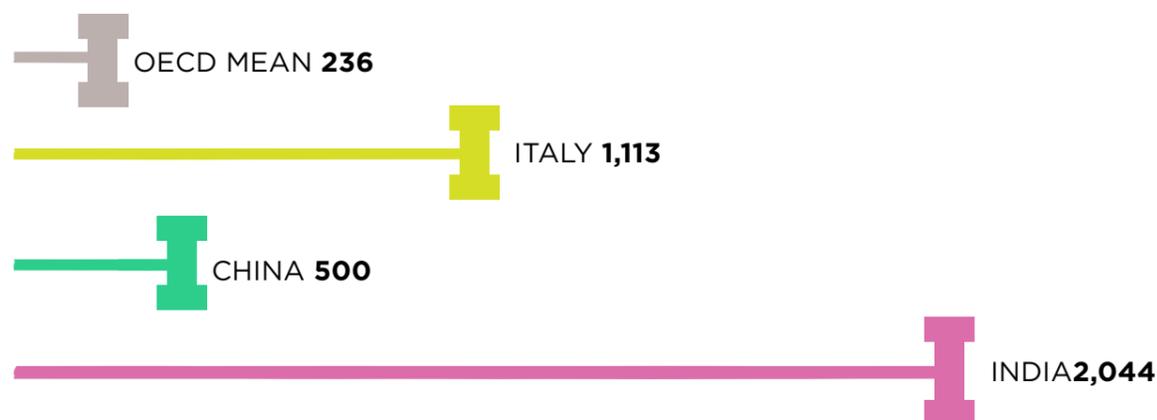


Dispute Resolution in India today

Around 16 million new cases get filed in Indian courts each year. Out of this, around 0.8 million cases get added to the backlog. This means that the nation lives under a lengthening shadow of unresolved disputes.



Average pendency (days) in selected High Courts and OECD second instance courts



As a result, individual litigants associate the legal process with three words:

Time consuming

Resolving a dispute in India takes, on average, 1445 days, which is 6 times longer than in an OECD country, nearly 3 times as much as in China, and 1.5 times as much as in other countries in the subcontinent.

Expensive

The average cost incurred by a litigant visiting the courts is INR 497. This is a significant amount in a country where 20% of its citizens have savings below INR 500. Furthermore, the average income lost by litigants per day is INR 844. When one adds the cost of legal consultation to this, one begins to see the price tag attached to justice.

What is worse is that at first glance, the litigants may not realise that the impact of hidden costs may often far outweigh the visible legal costs.

- **Visible legal costs** include lawyer fee, court fee, costs incurred while travelling to court, and documentation costs. Globally, the lawyer's fee is typically 70% of the expenditure incurred during litigation
- **Opportunity costs** include lost wages, the enforced unproductiveness of assets (such as land, machinery and capital) and the reduced confidence of those who might have invested in the litigant's journey. On an average, individuals lose 5 days of productive labour per annum
- **Well-being costs** can take the form of self-harm behaviour, emotional stress, impact on important relationships and even social ostracism. These average at 1 day of lost productivity per disputant per year

Hidden costs increase, often exponentially, with the length of the legal battle.

Onerous

What is lengthy and expensive is, by default, onerous. And the entire process is likely to be too complex and/or mystical for not only the illiterate litigant but even savvy citizens who cannot begin to understand how to engage with the legal system.

It is not surprising therefore that an estimated 75-97% of justiciable problems never reach the courts. If we consider this statistic to be true, we must acknowledge that anywhere between 5 million and 40 million justiciable issues are never brought to court each month.

“ A robust ODR ecosystem in India will:

- Have high potential to reduce the load on courts by resolving high volume of disputes outside the court.
- Allow access to justice and ease of doing business by making dispute resolution cheaper, quicker, and most importantly, equally credible as conventional methods
- Increase trust in businesses and also within society by prioritising collaborative resolution.”

Amitabh Kant, CEO, NITI Aayog

The macroeconomic cost of dispute resolution

As it stands, dispute resolution costs borne by Indian citizens and businesses result in an aggregate loss of at least

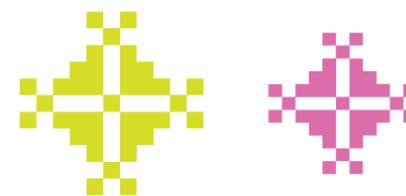
USD 56 billion
(around INR 4,20,000 crore)

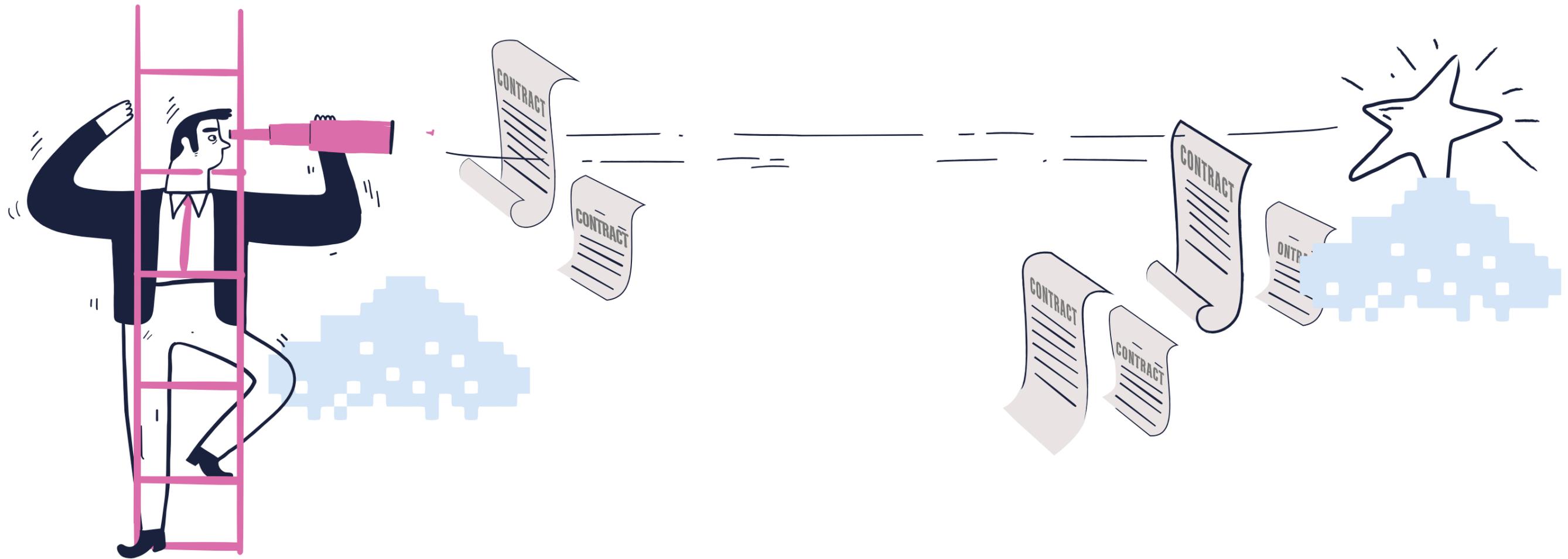
to the Indian economy. Even this conservative estimate amounts to

1.88% of the GDP!

Among businesses, contract-intensive industries bear the brunt of the costs because they need contracts to be enforced with vigour in order to survive. When that does not happen, these businesses tend to accept lower returns while resolving conflicts. This compromising attitude erodes the gains made by businesses by INR 3.12 lakh crore per annum.

That is why, even though India has climbed to the 63rd spot in the Ease of Doing Business Rankings, it is ranked a lowly 163rd when it comes to enforcement of contracts. This is a deterrent for foreign as well as domestic investments.





Entrepreneurship relies on Dispute Resolution

Entrepreneurs are rare and precious resources of society. Not only do they grow our economy, they also expand our minds to new possibilities. It augurs well for all when they feel motivated and supported. A significant motivation for entrepreneurs is the robustness of the legal system.

This statement is endorsed by two independent studies that arrived at the following conclusions:

1. In places where contract enforceability is high, entrepreneurs feel encouraged to start new ventures.
2. Stronger contract enforceability inspires entrepreneurs to invest more in their existing ventures because they have greater confidence in achieving secure returns on their investments.

Both these conclusions are echoed by an academic study conducted on Indian firms in 2016. The study showed that inefficient dispute resolution affects not only firm inception, but ongoing firm growth – in districts with more efficient courts, new and small businesses were able to expand more effectively than their counterparts elsewhere.

The study further discovered that entrepreneurs from marginalised and vulnerable segments of society suffer disproportionately due to inefficient dispute resolution. In the absence of robust contract enforcement, entrepreneurs tend to use informal relationship-based networks to resolve disputes. While this is detrimental to entrepreneurs in general, it is especially harmful for SC/ST and women entrepreneurs from within the MSME ecosystem because they cannot rely on traditional (male, upper caste) business networks. Their chances of recovery, therefore, become slimmer.

The success of these entrepreneurs is crucial to the creation of a more equitable society.

It is the right time to mainstream ODR

In hindsight, many trends and developments have, in recent years, created favourable pre-conditions for the advent of ODR. These include:

- An exponential increase in digital penetration amongst all classes of people
- The vocal support of the higher judiciary
- The steps taken by the RBI and NPCI to incorporate ODR in areas such as digital payments

These factors by themselves might have eventually mainstreamed ODR. And then the pandemic came and pressed the accelerator on ODR's growth path.



Following the lockdown, only

1.1 million

new cases were filed between March and September 2020.

Under normal circumstances, this number would have been

9.3 million

The difference

8.2 million cases

is more than 10 times the annual backlog of

0.8 million

cases that pile up in our judicial system.

Till September 2020, the National Company Law Tribunal had not reverted to even 20% of its pre-lockdown output. Imagine the impact of all these unfiled cases simultaneously entering an already clogged system.

In short, the Covid-19 pandemic threatens to set the Indian dispute resolution system back by more than a decade. It is clear that a paradigm-shift solution like ODR is the need of the hour. Right now, stakeholders in the government, industry and civil society are equally eager to experience the relief that ODR can provide.

Over time, ODR will be able to tackle all kinds of disputes, even those having high value and high complexity. But in the immediate future, ODR can provide tremendous relief by tackling low-value, high-frequency disputes. This will free the judiciary to set its sights on disputes that have high value, high impact and/or high complexity. The Covid-19 crisis has opened our minds to radical new possibilities and solutions, and it is, therefore, an opportune time to mainstream ODR.

When this happens, and a greater number of disputes gets resolved efficiently, ODR will deliver sizeable economic benefits. To understand how this will happen, we must first understand the causal link between enhanced justice delivery and an enhanced economy.

“The need of the hour today is to develop a robust ODR platform, which is easily accessible, user-friendly, less expensive and efficient for resolution of disputes”

Justice Indu Malhotra, Supreme Court of India

The economic gains from timely dispute resolution

Studies show that increasing access to justice by 1% against global benchmarks can yield a 0.17% higher annual GDP growth. This boost in macroeconomy benefits all stakeholders alike.



Enterprises

In high-impact sectors, reforms to improve dispute resolution efficiency increase the firm's productivity by 22% and average value add per worker by 55%

Individuals

Individuals with adequate access to dispute resolution experience better physical and mental health. Studies also show a direct correlation between dispute resolution and the growth of human capital

Government

Speedy conclusion of disputes could reduce legal, financing, and personnel costs for disputed government infrastructure projects by as much as 60%

Improvement in court efficiency would thus translate into jobs, economic growth and industrial self-sustainability

If, within one year, we could increase the number of resolved cases by

50%

the average pendency will drop from

1445 days to 1000 days

That is one of the reasons that a single rupee invested in the judiciary offers an ROI of

20 rupees

At the same time, the nation's GDP will rise by

1.42% or INR 312,000 crore.

In short, when the judiciary does well, the economy works wonders. One, therefore, hopes that the next wave of public and private investments supports the better functioning of the judiciary and other public and private ecosystems that aid in the resolution of dispute

Let us now look specifically at the quantifiable benefits that ODR can deliver.



ODR

and the expansion
of the economy

By 2025, a well-implemented and widely accepted ODR program can expand the Indian economy by up to

**USD 26 billion
(INR 199,000 crore)**

each year. The extent of economic gain will depend on the quantum of cases that go to ODR.

To achieve this we'll have to move to an "opt out" mechanism for ODR, requiring disputing parties to mandatorily try mediation before opting out of it if they feel the need to do so. So far, India has followed an "opt in" model, which makes the usage of ODR/ ADR entirely voluntary. In contrast, Italy requires disputing parties to mandatorily try mediation for at least one session before choosing to opt out

Since the default choice has the tendency to become the de facto choice, the decision to enforce the "opt out" mechanism for certain types of cases can lead to a wide-scale spread of ODR. This seems to be the smart choice since:

88%

of all civil cases can potentially be resolved by ODR

The "opt out" model can lead to

30-40%

of disputes resolved through ODR in 2 years, which is in sharp contrast to the

1%

conversion when ODR is voluntary. There is a further year-on-year growth of

5%

after Year 2 as consumer behaviour gradually changes.

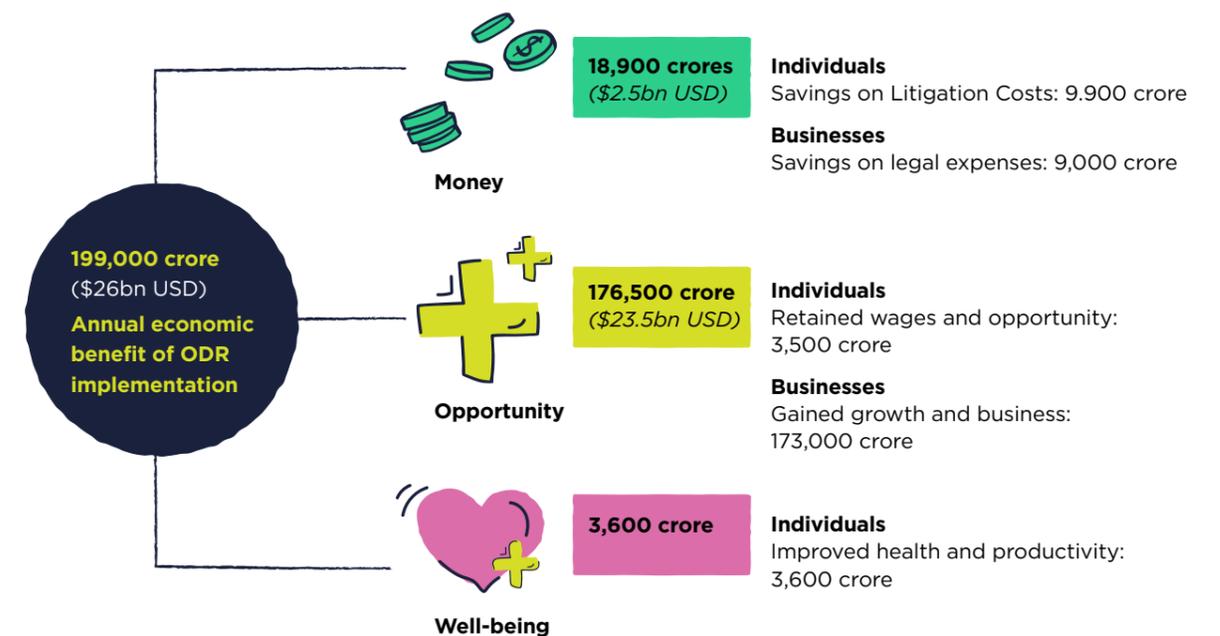
The table below showcases four scenarios, each with a different level of enforcement of the "opt out" mechanism.

Scenario	Description	% Opt Out Cases	YEAR 2		YEAR 5	
			% Resolved Through ODR	Economic Benefit	% Resolved Through ODR	Economic Benefit
A	Opt out mechanism is applied to all cases amenable to ODR	88%	29%	-1,67,000 cr. (\$22.3bn USD)	32%	-1,99,000 cr. (\$26.5bn USD)
B1	Optout mechanism is applied to only Phase 1*(priority) cases	41%	13.4%	-72,000 cr. (\$9.6bn USD)	15.5%	-85,000 cr. (\$11.3bn USD)
B2	Optout mechanism is applied to only Phase 1 & 2* (priority) cases	58%	18.8%	-1,04,000 cr. (\$13.8bn USD)	21.7%	-1,23,000 cr. (\$16.4bn USD)
C	Opt out mechanism is not applied to any case amenable to ODR	0%	0.9%	-4400 cr. (\$.6bn USD)	1%	-4500 cr. (\$.6bn USD)

Phase 1 implies rolling out ODR for debt, insurance, motor vehicles and consumer disputes.

Phase 2 includes ODR for family and labor disputes as well.

Let us examine Scenario A, and understand the math behind the USD 26 billion gain to the economy by 2025.



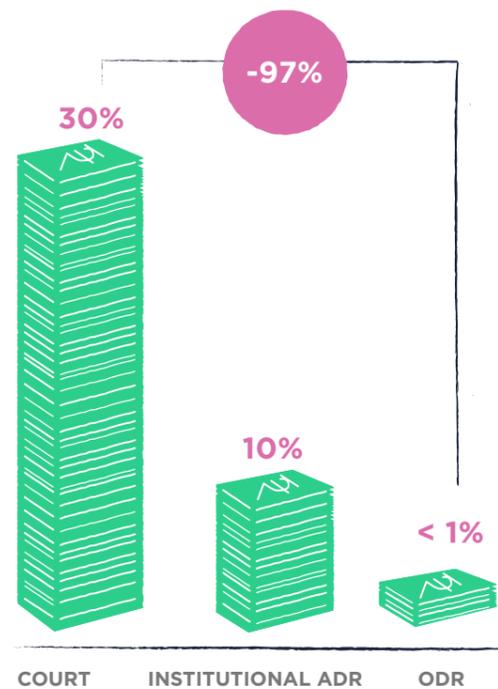
Great for individuals

ODR benefits people from all segments of society. And it does a particularly good job of improving access to dispute resolution for the vulnerable. These include:

- Women, who typically face disproportionately severe time and mobility constraints
- The elderly and people with disabilities who also have mobility constraints
- The poor and the marginalised because they do not have to invest a prohibitive amount of money and time

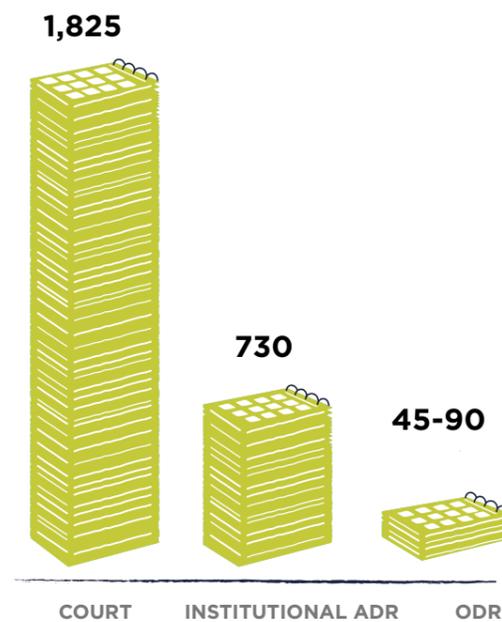
As the graphs show, the reduction in cost and time is humongous.

ODR offers >90% cost savings over court and conventional ADR mechanisms....



Average cost of resolving a case (% of claim)

... up to >85% time savings over comparable methods...



Average time taken to resolve a dispute (number of days)

Great for businesses

Contract-intensive industries, such as hi-tech manufacturing, depend on timely and efficient dispute resolution to support business operation. In spite of other advantages, the single drawback – that of an inefficient dispute resolution mechanism – might make them uncompetitive in the global market.

ODR has already demonstrated its value in these industries. Indian conglomerates have begun using ODR while addressing disputes with suppliers and this has increased trust in these relationships.

Trust is enhanced when disputes get resolved. Customers who have used eBay's ODR platform trust the company more and tend to shop more on eBay, irrespective of whether they won or lost the dispute.

Even as ODR increases trust between an enterprise and its external stakeholders, it enhances the harmony felt by internal stakeholders. As the duration, cost and intensity of dispute resolutions come down, legal counsels of enterprises find it possible to use their energies in more productive ways. Overall, every employee who is directly or indirectly involved in the enterprise's dispute resolution mechanism becomes more productive and feels greater pride in belonging to their organisation.

Later, we will delve into case studies of enterprises using ODR to achieve business gains. Here is a small sample for now. An ODR start-up reported that its client, which is in the business of small value loans, enjoyed the following benefits:

15-24%

savings in expenditure while recovering small-ticket MSME loans and

15-27%

reduction in the time spent by their staff per case

This is just one example of how businesses can expect both quantitative and qualitative benefits from ODR.

Other important benefits of ODR

1

A change in the perception of disputes

- ODR can fundamentally change social narratives around disputes, shifting focus from adversarial court procedures to collaborative, mediated resolutions
 - As uptake increases, mediation and negotiation may come to be seen as more acceptable forms of resolution
 - In fact, when one attempts non-adversarial dispute resolution, one tends to implement it in personal life too. As a result, one becomes more effective in resolving day-to-day interpersonal disputes. Society, as a whole, benefits
- ODR enables a positive feedback loop between pre- and post-dispute legal work, providing valuable data that will enable businesses to improve their processes and lawyers to craft better contracts and avoid future disputes altogether
- ODR will help deter litigants from filing frivolous suits, where the primary objective is to delay or harass the counterparty. Neither possibility is realistic within the ODR framework

2

Upskilling and livelihood opportunities

- Remember the 75-97% of justiciable problems that never reach the courts? well, as ODR makes dispute resolution affordable and accessible, more of these unexpressed disputes are likely to be brought forth and get resolved. Not only will this improve mental health in society, it will also create a greater demand for a supporting ecosystem. Jobs will be created in this ecosystem
- More mediators, arbitrators and intermediaries will be required to support access to ODR and navigate through it on behalf of clients
- As ODR gains popularity, boutique and enterprise software providers will increasingly engage to develop bespoke solutions that meet the needs of the marketplace. This may include, for example, rural farmers accessing simple dispute resolution services through a feature phone, as well as a large credit providing organisation seeking a robust data management architecture to support lakhs of cases annually. This translates to more jobs in the IT industry

3

The sandbox advantage

- The IT industry uses sandboxes to test new software in a secure environment before it becomes ready for a global release. An ODR ecosystem, due to its virtual nature, can be used to “sandbox” innovative dispute resolutions. When these solutions prove to be worthwhile, they can be embraced by the mainstream legal system. This has already begun, considering the heartening results emerging from Lok Adalats in Delhi and Rajasthan.

Success stories from around the world

India's uniqueness will require us to come up with radical new models for ODR that haven't been attempted elsewhere in the world. Having said that, it makes sense for us to study and learn from models that have worked in other countries:



Brazil

Brazil's Consumidor platform has resolved over 2 million consumer disputes in 5 years. Due to its simple procedures and intuitive user interfaces, the platform has become the de facto gateway for dispute resolutions between consumers and companies



Canada

Setup in 2012, the British Columbia Civil Resolution Tribunal (CRT) is Canada's first online tribunal addressing specific types of disputes such as motor vehicle injury, small claims, Strata property disputes etc.



Hong Kong

Hong Kong has established the Covid-19 ODR Scheme, a government funded ODR initiative to specifically address cases arising during the pandemic. Covering cases with claim amounts of less than HKD 500,000, 90% of the cases filed have gotten resolved.



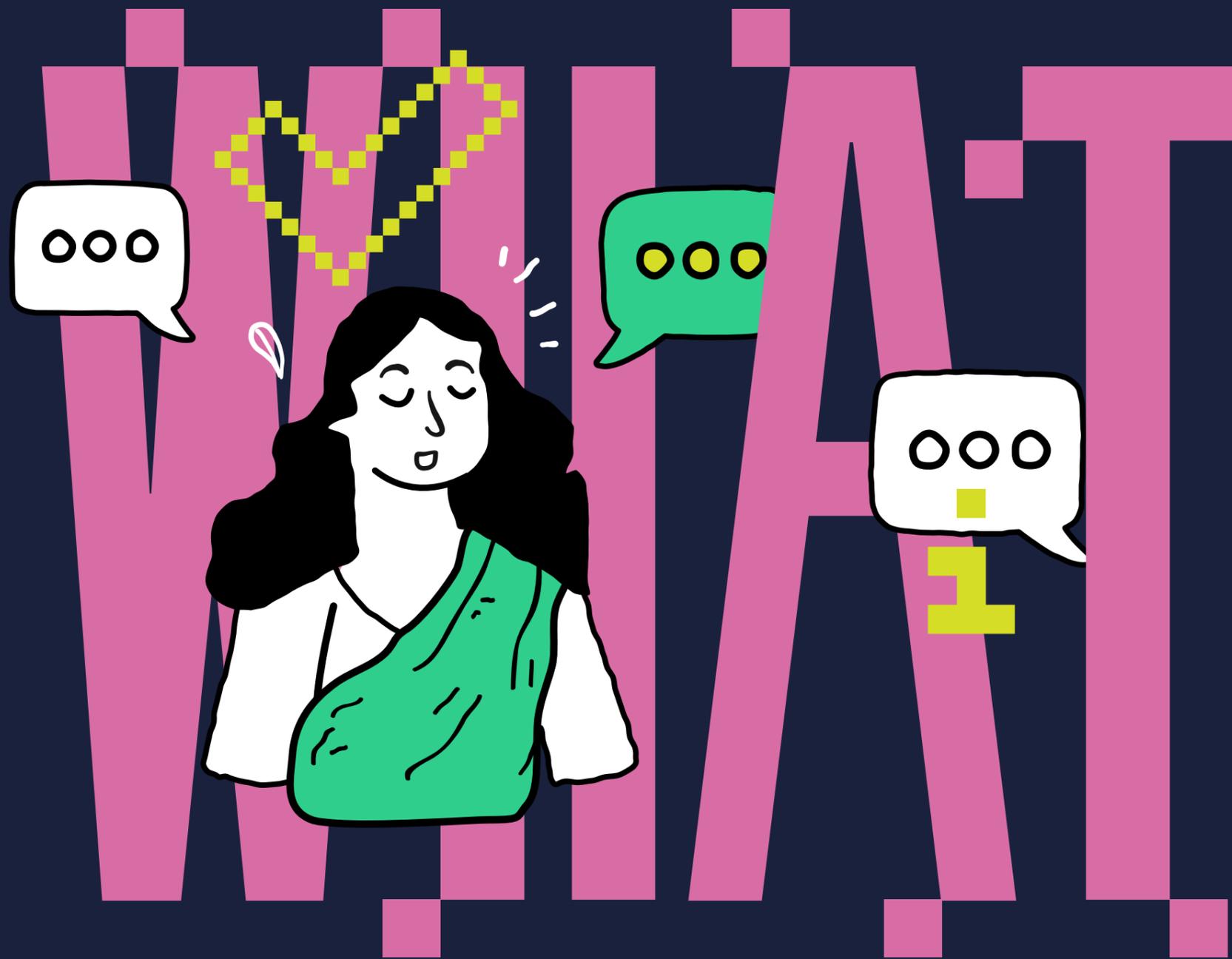
United States

Ecommerce platforms like eBay have built deep expertise on ODR. eBay itself began offering ODR through its proprietary channels in the early 2000s and has played an important part in the evolution of the idea. As of now, eBay resolves around 60 million disputes via ODR per year

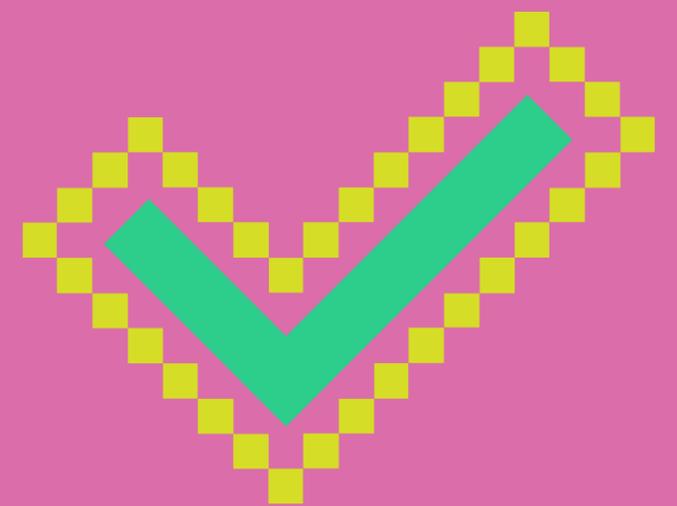
Around the world, ODR is fast becoming an essential part of the legal system's response to the pandemic. Many of the measures adopted during this difficult time are likely to stay.

“ eBay, PayPal, Airbnb, Alibaba, Upwork have all launched dispute resolution centres. It is now common among global technology companies to build software to provide fast and fair resolutions to underscore trust in transactions.”

Colin Rule, Global ODR pioneer, President & CEO, Mediate.com



What are the truths and myths of ODR?



ODR is the next evolutionary step after ADR

ODR owes a debt of gratitude to those who tirelessly championed ADR as an effective model of dispute resolution. It was ADR that made the idea of resolving disputes outside the courtroom acceptable. As the trend caught on, some parts of the world revived and integrated ADR-like processes that had existed in traditional systems. When ODR eventually began to take shape, it borrowed its core tenets from ADR while simultaneously mutating to become the next evolutionary step in dispute resolution.

Here is what ODR shares with ADR:

1

Both champion non-adversarial resolution techniques

While ADR and ODR both allow for arbitration, both frameworks make every attempt to deploy non-adversarial techniques such as negotiation, mediation and conciliation. On one popular ODR platform, nearly 90% of cases are resolved through proactive mediation processes.

2

Both are particularly effective for small- to medium-value cases

Parties to complex and high-value disputes involving questions of law are typically willing to spend more money in order to access the mainstream justice system. For almost everything else, there was the ADR, and now ODR. Having evolved from ADR, ODR is able to offer all the benefits of ADR plus huge savings in cost, time and effort.

3

Both can be availed of voluntarily or through a law or a court order

- The voluntary path: A pre-contracted dispute resolution agreement might identify ADR or ODR as the chosen path. Alternatively, even after the dispute arises, either option can be chosen by both parties for being non-adversarial, efficient and user-centric
- The mandated path: Disputants might be required to attempt ADR or ODR as a prerequisite for accessing the mainstream justice system. This can occur either as a result of statutory requirement (the 'mandatory' pretrial ODR) or on an adhoc basis (typically by court order)

Having said that, ODR is an evolutionary leap from ADR in four aspects:

- ODR uses technology for most or all aspects of dispute resolution, which, as we know, makes justice swift, affordable and simple
- ODR is less prone to deliberate delaying tactics since, unlike ADR, it bypasses requirements of physical presence or frequent synchronous communication
- ODR generates huge amounts of data that can be used to improve the solutions and outcomes; additionally, public data (laws, judgements etc) can be used to create better ODR solutions
- ODR practitioners can be anywhere and can resolve disputes even as they work in other jobs. In other words, ODR will give birth to a new gig economy that can expand fast, thereby creating talent and capacity in all parts of the country

WHAT the experts say

When introduced to ODR, many first-time users have several common questions.



Are decisions taken in ODR hearings enforceable?

“There is nothing in the law that prohibits ODR. We don’t need an amendment to the Arbitration Act per se, arbitration can be done on an electronic platform. If it can happen face to face, it can certainly happen remotely on a digital platform.”

Justice BN Srikrishna, Former Judge, Supreme Court

Can ODR and mainstream courts coexist?

“A hybrid model of courts (& virtual courts) & ODR would be a steady state of dispute resolution. To combine technology with the most thoughtful, equitable way to enhance justice for all.”

Nandan Nilekani,
Co-founder & Non-Executive Chairperson, Infosys.

Can private companies rely on ODR’s neutrality?

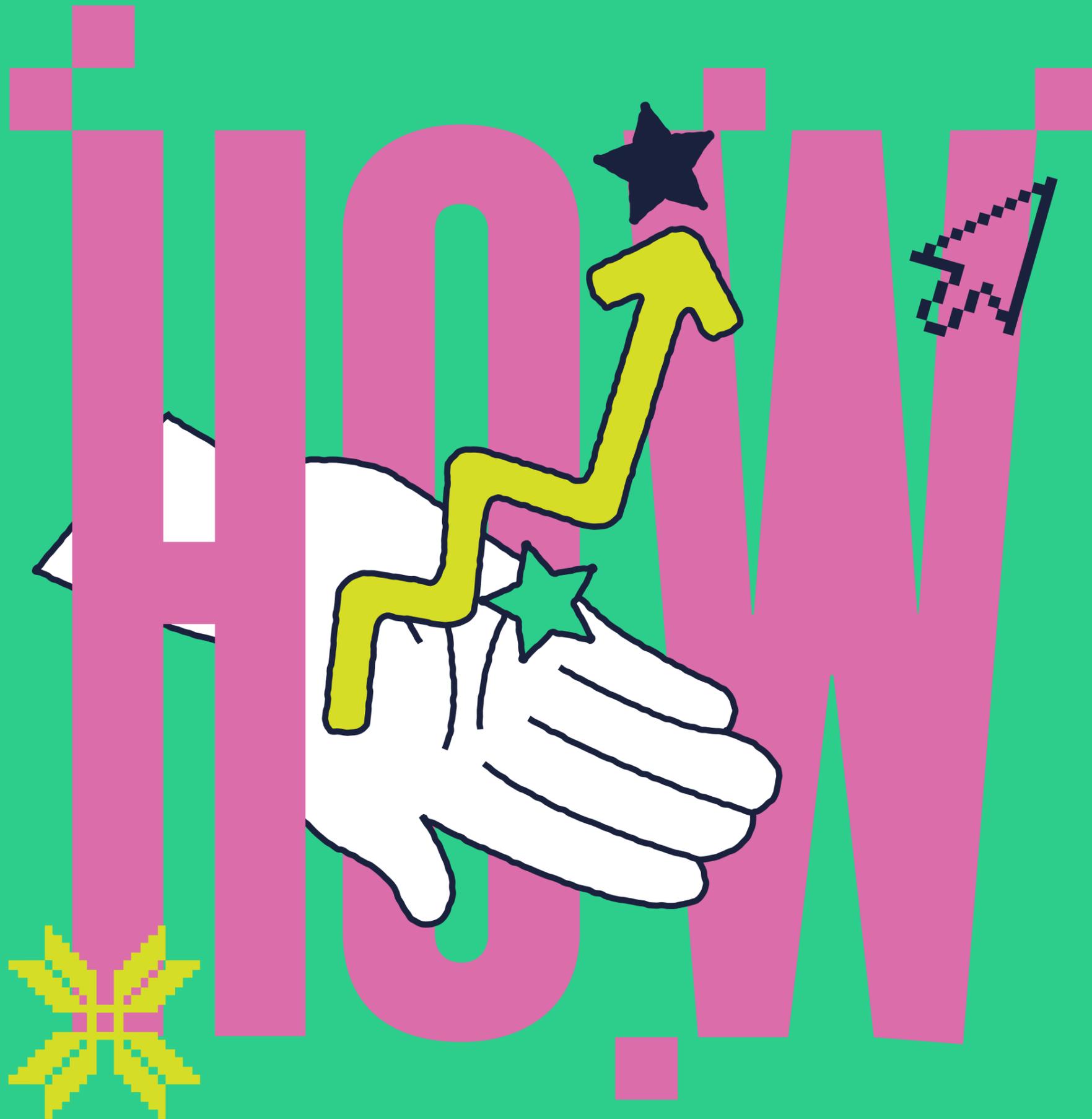
Most definitely! ODR institutions are adjunct to and supplement the judiciary, performing a vital public service. They have a duty to ensure that their platform and processes are secure, user friendly, and that the matters are managed to ensure timely outcomes. As such, ODR institutions would appeal to neutrals, commercial enterprises, consumers, and to the judiciary primarily for their independence and neutrality, which would serve to give adherence to the outcomes arrived. The legal framework does provide for remedies if the neutrality or independence is suspect.”

Pramod Rao, Group General Counsel, ICICI Bank.

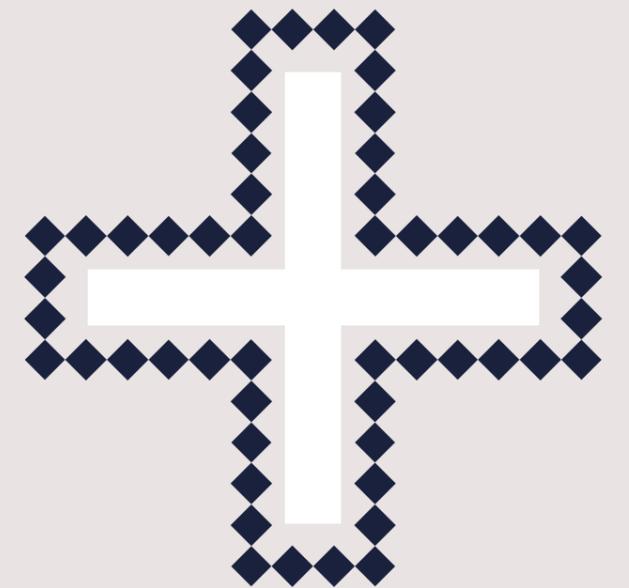
In what way does ODR redefine justice?

“Overall, we need a fundamental change in mindset – dispute resolution to be seen not as a court where justice is administered, but as a service which is availed of.”

Justice D Y Chandrachud, Judge, Supreme Court



How does ODR consistently manage to offer better outcomes for everybody?



Components of ODR

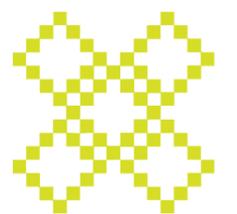
ODR owes its success to 5 components that determine HOW it works.



- 1/ Thoughtful technology** that enables frictionless service delivery
- 2/ Reengineered processes** that simplify the system and enhance the user experience
- 3/ Asynchronous communication** that reduces delays and biases while increasing efficiency
- 4/ Feedback loops** that contain/resolve individual disputes while also eliminating specific types of disputes
- 5/ Easy accessibility** that empowers the underserved and the digital illiterate

Also, every well-wisher of the domain hopes for the emergence of greater open-source design in ODR that drives more innovation and nationwide scalability.

Let us take a look at each component in turn and understand how they deliver their intended benefits.



1/

Thoughtful Technology



Mailing services were the first to move online. Then came the malls and the banks. Now, with telemedicine addressing 160 million cases even before the pandemic began, clinics too have moved online. It was only a matter of time before mainstream judges as well as qualified ODR professionals conducted virtual hearings and resolved disputes online.

Here are the key elements of ODR's technology:

Remote service

ODR wakes up when you do and delivers justice to your doorstep. It makes itself available whenever you want and wherever you are.

Driven by data

ODR software and solution providers can learn from every case and make incremental improvements for the future. At one point, the information it possesses will be sufficient to be analysed and converted into wisdom. It will then be able to suggest solutions to improve user outcomes.

Artificial Intelligence (AI)

AI and machine learning (ML) become possible with sufficient data. Over time, one can expect an ODR software's AI/ML capabilities to be able to solve low-value, minor and non-critical disputes on its own. It will also be able to serve human professionals in more complex cases.

Integration with other services

As the government embraces ODR, formal systems of dispute resolution such as the courts and Lok Adalats can use ODR technology to improve their outcomes. This is already happening. Additionally, integrating ODR solutions with database systems for intellectual property, land titles and financial transactions, amongst others, can dramatically improve outcomes for everybody.

In spite of a powerful engine of ideas driving its back-end, ODR remains simple enough on the front-end to be used by those who may not be very familiar with technology or may not be able to invest heavily in high-end phones and computers. And when technology becomes accessible to all, it attains its disruptive best form. It becomes the means to create great new possibilities for society at large.

2/ Reengineered Processes

The entire process can be hijacked by either party, random events or procedural minutiae.

Disputes Resolved in
4-5 YEARS

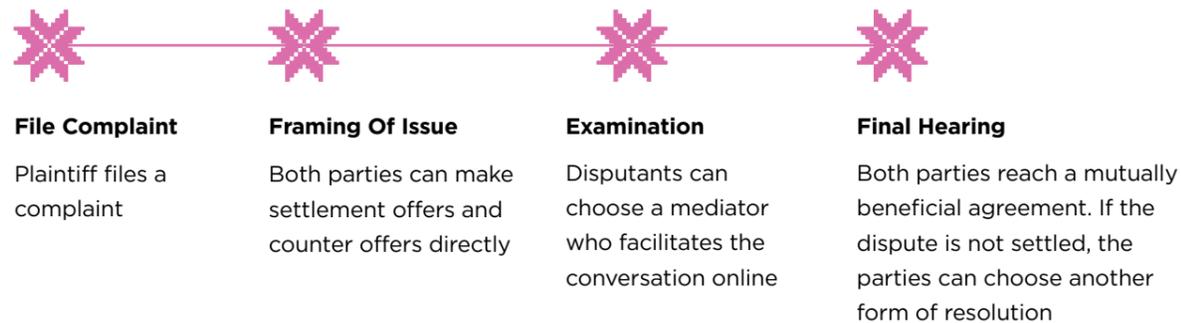


The Current Process



The Odr Process

Negotiation & Mediation



Arbitration



Disputes Resolved in
30-45 DAYS

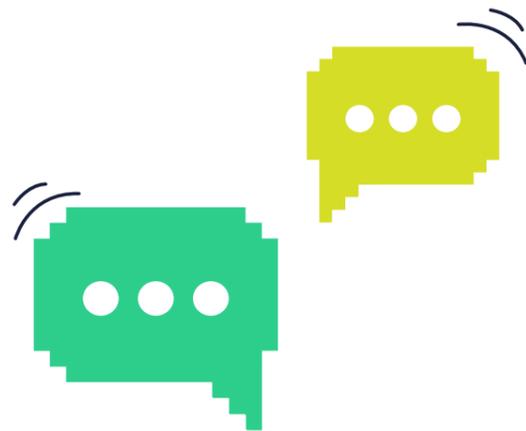


Delays are minimised in the ODR process due to the following reasons:

- Disputants can choose the most appropriate method as per their needs
- The Negotiation and Mediation path is designed to reduce friction, create a collaborative spirit and arrive at mutually beneficial outcomes
- Technology is used to share documents, conduct hearings and record conclusions. This reduces time and expenditure
- Asynchronous written communication reduces biases and delays. More on this in the next section

3/ Asynchronous Communication

One of the biggest sources of delays in formal, in-person proceedings is the need for everything to be ready at a single time. If one party needs additional time to prepare their case or respond to an argument, the court must reschedule keeping in mind its own overcrowded docket and the availability of the plaintiff and the defendant. As a result, civil cases in India get adjourned with alarming regularity. The average number of adjournments is 31 in Rajasthan and 51 in Orissa. Asynchronous communication does away with adjournments and other delays.



Barring pre-scheduled joint hearings which are often not required, people from different time zones can access ODR asynchronously, at a time and place of their convenience. For example, a newspaper editor working the night shift could work towards a mediated agreement with, say, his largest distributor in the city without having to reset his biological clock for an early morning court hearing. In this manner, asynchronous people can come together without actually coming together.



Additionally, asynchronous communication offers a few more important benefits:

Avoidance of bias

With much of the communication happening in written form, the mediator or arbitrator is more likely to avoid any unconscious bias that could play a part in determining the outcome of a dispute

Unrushed responses

Disputants have sufficient time to reflect, research and clearly express their positions and supporting arguments. They do not have to rush their responses from across the table

Big picture outlook

Due to the above three benefits, parties move away from arguing about procedural minutiae. With the help of mediators and arbitrators, they find it possible to focus on the broader, substantive content of the dispute

4/ Feedback Loops



When one studies tens of thousands of cases pertaining to the same kind of dispute, one sees clear patterns. One can identify factors that make the opposite party take an irrevocably entrenched position. Knowing that gives one the opportunity to prevent those factors from arising in the first place.

Businesses can thus find defects in their products and processes - be it the missing anti-slip flooring for monsoons or the ambiguously-worded clause in their contract. This ensures that the next generation of disputes has smaller numbers.

The mainstream justice system must be given comprehensive insights on how a particular innovation is panning out for disputants and whether it is ready for full-scale formal implementation.

Another important feedback loop occurs during the sandboxing of innovative solutions.

“ A dispute is really your best intelligence, and can tell you what needs to be fixed, to eventually have fewer disputes going forward.”

Shilpa Kumar, Partner, Omidyar Network India

5/ Easy Accessibility

The very framework of ODR inspires flexible ways of accessing it. Therefore, its impact is not restricted to the tech-savvy and the gadget-rich. It has the potential to serve the most marginalised and underserved segments of society. People of all economic strata, linguistic backgrounds, literacy levels and tech-awareness will be able to access ODR through suitable gateways or intermediaries. These include:

Public Gateways

Government connectivity platforms, including Common Service Centres (CSCs) and parallel state initiatives (e.g. eMitras in Rajasthan) that have already been established at a district/sub-district level can be equipped to serve those seeking ODR solutions

Private Gateways

For-profit connectivity resources like internet cafes can help citizens link with certified ODR professionals who work as intermediaries

Legal & Domain Professionals

Existing dispute professionals (such as private lawyers and legal aid non-profits) as well as domain experts in specific areas of dispute (such as insurance) can become certified ODR professionals and offer their services as intermediaries

The ease with which ODR can be accessed is likely to keep pace with its rate of growth. In its steady state, any citizen should be able to find a gateway or an intermediary within arm's length.



As the ODR ecosystem matures, citizens will be able to utilise not just hyper relevant ODR solutions but technology tools including:

- Local language ODR access guides
- Virtual ODR assistants and chatbots
- WhatsApp-based ODR solutions
- Simple, low-bandwidth ODR interfaces

“The use of technology is enabling access to justice for those who need it the most.”

Desh Gaurav Sekhri,
OSD & Head of Access to Justice, NITI Aayog.

Open-Source Design – A potential game changer for ODR adoption in India

The surest way to ensure wide-scale implementation of ODR is to create the finest open-source technology that allows anyone, anywhere to create and implement ODR solutions customised to local dispute types and ground realities.

And we will see an explosion in the use of ODR when its many features – such as filing, asynchronous chat, virtual conferencing and legal digital documentation tools – are leveraged by grassroots communities, organisations and practitioners.



Everyone can play a role in making this happen:

The judiciary can ensure open access to legal data, including past judgments and records, so that anyone can create smart, data-driven ODR solutions

ODR platforms can courageously open up their technology and operate as veritable platforms upon which other providers build custom solutions, thereby creating win-win scenarios

Philanthropists can invest in open-source ODR technologies and incentivise collaborations that result in open-source ODR solutions

The government can ensure open access to official data including land records so that ODR systems can resolve disputes more quickly

Enterprises can develop open APIs that allow anyone with a better solution to resolve their disputes

These open-sourcing efforts will eventually be felt by every Indian.

Models & Approaches



The five components of ODR provide great flexibility to create different ODR models. Even businesses and communities unfamiliar with new technologies can find or even help create an ODR model aligned with their needs.

Proprietary Models

In this, organisations develop ODR that fits into their internal processes.

For example, e-commerce platform eBay and online payment platform PayPal designed in-house platforms to address the huge number of disputes they need to resolve with their customers and users.

Third Party Technology Platforms

In this, private service-providers offer ODR solutions for all sizes of businesses.

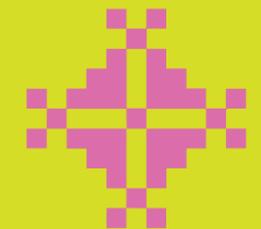
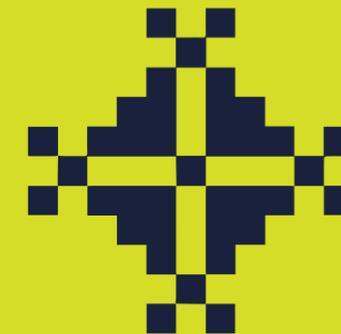
Companies that don't want to create their own platforms can send their disputes for resolution to these third party platforms such as Modria and Smartsettle that offer solutions such as communication tools, negotiation software, virtual meeting rooms and much more.

Independent ODR Institutions

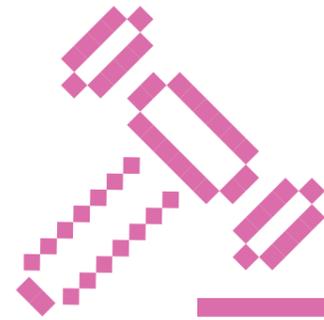
In this, independent and neutral technology-driven institutions offer ODR solutions.

This model is a variant of third-party technology platforms and it offers a seamless blend of technology coupled with access to dispute resolution professionals. The primary advantage of this model is that aspects of governance and neutrality organisations such as eBRAM are prioritised. This satisfies the concerns that users may have in approaching private organisations for what has historically been a public function.

The models described above can be implemented in diverse ways. The amount of technology and human support can vary widely. Technology can be used sparingly (for instance, merely to file documents) or it can be leveraged fully to create tech-led, futuristic solutions that have in-built automation.



Developing standards for ODR



For ODR to take firm roots in this brave new, post-Covid world, it would help for it to have a uniform set of codified principles. One of the ways by which courts demonstrate their commitment to justice is by following certain procedures that are reasonable and equally applicable to all.

In a physical hearing, for instance, any member of the public can sit in a courtroom where all litigants are equally entitled to legal representation and procedural safeguards. For ODR to become a viable substitute, similar coherent and consistent norms will have to be formulated.

Efforts are already being made in this direction. For instance, the UNCITRAL (United Nations Commission on International Trade Law) has released Technical Notes on ODR which emphasise Transparency, Independence, Party Consent and Proportionality as important values.

In India's case, while experts believe in the value of ODR standards, there are concerns that mandating standards for private ODR at this early stage could stifle innovation and create entry barriers. Instead, ODR service providers could be encouraged to self-regulate and voluntarily adopt and operationalise basic principles based on:

- **Peer reviews**
- **Ratings and accreditations**
- **A recommended code of professional conduct**



Drawing from international best practices, like the standards proposed by the ICODR (International Council for Online Dispute Resolution), Indian ODR service providers could adopt the following principles, amongst others:

Accessibility

Ensuring ODR platforms can be used across devices and by different demographic groups, accounting for the diversity of Indian languages and ability to engage with technology.

Competence & Neutrality

Neutrals should possess substantive knowledge and understanding of processes and must be free of conflicts of interest.

Accountability & Fairness

Adherence to due process standards. Remain mindful of the possibility of unequal bargaining powers between parties.

Information & Transparency

Proactive disclosure of conflict of interest, risks, and benefits to enable informed consent. Anonymised data on ODR trends and statistics can help in building trust.

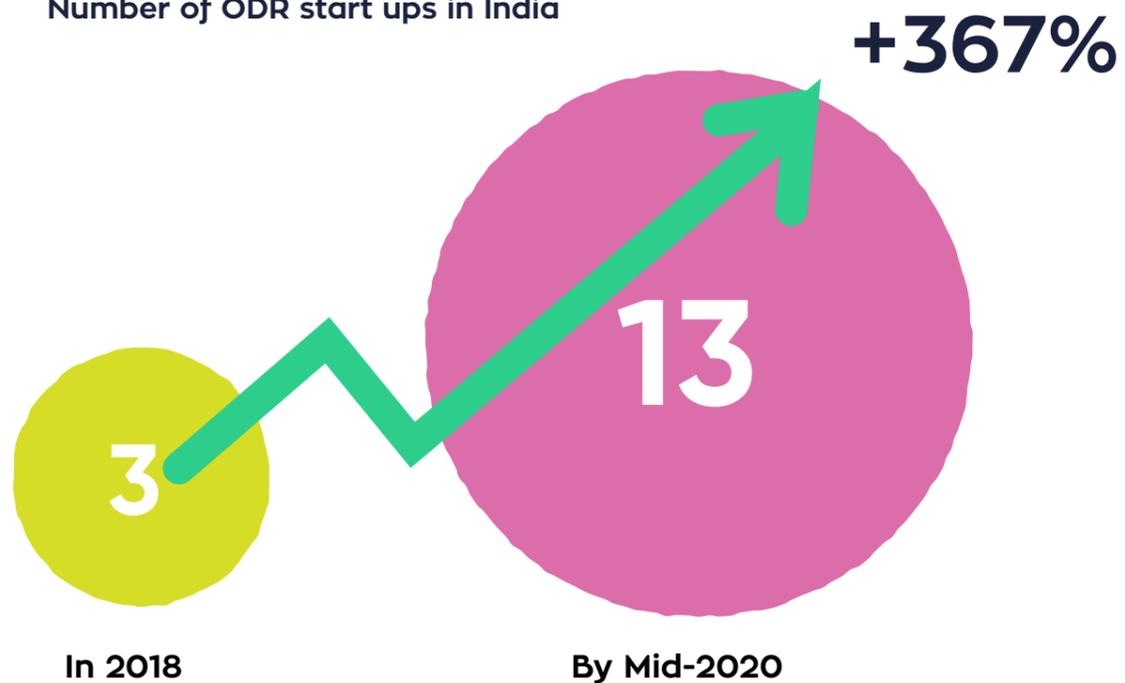
Confidentiality & Robust Data Security

Adherence to data protection norms, including safe storage and established protocols to deal with breaches, cyber-attacks, and disasters.

A fast-growing ecosystem

There has seen a surge in the number of start-ups providing ODR services. From those prioritizing different techniques to those focused on specific industries there is now a range of providers for businesses and citizens to choose from.

Number of ODR start ups in India



Here are the most prominent service-providers in the domain:

ADRes Now

Founded In 2019

Sector agnostic
www.adresnow.com

CADRE

Founded In 2019

All arbitrable disputes
www.atthecadre.com

Centre for Online Resolution of Disputes (CORD)

Founded In 2019

Banking, NBFC, Insurance, Rental
www.resolveoncord.com

Credgenics

Founded In 2019

BFSI Sector
www.credgenics.com

CREK ODR

Founded In 2019

Sector agnostic
www.crekodr.com

Jupitice

Founded In 2019

Commercial, consumer, personal and Government disputes
www.jupitice.com

JustAct

Founded In 2019

BFSI, Housing, Telecom, Family, Workplace disputes
www.justact.co.in

Presolv 360

Founded In 2017

Banking, Commercial, Consumer, Employment, Family, Government, IPR, Property & Tenancy disputes
www.presolv360.com

Private Court

Founded In 2019

Commercial disputes
www.pvtcourt.com

Resolve Disputes Online (RDO)

Founded In 2017

Sector agnostic
www.resolvedisputes.online

Sama

Founded In 2015

Financial Disputes, Servicing Lok Adalats and Consumer Forums to go online
www.sama.live

Webnyay

Founded In 2017

Civil and Commercial Disputes
www.webnyay.in

YesSettle

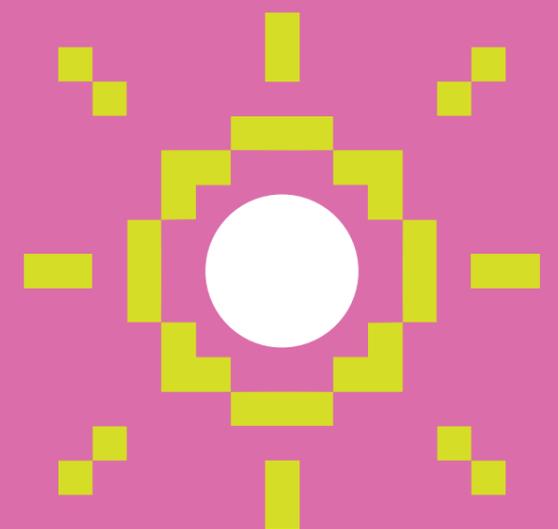
Founded In 2015

Telecom, Insurance, Banking, Business and Government disputes
www.yessettle.com



Who are most likely to benefit from ODR right away?

Spotlights on early instances of impact



Spotlight 1:

Revamping the credit market



About the beneficiary

Individual borrowers contribute 40.1% to the overall credit loan market in India. As a result, per capita loan has risen to 50% of per capita income. In the coming years, rapid growth in lending through digital channels is expected to further expand the market. One estimate suggests that, by 2023, nearly one in every two Indians will have taken a retail loan through digital channels. This translates into an estimated \$1 trillion digital loan market in the next four years. The ease with which individual borrowers access, leverage and repay loans is becoming significant to the smooth functioning of the economy.

The problem statement

However, dispute resolution mechanisms have not kept abreast of the growth in the lending market. In particular, existing processes suffer from a few key deficiencies:

Fragmentation

Dispute resolution across credit issues is currently split between multiple sectoral redressal forums. These include internal redressal mechanisms, multiple financial sector ombudspersons (e.g. RBI's Banking Ombudsman, RBI's NBFC Ombudsman), consumer fora, and civil courts

Slow speed

The time taken to resolve simple credit disputes ranges from 4 months to a year, depending on the forum. Considering the speed at which lending transactions currently occur, a slow-moving dispute resolution system can inhibit the overall growth of the market

Onerousness

A multitude of relevant entities within the transaction (e.g. credit marketplaces, credit scorers, payment service providers and account aggregators), and distinct processes prescribed by different resolution forums, make it difficult for the user to understand and navigate the system. As a result, over 50% of disputes get rejected for being non maintainable

Limitations

Existing fora have limited institutional capacity to address disputes at scale. For example, despite the wide penetration of NBFCs, only 4 Ombudspersons currently oversee their disputes.

The ODR breakthrough

Ongoing research conducted by Dvara Research suggests that ODR can help transform the credit dispute resolution system through addressing information asymmetries, improving transparency, and reducing frictions through the user journey.

Phase of dispute	Pre-ODR	Post-ODR
Information	<ul style="list-style-type: none"> • Difficulty identifying the liable party • Lack of awareness among borrowers of legal rights and procedures • Communication barriers between parties • Inability of parties to track complaints 	Automated and asynchronous processes reduce the information barrier for different parties within the transaction. For example, ODR platforms can automatically inform borrowers of payment failures, allow borrowers to communicate directly with the lenders, and clarify jurisdictional issues. This has been happening, in place like UK European Consumer Centre and The Furniture Ombudsman.
Management/ Containment	<ul style="list-style-type: none"> • Extensive documentation requirements • High evidentiary burden 	ODR can support feedback loops that strengthen dispute containment, offer integrated solutions for different fora, and provide handholding support. E.g ODR platforms such as Portable's Settle and Modria assist borrowers with procedure, documentation, evidence gathering and decision-making.

Phase Of Dispute

Resolution/Escalation

Pre-ODR

- Rejection on jurisdictional grounds. Complaint not automatically forwarded to the right jurisdiction.
- Lack of clarity regarding appeal and escalation

Post-ODR

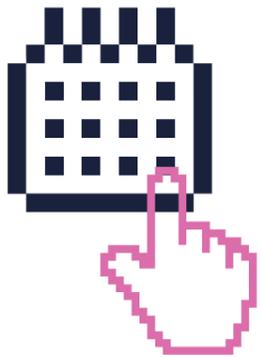
The one-stop nature of ODR platforms supports many kinds of ADR solutions that help avoid dispute retrenchment. In situations where dispute cannot be resolved, it can be automatically escalated to the right forum. This reduces the burden of following up on the consumer. An example of this is Resolver.

The Reserve Bank of India recently took a historic step by introducing an Online Dispute Resolution (ODR) mechanism for digital payments. While the guidelines do not cover lending transactions within their ambit, they provide a broad set of criteria that can govern ODR development in this market as well. In RBI's own words, the idea is to create

“transparent, rule-based, system-driven, user-friendly, and unbiased solutions...with zero or minimal manual intervention.”

Moving forward, these general stipulations will need to be developed further – both by industry actors and ODR service providers. However, they represent an important step towards the acceptance of ODR as a promising avenue for resolving disputes in the finance sector.

Meanwhile, as the subsequently spotlighted ICICI pilot shows, the private market for dispute resolution in lending is already growing.



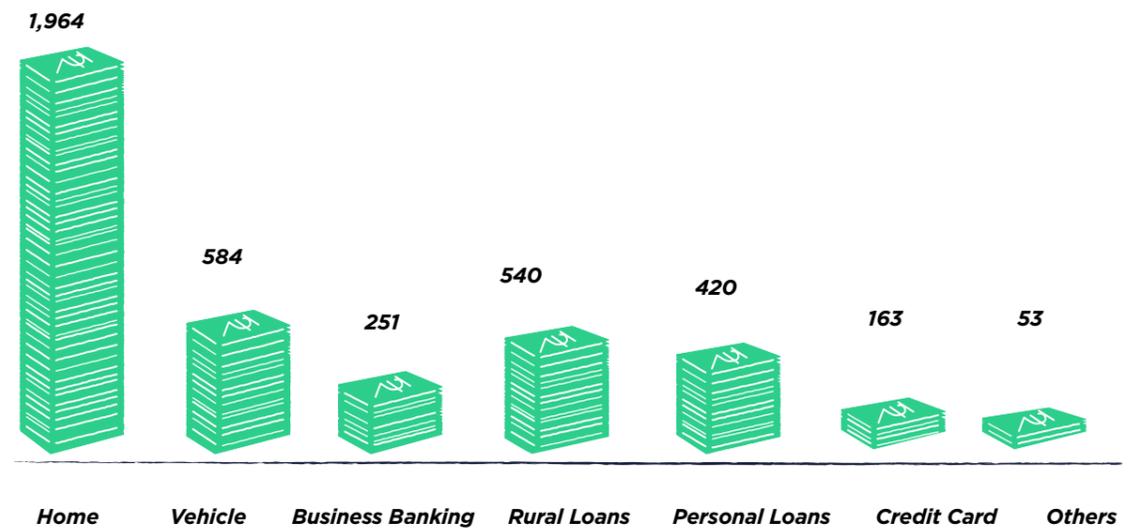
SPOTLIGHT 2:

ICICI Bank

About The Beneficiary

Founded in 1994, ICICI Bank is the largest Indian private sector bank. As of December 2019, the bank's portfolio contained nearly INR 4 lakh crore loans to retail borrowers.

ICICI Retail Loan Portfolio (in billions of INR)



The Problem Statement

Within the retail portfolio, many small value loans (<INR 20 lakh) are disproportionately difficult to recover cost-effectively in the event of default. Court cases require significant person-hours and travel. During the years it takes to resolve the case, underlying assets remain inaccessible.

To meet this challenge head-on, ICICI Bank undertook the largest ODR pilot project in India.

The Odr Breakthrough

In 2019, ICICI Bank partnered with a Bangalore-based ODR service provider. The two organisations embarked on a pilot project to resolve 10,000 retail loan disputes. ICICI had managed to resolve approximately 200 cases before the Covid-19 moratorium came into effect. While this limited the amount of pilot data available for scrutiny, it is already clear that the ODR pathway is far more efficient and effective.

Prior to ODR, the average lifespan of a single case was

3 years

and the average number of hearings was

12

With the ICICI Bank resource person spending at least

half a day per hearing,

the company had to spend a minimum of 6 person-days of effort per case.

Under ODR, this dropped to a mere

0.5 days.

And the average cost per case

dropped to INR 3,500.

Even as positive results trickled in through this pilot, which focused on unsecured loans, the bank took to resolving secured loan disputes through Lok Adalats which had also started using ODR. ICICI Bank accessed these courts using its Bangalore-based ODR partner's platform.

Time to Resolve Loan Dispute



Court

3 years

Traditional ADR

1 year

ODR

45 days

Commenting on the incredibly quick turnaround time, the bank's

“For ICICI, the real value of ODR lies in the immense time savings. Being able to resolve a case in as little as a month puts us in a much superior position vis-a-vis our previous dispute resolution options.”

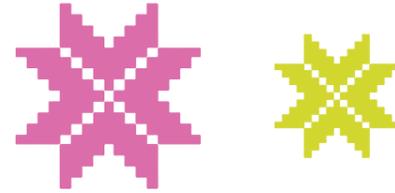
Pramod Rao, Group General Counsel ICICI

In order to attain this success, ICICI Bank had to refine their internal and customer-facing processes, which ensured they and the other party were both present and prepared for hearings. The table below offers a glimpse at their lateral solutions.

Issue	Low Connectivity	Consumer Consent	Registration Formalities
Scenario	Throughout the pilot, ICICI Bank faced numerous instances where the customer's capacity to connect to the videoconferencing platform on the day of the mediation/hearing was hampered by poor connectivity.	One of the more common barriers faced throughout the pilot was obtaining informed consent from existing customers. Retail customers typically were unaware of ODR and therefore sceptical about the process in the beginning.	Legal requirements around stamping and e-signature lead to significant confusion in two areas: <ul style="list-style-type: none"> • Electronic stamping of digital processes, leading to redundant effort and cost • Jurisdictional ambiguities around stamping processes for multi-state ODR
Resolution	The ODR partner established bridge telephone conferencing facilities to allow proceedings to continue over voice call. Evidence, pleadings and other documents were uploaded to the platform in advance and possessed by both parties.	For the pilot, ICICI Bank proactively conducted pre-mediation calls with customers during which they educated them individually about alternative dispute resolution processes, procedures, benefits, and consequences.	Unresolved. ICICI Bank continued to undertake physical stamping processes and bore the cost for the same. It continues to do so.
Takeaways	Low-tech, easy-to-access redundancies are a necessary requirement to ensure ODR hearings are conducted effectively and efficiently.	For ODR to operate at scale, users must be made aware of ODR processes using accessible, intelligible materials written in the languages of their choice.	To incentivise ODR uptake, governments could consider waiver or modification of stamp duties on ODR processes.

SPOTLIGHT 3:

Orange Retail Finance



About the beneficiary

Incorporated in 2000 and certified by Reserve Bank of India, Orange Retail Finance is an organized lending platform providing financing solutions to support mobility and livelihoods for customers particularly in Tier 3 and Tier 4 cities and rural markets in five South Indian states. Orange has disbursed over 700 crores with an average ticket size of Rs. 40,000 over the last 7 years.

The problem statement

With a customer base that is primarily rural, Orange recognised that its customers might be more vulnerable as a result of limited awareness of their rights as well as understanding of formal dispute resolution processes. Recognizing that the core expertise of their staff is finance and marketing, Orange was keen on identifying an outsourced solution to support fair, transparent, and unbiased dispute resolution. This would help Orange Retail build trust and credibility with its customers and also reduce productivity costs for its employees.

The ODR breakthrough

Orange began working with a Chennai based ODR startup in

May 2020.

Orange seeks to resolve their disputes with customers who are historically in the book of defaults using ODR

(1.5% of their total number of disputes).

They have since referred more than

50% of these disputes to the ODR platform.

Early results indicate that resolutions which would normally take

8-12 months without ODR

can be resolved in

45-60 days using ODR.

Early settlement data has also been valuable in creating feedback loops for Orange that help it understand how to improve customer experience. For example, insights from the negotiation process have helped Orange redesign its customer engagement processes in a more user-friendly manner, including identifying how better to engage with its customers. Customers are also welcoming the ODR solution as it provides much-needed consistency regarding the whole dispute right from the beginning to the stage of resolution.

The ODR solution offered is a flexible offline-online offering that accommodates those customers who might not have the access or ability to engage with a pure tech-led platform. First, Orange ensures that its branch networks, often the customers' first touchpoint, are familiar with the ODR process to ensure credibility, trust, and consistency. Second, customers are provided access to an 'offline buddy' or a case manager who is responsible for informing customers of the dispute, advising them on appropriate methods of resolution available, and helping onboard the customer onto the platform. Parties go through 3-4 rounds of negotiation, where convergence is usually seen by the third round. These settlements are signed as conciliator orders to provide comfort around enforceability. The ODR platform maintains

“The moment you unlock ODR, the rate of interest will fall down. Today, the customers are charged more due to high volume of disputes. The moment the cash flow increases, I can drop the pricing. Therefore, the net impact of ODR is that it expands the market, and drops the pricing”

Seetharam A, Executive Director, Orange Retail Finance

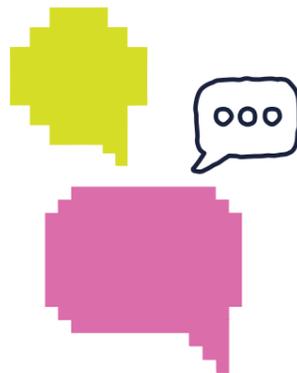
Are some business domains more ODR-ready than others?

Let us take a step back from individual success stories and ask larger questions like: is ODR suitable for any and every business domain? If not, then do suitable and unsuitable domains fall into two neat categories? Or is there a gradient of suitability?

These questions are best answered by reaffirming our guiding principles while evaluating the suitability of ODR for a business domain:

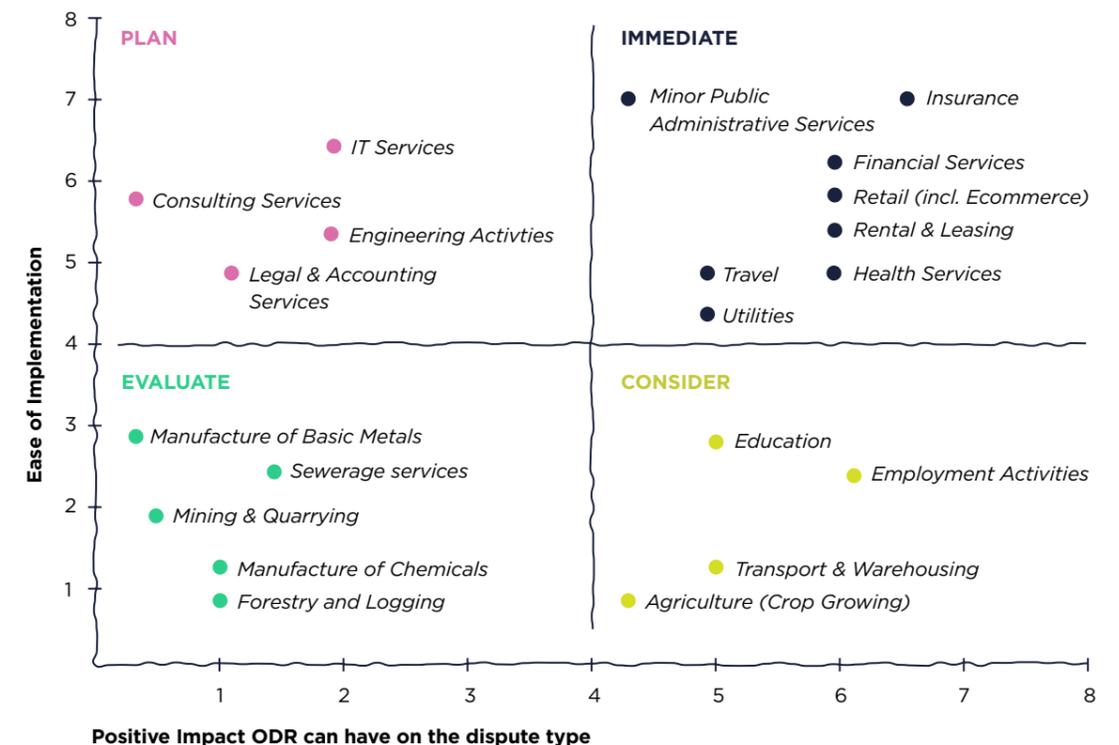
- Does the domain tend to create a high volume and high frequency of small- and medium-value transactions?
- Do these transactions carry a high likelihood of generating disputes?
- Does the domain and its stakeholders enjoy a high degree of technology integration in business operations and daily lives?

Business domains that have more yeses in response to the above questions are more ODR-ready than others. The same goes for specific types of disputes. With this primer, we are ready to examine the suitability of business domains and types of disputes.

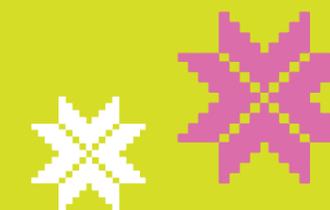


Suitable and unsuitable business domains

While some domains can be considered low-hanging fruit, ready for immediate harvesting, some others will require foundational prep work. A small subset of domains will require a lot of social reengineering or regulatory pushes and will not be ready for an ODR implementation in the near future.



The analysis reveals 7 business domains that are ready for an immediate embrace of ODR. Let us take a brief look at each of these domains:



	Suitability	Proof of concept	Incentives to implement ODR
BFSI	Consumer finance and insurance activities are highly organised, linked to online resources, and often small value matters. Dispute resolution costs are a high percentage of the total claim value.	ICICI Bank and a leading NBFC	Industry leaders in BFSI generally have strong financial incentives (litigation costs and opportunity costs) to resolve disputes quickly and efficiently, and the market power to incorporate ODR into contracts.
E-Commerce	Currently, most e-commerce disputes are handled through internal grievance mechanisms. Customers and merchants would significantly benefit from a third-party, neutral option to appeal internal corporate decisions.	eBay	Earning the customer's trust and enhancing their brand image are important incentives for e-commerce platforms. These organisations usually prefer existing, internal grievance mechanisms because they exercise significant control over outcomes and are unlikely to switch to neutral ODR platforms without government intervention.
Rental	Rental leases are high volume, low value disputes, making virtual resolution attractive. To the extent possible, users typically hope to resolve disputes amicably.	Nestaway	While renters might litigate for repairs and landlords for arrears, damage to property or eviction, both typically seek quick and inexpensive dispute resolutions for their small-value conflicts.
Travel	Customer grievances against travel industry providers are commonplace. Significant consumer surplus could be unlocked by enabling redressal of these grievances in a timely, cost-effective manner through remote ODR.	European Commission ODR Platform.	Same as Utilities (below).
Private Healthcare	Disputes over services typically require significant effort and expenditure to resolve. Often, these grievances involve sophisticated parties who could benefit from ODR if the option to delay through costly legal proceedings was removed.	JAMS Virtual ADR Platform (USA).	Same as Utilities (below).
Utilities	Utilities and telecom disputes can be funnelled to ODR through centralised "gateway" companies, thereby providing a seamless customer experience while availing a third-party grievance redressal forum.	Brazil's Consumidor Platform.	Where grievances are common and alternatives limited, industries prefer to disincentivise effective grievance redressal as a cost-saving measure. Government regulatory measures can open these domains to increased accountability. This point is common to the domains of Travel, Health and Utilities.
Government services	The government's disputes with citizens/businesses are among the most common source of civil litigation in the justice system. Implementing ODR in these fields could significantly reduce the burden on courts while also reinforcing the public's faith in ODR solutions.	Matterhorn ODR.	The government should enable administrative bodies to proceed through ODR while resolving disputes with service providers. The incentive for the judiciary and bureaucracy is an alleviation of stress. The incentive for politicians could be public support and praise for the improved system.

Some of the most powerful incentives come from the government in the form of regulatory changes that level the playing field between corporations and consumers.



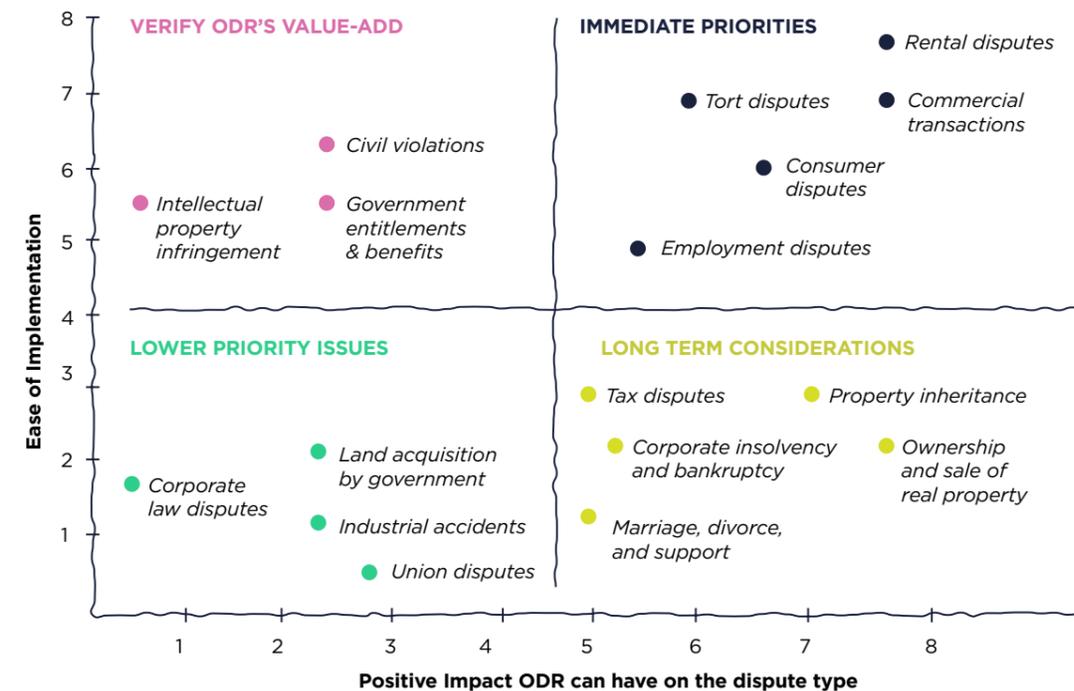
Suitable and unsuitable types of disputes

The suitability of ODR can also be ascertained by looking at the nature of the disputes rather than the business domains in which they originated. Two governing guidelines exist here, and they can be framed by asking the following questions:



• Is a relatively high level of standardisation possible in the nature of disputes?

• Is there early proof, global or domestic, that ODR works for those type of disputes?



Let us take a deeper look at some of the disputes most amenable to ODR:

Commercial transactions

Disputes arising out of a commercial relationship between parties (typically merchants engaged in trade or business) in excess of a certain specified value.

Sample disputes

- MSME loans or insurance claims
- Commercial Rentals

Rationale to use ODR

For MSMEs and property owners, ODR saves cost and time resolving high volume, low-value disagreements that would otherwise clog courts.

Successfully implemented by

Hong Kong Covid-19 ODR Scheme

Employment disputes

Disagreements between employers and employees, typically regarding terms of employment, remuneration or termination.

Sample disputes

- Employee compensation
- Payment of wages
- Employee termination
- Breach of contract

Rationale to use ODR

Employees often lack resources to vindicate many employment claims in court. Employment disputes are also likely to spike due to Covid-19.

Successfully implemented by

JAMS Endispute ODR System

Consumer disputes

Suits between consumers (individuals) and businesses relating to smaller ticket, typically consumption-oriented transactions

Sample disputes

- Unfair trade practices
- Defective/wrong goods/services
- Delay in delivery of good/services
- Retail loans + insurance

Rationale to use ODR

Disputes tend to be fairly standardised, low value conflicts. Consumers will benefit from local access to resolution from faraway producers.

Successfully implemented by

Alibaba Dispute Resolution Centre

Tort disputes

Civil liability arising from harm to other persons or property.

Sample disputes

- Motor accident claims e.g. damage to vehicle
- Damage to property
- Small claim civil offenses

Rationale to use ODR

Tort disputes, particularly motor vehicle disputes, are often highly standardised and have significant uptake globally.

Successfully implemented by

British Columbia (Canada) Civil Disputes Tribunal

SPOTLIGHT 4:

Aajeevika Bureau

About the beneficiary

An estimated 139 million Indians nearly 1 in 4 members of the labour force - are migrant workers. 92% of them are employed in unorganised or casual work in domains such as textiles, construction, hospitality, small manufacturing and transport.

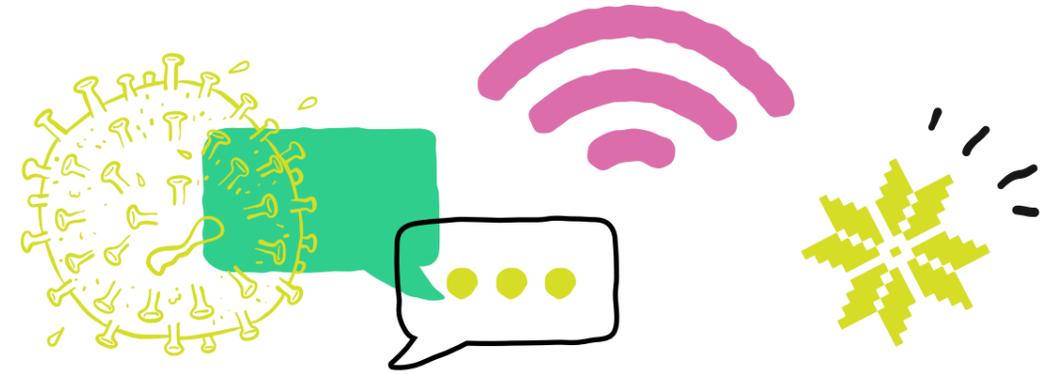
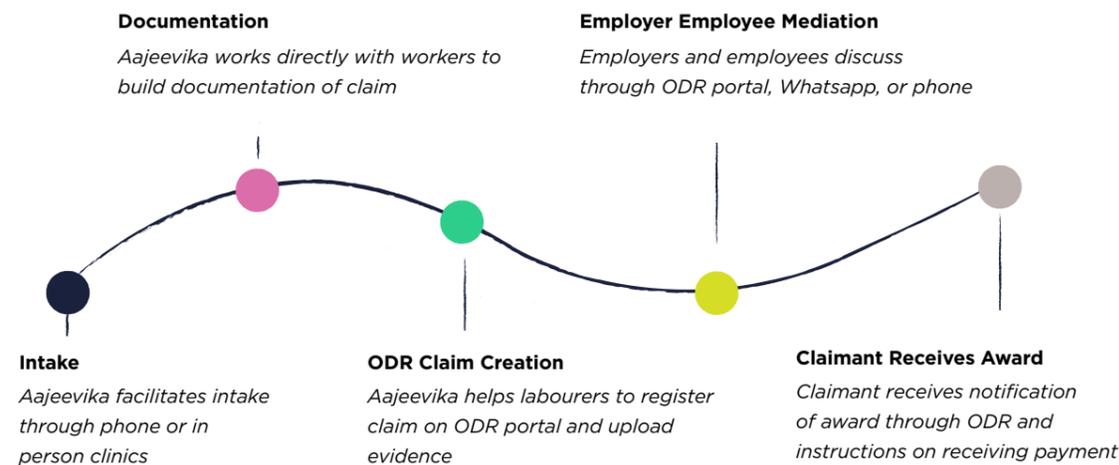
These workers are the beneficiaries of the work done by Aajeevika Bureau, a non-profit organisation with 17 field offices in Rajasthan, Gujarat and Maharashtra. Aajeevika offers a variety of services, including legal representation, to migrant workers.

The problem statement

The power differential between migrant workers and employers is massive. The typical migrant worker does not have the information or capacity to be treated in the way a formal worker would be treated. It is therefore next to impossible for these workers to claim their rights.

The ODR breakthrough

Aajeevika helps migrant workers using a Hybrid ODR process which has the following steps:



Emphasising the importance of the Hybrid model, Santosh Poonia, Co-coordinator, Aajeevika Bureau Legal Aid, says, "Once the workers are brought into the system, they can manage tasks. But our help is needed to get them ready to engage with ODR and present their complaint."

Using this model, Aajeevika helps around

200-250 workers each month.

Put together, these workers recover a monthly average of around

INR 30 lakhs

in unpaid compensation from employers.

But during the lockdown period, Aajeevika Bureau helped migrant workers recover a whopping

INR 1.35 crores.

The organisation registered

1,388 cases between 24 March and 31 May.

In spite of the complete lockdown,

354 of them got resolved.

In the absence of ODR and the Aajeevika Bureau, the workers who were summarily dismissed would not have been able to fight for their arrears from their hometowns. Thankfully, justice was just a few phone calls and WhatsApp messages away.

Spotlight 5:

Lok Adalat

About the beneficiary

Lok Adalats are a government-run alternative dispute redressal mechanism, where pretrial or pending disputes are settled amicably. They have played a significant role in enhancing access to justice and improving resolution speed, particularly for small disputes.

Under the Legal Services Authorities Act, 1987, courts can compel litigants to appear before a Lok Adalat prior to proceeding with their case in court. In order to incentivise uptake and expand access to justice, no court fee is payable when a matter is filed in a Lok Adalat. Statistics compiled by the Law Ministry show that, on average, Lok Adalats dispose more than 50 lakh cases each year.

The problem statement

Lok Adalats are traditionally conducted in-person in regional court premises. But the lockdown imposed due to Covid-19 put an abrupt halt to the proceedings of Lok Adalat. Given the positive impact of this institution on Indian society, it was important to get them up and running immediately.

The ODR breakthrough

Using ODR and multi-stakeholder partnerships, Lok Adalats quickly digitised their processes. This included:

- Sending invitations with necessary details to disputing parties via WhatsApp and email
- Setting up video-conferencing rooms on ODR platforms for mediation with smartphones being used as backup devices in case the facility becomes unavailable
- Sending a binding decision via email to disputing parties once a settlement is reached



The shift has already begun paying dividends:

On 22 August 2020, the Rajasthan State Legal Services Authority (RSLSA) conducted its first ever Online Lok Adalat. Using the ODR platform built by a Bangalore-based ODR service-provider,

**over 350 courts from
37 districts**

across the state, settled disputes online through videoconferencing and e-Signatures. A total of

33,546 matters

were settled, with the total settlement amount crossing

INR 270 crores

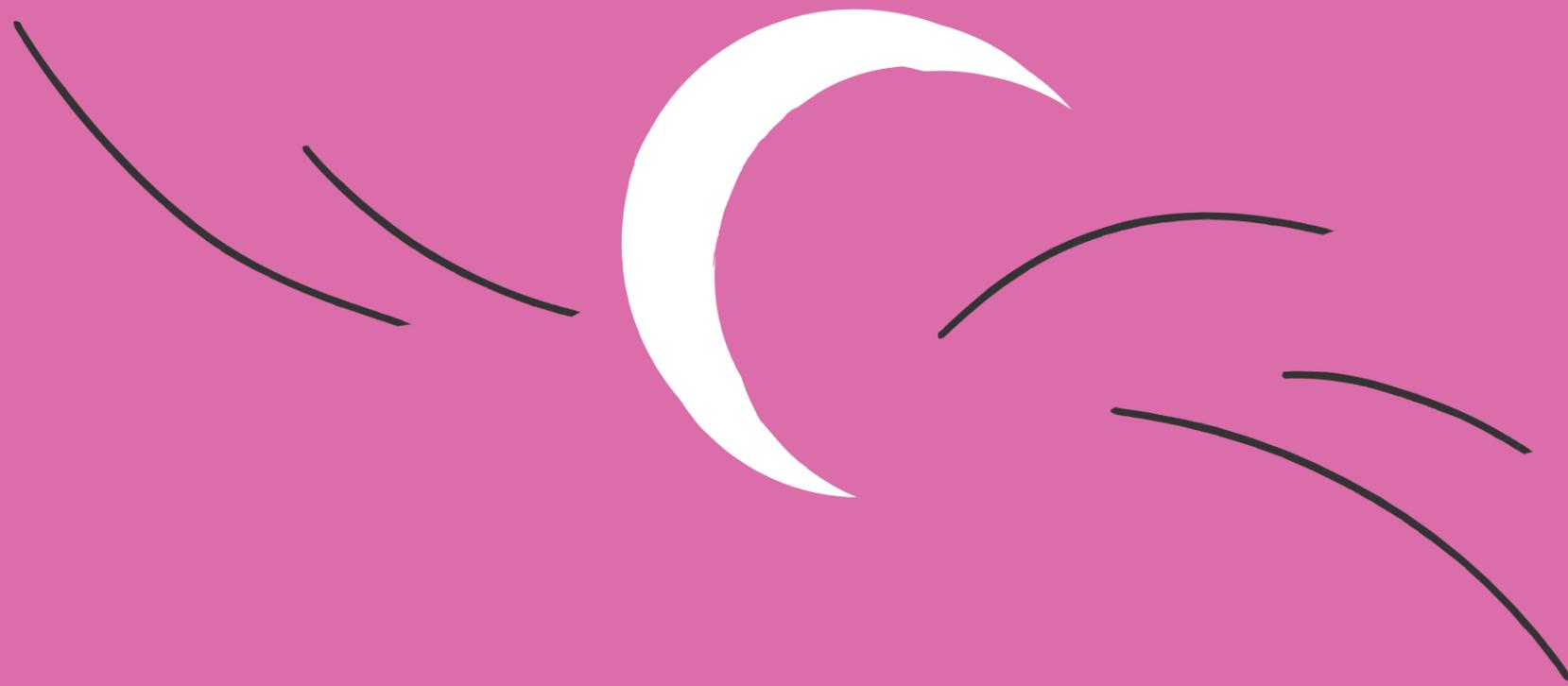
On 08 August 2020, the Delhi State Legal Services Authority (DSLISA) conducted a first-of-its-kind, prototype “E-Lok Adalat” through a Bangalore-based ODR service-provider.

8112 cases

were taken up, primarily relating to money/debt recovery, motor vehicle and electricity disputes. The aggregate settlement amount of these cases was

INR 46 crores

ODR service providers hope that this successful public-private partnership is replicated in other courts and tribunals, with one National Legal Services Authority (NALSA) member expressing the hope that the private and public sectors would share their best practices with one another. That attitude might well hold the key to future growth of the sector, leading to the ultimate dividend: access to swift dispute resolution to all.



In conclusion

At the cusp of change

ODR has brought us to the cusp of change. Companies are beginning to see that it enhances customer relationships and the bottom-line. Citizens who have availed it are clear about its efficacy. ODR service providers are beginning to establish their credentials. And now that several pilots have demonstrated value, stakeholders across the government, private sector and the judiciary are championing ODR's expansion.

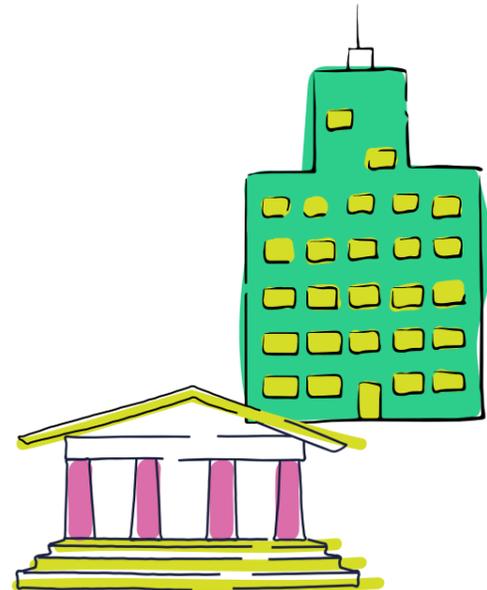
We have begun witnessing tangible change. ODR is certain to transform India's legal landscape within the decade. However, we have no reason to delay its economic and social gains. We have the opportunity to mainstream ODR here and now.

This will require changemakers in Bazaar, Samaaj and Sarkar to work together. Let us examine what needs to be done in each case.

Bazaar: Building the market for resolutions

The market for disputes has always thrived. It is time to create a market for resolutions in India. In a country like India where people take pride in aligning with their communities, ODR seems like an organic solution with its non-adversarial and collaborative approach. By making the courtroom our last resort, we can distance ourselves from our warring instincts.

This alternate reality is already being championed by the market. In the last 12 months alone, over 50 enterprises have already begun ODR pilots in India despite the lack of any legal requirement to do so.



“The best way to create a successful ODR environment is to build a market for resolutions. For example, 98% of the cases filed in civil courts don’t go in front of a Judge in the US because those cases are resolved prior to a case being formally filed.”

Colin Rule, a global pioneer of ODR and President & CEO of mediate.com.

Samaaj: Ensuring ODR awareness and trust

Most consumers – even savvy, high-information market participants – remain largely unaware of ODR. Among those who are aware, many consider ODR to be a niche solution rather than a viable equivalent to in-court proceedings and ADR.



Among consumers aware of ODR, many are unsure whether the process is trustworthy, whether the ODR platforms are neutral, whether the agreements and decisions are enforceable in court, and whether their privacy and data will be protected.

Initiatives such as the Online Lok Adalats and Indian Mediation Week, and the recent spurt of media coverage of the issue, have begun spreading awareness on ODR. But for the idea to have a nation-wide impact, we need to create greater awareness at the grassroots. And when new local audiences tentatively try out ODR solutions, they must find those to be intuitive and innovative, perfectly tailored to their needs.

“ Access to dispute resolution is a cornerstone of the health of Samaaj. Mediation, ADR, and now ODR are a peek into what the future holds in terms of preventing conflicts from escalating, reaching the courts and staying in the courts for years in our justice system.”

Rohini Nilekani, Founder-Chairperson Arghyam

Sarkar: Ensuring the right enabling environment

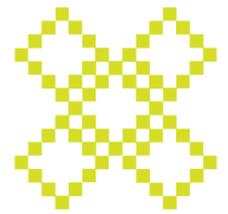
Since the onset of the pandemic, the NITI Aayog has worked actively to make ODR a national priority. Working in tandem with Agami and Omidyar Network India, NITI Aayog convened critical stakeholders from the higher judiciary, government and industry on June 6 and again on August 8. This was followed by the creation of the Justice AK Sikri Task Force Committee to propose ODR reforms. With support from the Vidhi Centre of Legal Policy, feedback from a wide range of experts, and extensive public consultations, the Committee has already submitted a draft report that details policy changes needed to mainstream ODR in India.



“ The government has a critical role to play in not just creating a conducive law and policy framework, but also by being one of ODR’s early adopters. This will directly help reduce ‘government litigation’ and thereby free up precious judicial time for ordinary citizens. Indirectly, it will also boost confidence in ODR as a legitimate and effective dispute resolution mechanism.”

Deepika Kinhal, Lead (Judicial Reforms) & Senior Resident Fellow, Vidhi Centre for Legal Policy

A Tale of Two Generations



*It’s the most beautiful gift I have ever received, Papa,” says Tara, admiring her new watch.
“Thank you. I will wear it all the time.”*



“Beta, there is a lot more I wanted to do for you,” says Somnath. “Unfortunately, life didn’t go quite the way I had planned. All I can bequeath you is that watch and a warning: never trust anybody. Friends, family, clients... they will cheat you and there’s nothing you can do about it.”

“I know you’ve had more than your share of troubles, but you’ve never spoken about it.”



"What is there to talk about Beta? Your grandpa left behind some family property for me. That would have been your gift today, but your uncles filed a case, and the matter is still stuck in court. As if that wasn't enough, an old-time client went silent after I asked him to pay up on a big order that he had placed. He said that he didn't have the money to make even a partial payment. That destroyed my business and peace of mind. So many court dates, and so much uncertainty... the amount I eventually received from the client was less than what I paid to lawyers."



"I can't even imagine what you went through... Remember the office space re-design project I was doing, Papa? Well, that client refused to pay me the second instalment saying we didn't do enough work to deserve it."

"That is so unprofessional! I know you had already paid the sub-contractors. What will you do now?"



"Thankfully, in all my contracts, I include a clause that states that if there ever is a dispute, it would need to be mediated, and if that failed, a decision would be taken by an arbitrator from a trusted local institution."

Halfway into our first online mediation session, the client realised that he was being unfair and that he didn't have a case. He paid up."



"How much time did the process take, beta?"

"Two weeks from the time he sent his ugly email. Two weeks too long, if you ask my opinion."



"Two weeks is too long, beta?"

Tara holds up her wrist and looks at her father. "Things have changed, Papa. Time matters more than ever. That's why I love this gift so much."



ACTION ROADMAP

That takes ODR from initiation to integration.

PHASE 1

Develop an ODR construct for your business

- Identify the kinds of disputes ODR could apply to for your enterprise
- Imagine the forms of ODR that could work best for those dispute types
- Conceptualise the best way to pilot those ODR solutions

PHASE 2

Shortlist potential ODR solution providers

- Identify who has experience relevant for your ODR construct
- Prioritise those who can help you evolve your construct and not just implement it
- Shortlist those with a track-record of quality performance
- Shortlist those with the principles and standards critical for long-term ODR success

PHASE 3

Devise and deploy a robust ODR pilot

- Design for adequate learning about what works and doesn't
- Listen for where internal changes, particularly behavioural, are needed
- Keep the principles and standards at the centre of the Pilot design
- Take the long-view and don't draw conclusions on very small numbers
- Communicate with industry peers who are exploring or implementing ODR

PHASE 4

Integrate ODR meaningfully

- Implement internal and external learnings
- Standardise and optimise your relationship with ODR provider(s)
- Incorporate a robust ODR clause where relevant
- Emphasise robust data collection and adherence to standards
- Take complete responsibility for your ODR outcomes

“With ODR we can leapfrog to a system of dispute resolution that keeps pace with and aids innovation in other areas. By adopting ODR, businesses can help India take a giant step forward in ease of doing business.”

Chittu Nagarajan, Founder, CREK ODR

References

An idea whose time has come

- E-courts: Objectives accomplished in phase 2
- Press Release of Law Ministry, 16 October 2020

Dispute Resolution in India today

- World Bank, Ease of Doing Business, 2019
- Daksh, Access to Justice Survey, 2015
- World Inequality Database
- OECD, Building a Business Case for Access to Justice
- Deepika Kinhal, Tarika Jain, Vaidehi Mishra, Aditya Ranjan, ODR: The Future of Online Dispute Resolution in India, Vidhi Centre for Legal Policy, July 2020
- NITI Aayog Expert Committee on ODR, Designing the Future of Dispute Resolution: The ODR Policy Plan for India, October 2020

The macroeconomic cost of dispute resolution

- Amrit Amirapu, Justice Delayed is Growth Denied: The Effect of Slow Courts on Relationship-Specific Industries in India, forthcoming, 2020
- Amrit Amirapu, A Note on Aggregate Economic Benefits from Improving Court Efficiency in India, 2020

Entrepreneurship relies on Dispute Resolution

- Silvia Ardagna & Annamaria Lusardi, Explaining International Differences in Entrepreneurship: The Role of Individual Characteristics and Regulatory Constraints, 2008
- Michael Seitz, Martin Watzinger, Contract Enforcement and R&D Investment, 2017
- Tanika Chakraborty, et al., Caste, Courts, and Business, 2017

It is the right time to mainstream ODR

- NITI Aayog in association with Agami and Omidyar Network India, Minutes of Catalyzing Online Dispute Resolution in India, 2020
- NITI Aayog in association with Agami and Omidyar Network India, Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business, 2020
- Ashwin Manikandan, Real-time dispute resolution system for UPI in the works, The Economic Times, 2020
- Maneesh Chhibber, How lockdown has hit judiciary in numbers - April cases fall to 82k from 14 lakh avg in 2019, The Print, 2020
- Anjali Sharma, Bhargavi Zaveri, Measuring Court Output in the Pandemic: Evidence from India's Largest Commercial Tribunal, The Leap Blog, 2020

The economic gains from timely dispute resolution

- OECD, Building a Business Case for Access to Justice
- Matthieu Chemin, Judicial Efficiency and Firm Productivity: Evidence from a World Database of Judicial Reforms, 2020
- Johannes Boehm & Ezra Oberfield, Misallocation in the Market for Inputs: Enforcement and the Organization of Production, 2018

- Economic Survey of India, 2017-2018
- Amrit Amirapu, Justice Delayed is Growth Denied: The Effect of Slow Courts on Relationship-Specific Industries in India, forthcoming, 2020
- Amrit Amirapu, A Note on Aggregate Economic Benefits from Improving Court Efficiency in India, 2020

ODR and the expansion of the economy

- Daksh, State of the Indian Judiciary, 2017
- Italian Mediation Experience, 10 Year EU Mediation Paradox, Alternatives Vol. 36

Other important benefits of ODR

- OECD, Building a Business Case for Access to Justice
- NITI Aayog in association with Agami and Omidyar Network India, Minutes of Catalyzing Online Dispute Resolution in India, 2020

Success stories from around the world

- M. J. Schmidt-Kessen, et al., Success or Failure? – Effectiveness of Consumer ODR Platforms in Brazil and in the EU, 2020
- <https://civilresolutionbc.ca/>
- <https://www.ebram.org/index.html>
- Colin Rule, et al, eBay 's De Facto Low Value High Volume Resolution Process: Lessons and Best Practices for ODR Systems Designers, 2014

What the experts say

- NITI Aayog in association with Agami and Omidyar Network India, Minutes of Catalyzing Online Dispute Resolution in India, 2020
- NITI Aayog in association with Agami & Omidyar Network India, Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business, 2020

Asynchronous communication

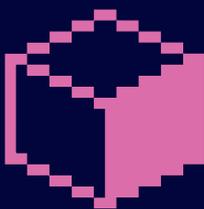
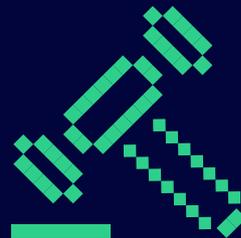
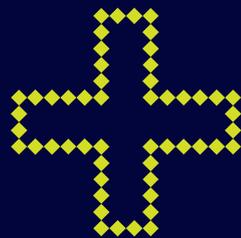
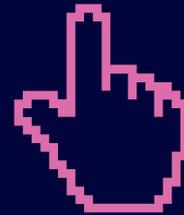
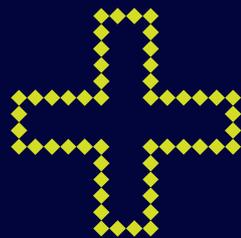
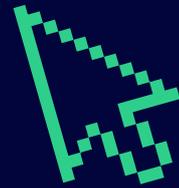
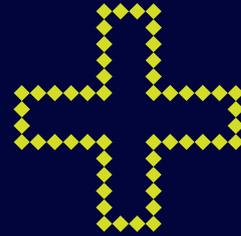
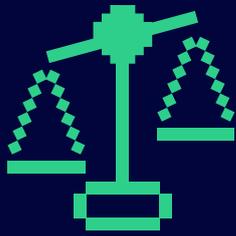
- Indian Express, Rajasthan, Odisha courts grant maximum adjournments leading to delays: Law Ministry, 2016
- Vidhi Centre for Legal Policy, Inefficiency and Judicial Delay: New Insights from the Delhi High Court, 2017

Spotlight 2: Aajeevika Bureau

- Economic Survey of India, 2016-2017
- Sreeradha D Basu, Migrant Workers: Where they come from, where they go, The Economic Times, 2019
- Pradip K Saha, Online Dispute Resolution Comes of Age, The Morning Context, 2020

Spotlight 3: Revamping the credit market

- Alpesh Shah, et al, Digital Lending: A \$1 Trillion Opportunity Over the Next 5 Years, BCG, 2018



Research led by:

Dalberg

Designed by:

CRACKER & RUSH

