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A Study on Resolving Disputes in Trial Courts Through online Dispute Resolution in India

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Abstract: Byzantine methods and cumbersome process clog the approximately 672 district courts and their subordinate courts, which is the first door to access for violation of rights for the common citizenry. India is an emerging economy slated to become one of the topmost economies in the world in future years. With an overwhelmingly large population of smartphone users, which is almost 55% of the people with an average age of 28, it can only be estimated that the numbers will grow exponentially. One of the benchmarks for tracking the growth of a democratic polity along with emerging markets is the quality of the justice delivery system. The justice delivery system in India, with the courts being in the eye of the storm, is often harshly criticized for working at a snail's pace, mainly due to a lack of infrastructure and judges and a burgeoning population of litigants. The last reason is substantiated by the fact that the majority of people repose their constant faith in institutional adjudication of disputes. So, the question is how dispute resolution can be time-bound? Now, considering the above facts and putting them in perspective, i.e., a young working population with smartphones having access to justice to resolve their personal or professional feuds, or be it a company, body of persons, or the biggest litigant of all, the government if in a specific criminal, civil proceeding, can settle the dispute having online access to court process it will help immensely in resolving disputes and claims on time. The authors suggest measures to implement the procedure and method to address and effectively implement the online mechanism in trial courts involving all concerned and interest parties and usher a new vista in the justice delivery system.

Keywords: Trial Court. Online Justice Delivery. Litigant; Government.

Summary: **I** Introduction – **II** Trial Courts Overwhelmed to the Point Being Kaput – **III** From ADR to ODR – A Technological Breakthrough – **IV** The Future Of ODR in India – **V** Conclusion – References

I Introduction

Karl Popper, the Austrian-British philosopher, once remarked "Unlimited tolerance must lead to the disappearance of tolerance". Popper stated that if we extend unlimited tolerance even to those who are intolerant, if we are not prepared

to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them. If we tweak this observation then similar optics can be applied amongst the Courts (at all the three tiers), common litigants (barring the Government which is the biggest litigant) and all stake holders who are concerned with administration of justice in India. The administration of justice is largely carried on by a hierarchy of courts in India wherein at the lowest rung the District Courts and Sub- divisional Courts are situated, which is also known as Subordinate judiciary in Constitutional and legal parlance and are exclusively controlled and supervised by the respective High Courts of the respective States. It is pertinent to mention here that through the legislative mandate under section 7 of Code of Criminal Procedure, 1973 every Indian State shall be a sessions division or shall consist of sessions division; and every session division shall be a district or consist of districts. It also states that every metropolitan area shall be a separate sessions division and district. The State Government after consultation with the High Court can alter the limits and number of such divisions and districts and also may divide such district into sub divisions and may alter the limits or number of such sub divisions. That in a very welcome move the Full Court of Madhya Pradesh made Constitutional history at a meeting on December 15 2022, passing an unanimous resolution to that effect that all courts thereinafter be referred as the 'district judiciary' and not as 'subordinate judiciary' and that all courts other than the High Courts shall be referred to as 'trial courts' and not as 'subordinate courts'. This has been marked to be "the beginning of the end of judicial feudalism in India and restores dignity and grace to the notions of independence of the judiciary and the rule of law" as stated by Prof. Upendra Baxi, the eminent legal scholar.[1] Although the Indian Constitution vouches by the principle of separation of power between judiciary and executive in public spheres of life, but when it comes to administration of justice through district and sub divisional courts, the power of the judiciary and executive seems always to overlap. That if we take in context the appointment procedure, the condition of services for the judges in the subordinate judiciary along with creation of court infrastructure and providing with staffs, infrastructure and other logistic supports the process and procedure prescribed is often byzantine. Questions like "how justice delivery system (particularly in lower judiciary) can be augmented and delivered in a time bound manner?" or "how justice can be extended to the marginalized sections of the society where they are juxtaposed against a person/institution with better bargaining power?" remain largely unanswered and have been perplexing for lawyers, judges, legal scholars and there is great consternation as to how to approach the problem and find a

[1] The Indian Express, 6th January, 2023.

suitable solution. The key to this problem lies in shared power structure between the executive and judiciary in regulating various features of subordinate judiciary. A plain reading of Part VI, Chapter VI of the Indian Constitution, which encapsulates the provisions relating to subordinate judiciary (ARTICLE 233-237) along with the civil and criminal procedure code, creates space for executive to intrude the space of judicial appointment, of designating Public Prosecutor/Assistant Public Prosecutor, Government Pleaders, Assistant Government pleaders. The executive arm of any State Government also takes crucial decision regarding allocation of funds needed for infrastructure development of a subordinate court other than appointing staff and acting as the sole resource person. In recent years the state Governments and Central Governments in particular have tried to make funds and resources available for smooth functioning of the subordinate Judiciary. In 2017, an evaluation study of centrally sponsored scheme was submitted by Economic Services Group, National Productivity Council, New Delhi (the study sponsored by Department Of Justice, Ministry of law & Justice Govt. of India.) made some startling revelation as to how infrastructure hindrance is holding back access to justice and smooth functioning of Subordinate Judiciary. The report inter-alia in its introductory chapter (Pg-8) states 'The subordinate judiciary works under the severe deficiency of 5018 court rooms. As on 30-9-2016, there are 16513 court halls available for subordinate judiciary against the working strength of 16528 judicial officers. Further 2447 court halls are under construction. In addition 14420 residential units are available for judges/judicial officers of District and Subordinate Courts and 1868 residential units are under construction as on 31-12-2015". The report opened with mention of pending cases before subordinate judiciary tracking it through the national grid system. It mentioned that as on 20 April 2017, 241.33 lakhs cases are pending in subordinate judiciary all over India. The latest data available on the national grid regarding pendency of cases in subordinate judiciary has really raised eyebrows and an alarm has been created. Close to 4 crore 30 lakh cases are pending in subordinate court as per the latest data available and the government is the biggest litigator. The pendency of cases is as high as 85% and the government is a litigant in almost in 50% of the cases. In this context it is quite relevant to mention about a research paper titled "Bottlenecks in Civil Justice Administration Before The Courts and Remedies Thereof", the authors Dr Gyanendra Kumar Sharma and Pranav Vashishtha listed roadblocks to access to justice and one of the reason attributed were 'Administrative Inaction and laxity in discharging Statutory notice and also Judicial Inaction in ADR mechanism'.

With an ever-growing population of litigants at the backdrop, the Indians (the average of India now stands at 28) who are ever ready to knock the doors of court, need an alternative mechanism to claim their rights. The authors of this article

try to answer the question and the arm they rest to find solution to the problem is adoption of online mode as part of Alternative Dispute Resolution System to resolve issues as to solving cases which can save valuable time and money and can present a smooth and concrete mechanism as to various problems the subordinate judiciary is subject too.

The article tries to dissect the above problems in hand and provide for proper prognosis of the same. The methodology used for this research paper is primarily a doctrinal method where the data has been collected from various primary and secondary sources. Real time data has been collected from various research institutes like Vidhi Institute.

II Trial Courts Overwhelmed to the Point Being Kaput

The golden thread of "LIBERTY, EQUALITY AND FRATERNITY" runs throughout the length and breadth of the Indian Constitution starting from the Preamble and "Justice – Social, Political and Economic" is the essence of achieving the Holy Trinity of LIBERTY, EQULAITY AND FRATERNITY.[2] Right to speedy justice is a concept which emanates from the right to equality and right to life. Within the realms of Indian Constitution judiciary is a co-equal branch of governance. The guarantee of equal justice for all citizens under Indian Constitution is a very complex issues as it not only adjudicates between citizens and state (its institution and agencies), but disparate body of individuals from variety of socio- economic strata and educational background. That the Constitution mandates the subordinate courts to be monitored by the respective High Courts, the challenges faced therein by the subordinate courts are manifold. There is enormous backlog of cases in subordinate courts and the reasons are many varying from infrastructural issues, to paucity of judges and supporting staffs, inadequate courts, process of adjournments, no comprehensive scheme regarding witnesses and multiple processes under both civil and criminal adjudication processes.

Procedural delay is one of the major reasons for backlog and pendency of cases. The numbers shown in the following table regarding civil matters in subordinate judiciary, points out the deep lesion in our judiciary:

[2] Soma Dey Sarkar, et al., *"Administration of Civil Justice and Its Glorious Uncertainty in the Indian Legal System: A Long, Expensive Journey to Justice",* Advancing Civil Justice Reform and Conflict Resolution in Africa and Asia: Comparative Analyses and Case Studies, 93, Elijah Tukwariba Yin and Nelson F. Kofie (Ed.) [IGI Global, Hershey, USA].

TABLE 1

Supreme Court of India	67,898	01-05-2021
High Courts	4,168, 350	23-06-2021
District and Taluka Courts	10, 172,245	23-06-2021

Source: https://njdg.ecourts.gov.in/[3].

The alarming number of pending civil litigations with more than 4 million in High Courts and 10 million in the Lower Courts show the sad state of affairs of the Indian judiciary.

TABLE 2

TIME	DISTRICT AND TALUKA COURTS	HIGH COURTS
0-1 YEARS	2,805,045	697,517
3-5 YEARS	1,675,502	673,847
5-10 YEARS	1,627,335	861,386
10-20 YEARS	550,737	711289
<30 YEARS	37,036	109,284

Source: https://njdg.ecourts.gov.in/[4].

Table 2 displays the number of pending civil cases for a duration of 1 year, 3 to 5 years, 5 to 10 years, 10 to 20 years, more 30 years at the District and Taluka Courts and various High Courts. A report by the Times of India on 16 February, 2021 suggests that in the last two years backlog of 30-year-old cases have gone up by 61%. The subordinate and district judiciary in six states of Uttar Pradesh, Maharashtra, West Bengal, Bihar, Gujarat and Odisha accounted for 98% of more than a lakh of these three decades old pending cases.[5]

Over a considerable period of time certain administrative and judicial measures have been taken to lessen the burden of the subordinate court in both spheres of civil and criminal administration of justice. On the civil side, to ease the civil court's burden, its subject- matter jurisdiction has been curtailed by introducing new tribunals and forums, such as the Debt Recovery Tribunal or the three tier

3 Ibid 4.
4 Id.
5 Ibid 4 at 96-98.

Consumer Forums. To adjudicate over Commercial disputes specific Commercial courts have come up, and the Arbitration and Conciliation Act, 1996 have totally ousted the jurisdiction of civil courts. In the famous case of Hussainara khatoon vs Home Secretary, State of Bihar,[6] the Supreme Court opined that speedy trial is the fundamental right of every citizen and as a result of this judgement, fast track courts were set up in the premises of the subordinate courts. It is very much within the ambits of civil courts to invoke the jurisdiction of Section 89 of Code of Civil Procedure to settle the disputes between parties amicably through arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation, to enable the courts for fast decongestion of cases. To ease the burden of criminal courts, certain measures such as a new chapter on 'Plea Bargaining' in Code of Criminal Procedure has been inserted, where procedural details have been done away with and the parties to the proceeding, with the aid of the Prosecutors and under the observation of the court, may come with an amicable solution. One of the ills which is pervasive and puts up hindrance in the working of criminal courts is false or trivial cases. To arrest this situation, the Supreme Court issued guidelines in Lalita Kumari v Govt. of U.P,[7] whereby it stated that in matters pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases and cases where there is abnormal delay in filing of First Information Report and in relation to cognizable offences, a preliminary inquiry must proceed prior to registering an First Information Report. The measures discussed above have in place for two to three decades but the system is unable to stem, the continuous clogging of cases which leads to frustration for all stake holders associated therein. A more cautious look will help us to discern what has led to the problem we are straddled with? India has a huge population of people who are educated, resourceful and in the journey of 75th year of independence; we can say with gusto that democratic principles within common citizens have deep rooted and hence any violation of the same brings them to the doors of the court, which is manifested in rising litigation in the Court of law. That while an informed citizen is an asset for any country but the cause of concern and alarm is that the same people can be agitated if access to justice is kept out of reach due to circumstances which are beyond their control.

The Centre for Research and Planning wing of Supreme Court of India, in the year of 2016 submitted a detailed and a very well researched report titled 'Subordinate Courts Of India: A Report on Access to Justice', where multiple issues plaguing the process of administration of justice was identified, discussed,

6 1979 AIR 1369,1979 SCR(3)532.
7 2014 2SCC 1.

deliberated and concrete suggestion were given to provide for more smooth functioning of subordinate courts and if recommendations were to be put in place then it would usher new vistas for common citizens to get access to justice. It suggested 'E- Justice' for improvement in case flow system and better management of record in subordinate courts. It also suggested to identify certain subordinate courts to be as model courts and a software be developed in order to cater to the demands of the public at large and better balancing of workload, file tracking, document management, exhibit management and enabling e-litigation including e- filing, e-court fess, e notarization of e documents. Over a period of time, the Supreme Court, through a catena of judgments, tried to ameliorate the conditions of the subordinate judiciary in all its capacities. In the case of All India Judges' Association & Ors v. Union of India & Ors,[8] the court stated for creation of All India Judicial Service and also suggested measures to ameliorate the condition of judges and to bring a certain degree of parity in their conditions of service. Similarly in the case of P. Ramchandran Rao v State of Karnataka,[9] the court speaking on the contours of right to speedy trial being one of the facet of Right to Life under Article 21, laid down certain guidelines and said that the criminal courts (trial courts) should by virtue of power conferred under section 309, 311 and 258 of the Code of Criminal Procedure, 1973, ensure speedy trial. In the case of Brij Mohan Lal v Union of India & Ors,[10] the Supreme Court upheld the constitutional validity of the Fast Track Court Schemes and framed guidelines for the same. It also ensured monitoring of the fast track courts. In Malik Mazhar Sultan & Anr v Uttar Pradesh Public Service Commission & Ors,[11] the Apex Court vide an order dated 4/1/2007, gave a detailed order regarding conditions of recruitment and service in the subordinate judiciary. It laid down the fact that as to how candidates are to be selected, it stated that candidates are to be selected from prelims in 1: 10 ratio of vacancies and gave directions to improve the conditions of subordinate judiciary. The Supreme Court in particular through its various directives had tried to arrest the deteriorating working conditions of the Subordinate judiciary with very limited success. As discussed earlier in this article without the total separation of executive from the judiciary, the judiciary being allocated separate financial allocation both from the Central and State Government, the subordinate judiciary stands on the brink of being collapsed.

8 (2002) 4 SCC 247.
9 (2002) 4 SC 92.
10 (2012) 6 SCC 502.
11 Appeal (C) No 1867 of 2006.

III From ADR to ODR – A Technological Breakthrough

One of the popular remedies to deal with pendency and backlogs in courts in India has been suggested by experts and judiciary, to be the Alternative Dispute Resolution System (ADR). Processes including arbitration, conciliation, negotiation and mediation within the purview of the ADR and not involving courtroom processes have proved to be effective methods to some extent, to reduce the burden of backlogging on the Indian Judiciary.

A. Alternative Dispute Resolution System in India-The Backdrop

ADR has been prevalent in India in the form of panchayats even before the British came to India and established their authority. At the international front, the Geneva Convention, approved by the League of Nations in 1923, contained clauses for arbitration. In India, S.89 of the Civil Procedure Code, 1908 provided for resolving of disputes for the first time which was later repealed by S. 49 and Schedule III of the Arbitration Act, 1940. The Preamble to the Arbitration (Protocol and Convention) Act, 1937, enacted even before the 1940 Act, empowered India as a signatory as a State to the Protocol on arbitration as established by the League of Nations. The Arbitration Act, 1940 repealed all the acts enacted prior to it which was also repealed and replaced by the Arbitration Act, 1960.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards held on June 10, 1958 in New York (The New York Convention) adhered by more than 160 countries, made the way for the legislation of the Foreign Awards (Recognition and Enforcement) Act, 1961 to filling the gaps present in the Arbitration Act, 1960. The Arbitration Act, 1960 failed miserably in cost and time effectiveness and people ended up approaching the courts for litigation resolution. In 1985, the United Nations Commission on International Trade Law (UNCITRAL) presented a comprehensive model for arbitration. Based on the UNCITRAL, the Arbitration and Conciliation Act, 1996, was enacted which was again subjected to amendment in 2015 and 2019. To further the cause of conciliation and cost efficacy, the Legal Services Authorities Act, 1987 was legislated. The proceedings used alternative methods where psychological skills are more operational than legal expertise. The Lok Adalat, established under the Legal Services Authorities Act and Legal Aid are twin institutions that are intended to promote equal justice and free legal aid as envisaged under Article 39-A of the Constitution of India.

In P.T. Thomas v. Thomas Job[12] the court highlighted the benefits of the Legal Services Authorities as following:-

1. No Court Fee is charged and if any fee is deposited, refund of the amount shall be made on settlement of disputes;
2. There is procedural flexibility resulting in expeditious resolution of disputes.
3. Interaction with retired Judges may be done.
4. Unlike the court rooms procedures, no adversarial order can be passed by the judges.
5. The settled disputes under this Act, has the effect of a court decree and enforceability of the court decree and enforceability of the Court. No Appeals lie against these settlements.

The Mediation Rules, 2003 govern mediation in India where the proceedings are more informal than arbitration and conciliation. The role of the mediation is limited to providing guidance and clears any misunderstanding that arises between parties and merely regulates the settlement process. Rather than imposing a decision, the parties to the dispute reach at a settlement on their own.

On the recommendation of the Law Commission of India, the Commercial Courts Act was enacted in 2015. The amendment in 2018 in the Commercial Courts Act, 2015, introduced pre-litigation mediation for all commercial disputes. S.12 of the Act, imposed compulsory mediation where no interim relief is required [S. 12-A(1)] and empowers the Central Government, through notification, to authorise the authorities under the Legal Services Authorities Act, 1987 for pre-institution mediation [S.12-A(2)].

By an amendment to S. 89 of the Civil Procedure Code, 1908 in 2002, various alternative dispute resolution mechanism was brought within the ambit of the S. 89. In Salem Advocate Bar Assn. (1) v. Union of India,[13] the constitutionality of the new S. 89 was upheld.

B. The Online Dispute Resolution System and the Digitalisation of the Indian Judiciary

The ambitious ADR system introduced in the Indian legal system to reduce the burden of the courts and to make dispute resolution cost effective, has not churned out the expected results. Richard Susskind, a renowned author in the field of law and technology, stated that ADR "has not entirely fulfilled its early promise of resolving disputes without recourse to the conventional court system". The reason

12 (2005) 6 SCC 478.
13 (2003) 1 SCC 49.

why the ADR system could not perform optimally, as identified by Susskind, is the adoption of 'quite court-like' processes in ADR.

The problems that plagued the court room trials and ushered the ADR venture have seeped in the ADR system as well, instead of extending the respite for complicated processes along with time and cost constraints. The wrath of COVID-19, globally and in India, has further given the impetus to rethink on introducing alternative devices in litigation resolution in India. It is in this backdrop that digitalisation of the Indian Judiciary and the role of Online Dispute Resolution system in Indian must be brought into perspective.

Digitisation has revolutionised service and industrial sector and the legal system has also not been immune to the impact of digitisation. Though the stages of development of digital technology in court room proceedings or ADR are still in its nascent stage as compared to the digital economy, the COVID-19 and its restrictions have been major incentive in the way courts, legal departments and firms will work in a digital environment. There has been gradual implementation of electronic filing for time-sensitive matters and increase in the number of hearings held via video conferencing under the aegis of the Supreme Court and High Courts. Reduction in pendency of cases and preservation of documents that are over ten years are the chief object behind digitisation of the Indian Judiciary. With newer challenges at hand, the Indian Judiciary needs modernisation through introduction and optimum utilisation of information and communication technology and hence, the e-Courts project was launched. In the wake of the pandemic, the Supreme Court issued an order to all lower courts instructing them to make extensive use of video conferencing for judicial proceedings. With e-filing of cases, the process of filing a First Information Report (FIR), a civil case, an application for Right to Information (RTI), a consumer grievance, an application for verification of documents, driving license, etc. are going to be hassle free. The Allahabad High Court has played a pivotal role under the leadership of Justice D Y Chandrachud, the then Chief Justice of Allahabad High Court, and serves as a model in conceptualising and starting the digitisation process. In Krishna Veni Nagam v. Harish Nagam,[14] the Supreme Court authorised the hearing of matrimonial cases via videoconferencing in 2017. Live streaming of cases with constitutional and national significance was permitted in Swapnil Tripathi v. Supreme Court of India.[15]

The live streaming of court proceedings is an effort to guarantee openness and transparency. The Gujarat High Court was the first court in the nation to stream

[14] AIR 2017 SC 1345.
[15] (2018) 10 SCC 628.

its proceedings live in July 2021 and was adopted by the High Courts of Karnataka, Odisha, Madhya Pradesh and Patna.

To oversee the implementation of the e-Courts Project under the 'National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary, 2005', an e-Committee of the Supreme Court was constituted.

The roles and responsibilities of the e-Committee have evolved over the last fifteen years to include the following objectives:[16]

- Interlinking of all Courts across the country
- ICT enablement of Indian Judicial System
- Enhancing judicial productivity
- Making the justice delivery system accessible, cost effective, transparent and accountable
- Providing citizen-centric services

With Phase II of the e-Courts project at the verge of conclusion, the Vision Document for Phase III has been prepared in November, 2022 which outlines an "inclusive, agile, open and user-centric" vision for courts in Phase III of the e-Courts Project. The Vision Document for Phase III articulates the need to exponentially advance the digitisation of courts by:

a. Simplifying procedures,
b. Creating a digital infrastructure, and
c. Establishment of the right institutional and governance framework, such as technology offices at various levels to enable the judiciary to appropriately employ technology.

Achievements of E-Courts Project during the Phase II and Phase III

The achievements of the e-Courts Project during Phase I and Phase II may be enlisted under the following categories:

A. Public Infrastructure:

a. Depending upon the number of functioning court and providing upto 13,606 court rooms, ensuring BSNL MPLS WAN connectivity through optical fibre having speed of 10 Mbps to 100 Mbps.
b. Solar energy backup for 242 court complexes
c. Installing hardwares and softwares needed to support digital efforts across approximately 13,500 courts
d. Enabling video conferencing facilities across 3477 courts.

[16] https://ecommitteesci.gov.in/vision-document-for-phase-iii-of-ecourts-project/, visited on 2.06.2023 at 10 am.

B. Systems:

a. Development of CIS based on free and open source software for case management.
b. Development of a unique case number record (CNR) for each case, essential for both processing of case related data as well as enabling interactions with other services in relation to a case (suych as video conferencing, e-filing, tagging, scheduling)
c. Development of a quick response code (QR code) to link with pleadings, orders, and judgements to enable easy access to all related documents of a particular case.
d. Creation of a judicial officer code (JO Code) to provide a unique ID for every judge. This enables tracking of case statistics of judicial officers and builds the capability for judicial assessment.
e. Development of national codes for case types and legislations across all districts. This is to create back-end standardisation for diverse case classification systems across different High Courts, to enable collation of comparable meta-data at state and national levels.
f. Launch of the Interoperable Criminal Justice System (ICJS) to improve transparency and effectiveness of the criminal justice system. ICJS aims to integrate and make data interoperable between different institutions such as police, prisons and courts involved in the criminal justice system.
g. Launch of the National Judicial Data Grid (NJDG), which makes summary statistics of all cases across High Courts and District Courts, transparent and accessible to all.
h. Launch of National Service and Tracking of Electronic Processes (NSTEP) to track service of processes by bailiffs / process servers though a global positioning system (GPS) enabled application. This is aimed at increasing accountability and transparency in the summons service processes.
i. Digitisation of case records, especially old case records. This is essential to provide a foundation and capacity for digitisation of all administrative functions in the judiciary

C. Services:

FOR LAWYERS AND LITIGANTS

a) Launch of Virtual Courts: to reduce costs and increase speed of disposal of cases, virtual courts were set up for disputes relating to traffic challans in various states.

b) E-seva Kendras were set up at all High Courts and one district court in each state to improve access of information and services to litigants and lawyers on the other side of the digital divide. It enables users to file cases online and access court related information.
c) Information kiosks were set up at High Courts to provide access to case information to litigants and advocates. A few examples worth highlighting are: display boards outside the filing counters which inform a user about filing status, defects detected etc, a mobile based application which helps retrieve case information, and for legal aid services.
d) Launch of a free downloadable e-Courts Services App that provides easy access and search of relevant case information (status, orders and cause list) using the QR code.
e) Setting up systems for e-filing of pleadings and supporting documents at High Courts and District Courts. This has enabled lawyers to file their cases 24x7 as per their convenience.
f) Setting up systems to accept e-payment of court fees, fines, penalties and judicial deposits at several High Courts to enable seamless payments online.
g) Several District Court websites have been rolled out to disseminate all information relating to the cases in their respective jurisdictions.
h) Launch of automated emailing systems to provide advocates and litigants with case status, next date of hearing, cause list, orders, if the email is registered in the system.

FOR JUDGES

a) Launch of 'JustIS Mobile App' for all judges in the district judiciary. It provides details of cases in their courts along with features to support case management such as calendaring.
b) Few High Courts have developed dashboards or e-diary for judges indicating daily disposal in addition to other details such as pending cases, number of judgements, etc which are available for every judge to track.

From the services and benefits highlighted above, it can be concluded that the first two phases of e-Courts project have not only built a solid foundation for the modernisation of the judiciary at all levels but have also allowed for innovation. The modular services developed by individual High Courts are a testament to the same.

In addition, the following measures were taken to create a supportive framework for the technology systems and services that were introduced:

1. Training programmes were designed to train court masters, court staff, advocates and their clerks, District Court judges, High Court judges, trainee judicial officers, system administrators, and registrars to use the services effectively. This was done by creating a large pool of master trainers who in turn trained other officials through training programmes developed by the e-Committee in coordination with state judicial academies. Further, support for stakeholders was made available through kiosks and e-Sewa Kendra on court premises.
2. Support materials were provided through a consolidated 'Knowledge Management' tab on e-Courts website linking video tutorials on YouTube, brochures, and user manuals. In addition, pamphlets and e-filing manuals in regional languages were also created and uploaded.

C. Furthering Online Dispute Resolution (ODR) through the Digitisation of the Indian Judicial System

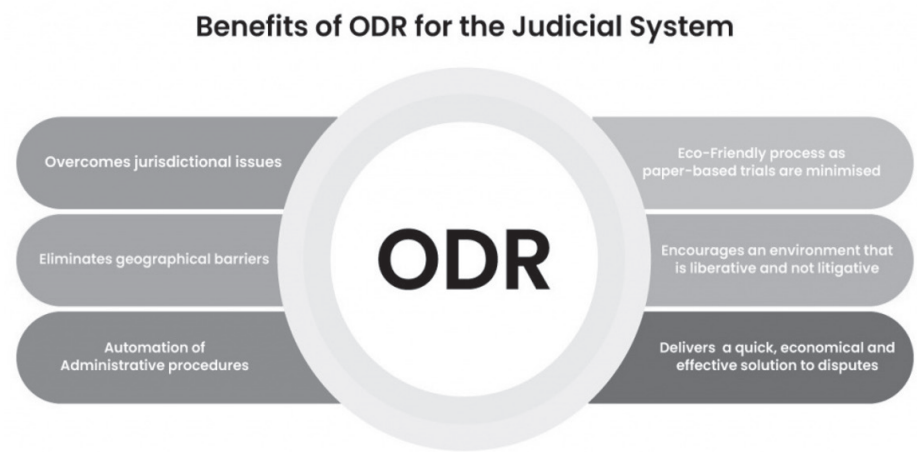
ODR is a set of dispute resolution techniques using information and communication technology for automating and speeding up the judicial process in the courtroom trials and processing of information using remote communication. The United Nations Commission on International Trade Law ODR Working Group defines ODR as " […] a mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology".[17] In essence, ODR is simply e-ADR where interactions take place online using technology. In practice, ODR offers more advantages than the traditional offline ADR mechanisms as parties do not have to be present together in person and resolution can take place through asynchronous communication.[18]

The end of the last millennium saw the emergence of e-commerce thereby giving rise to cross-border disputes. This gave a push to evolve innovative ideas for resolving these disputes. The first instance at hand is the case of eBay which allowed customers to file complaint online and initiate a settlement process. In the event of a failed settlement, the process of online mediation would commence. The problem could be identified on the platform and conduct automated negotiation followed by mediation or arbitration. This has evolved into more sophisticated variants which have come to be termed as ODR.

On perusal of the Arbitration and Conciliation Act, 1996, the Civil Procedure Code, 1908, the Information Technology Act, 2002 and the Indian Evidence Act,

[17] United Nations Commission on International Trade Law, 'UNCITRAL Technical Notes on Online Dispute Resolution' (2017) vii accessed 01 June, 2023.
[18] Susskind (n. 12), 62.

1882, it is evident that use of ADR in an online environment is inevitable to emancipate the Indian Judicial system and make it robust. But, there is no law clearly suggesting the use of ODR as a form of ADR. Needless to mention that to up the efficiency of the ADR system in India, an infusion of technology in the ADR system is unavoidable and in this context ODR plays an important role and has the following benefit:



Source: https://presolv360.com/resources/concept-note-on-odr/.

ODR may take two forms: ODR conducted by private bodies and court annexed ODR. Essentially, ODR originated and evolved in the domain of private organisations to mete out commercial disputes. The success of ODR in private international organisations motivated several governments in various jurisdictions to co-opt ODR into their court systems. Some success stories of ODR in court systems include the New Mexico Courts Online Dispute Resolution Centre in the US for resolving debt and money due cases at district level through negotiation, the United Kingdom's Money Claim Online for settling money claim disputes and Canada's Civil Administrative Tribunal for range of small value disputes.

The usage of ODR is not restricted to e-commerce disputes only; it has now been extended to a variety of disputes across the globe like consumer disputes, insurance claim, intellectual property/domain name disputes, family disputes, e-commerce, small cause and small claims disputes, disputes involving small and medium enterprises.

Position of ODR in India

While addressing release event of a handbook on ODR,[19] developed by Agami and Omidyar India, in association with NITI Aayog and with the support of ICICI Bank, Ashoka Innovators for the Public, Trilegal, Dalberg, Dvara and NIPFP, on 10 April, 2021, Supreme Court Justice D Y Chandrachud, presently the Chief Justice of India, said that Online Dispute Resolution (ODR) has the potential to decentralize, diversify, democratize, and disentangle the justice delivery mechanism. Justice Chandrachud emphasised on the importance ODR in the new normal and transformed world in the post COVID-19 era. "This is not just because of the process being conducted virtually, but also because of its firm willingness to adopt all forms of digital solutions available. In my opinion, one of the most important learnings from the past one year of virtual hearings, has been that the process can often be far more efficient because of very simple changes— the use of digital files by all parties, the ability to make digital notes, and having all documents in one place. Further, conducting all disputes online also helps generate a lot more data, which can provide the necessary groundwork for the process of ODR to improve in the future. In fact, this data can also be meaningfully used to improve the virtual experience of courts. Finally, the effective use of affordable ODR services can bring about a major change in the perception of parties involved in the dispute— by making the process more accessible, affordable and participative. It will make all parties consider it more amicable and solution-oriented. This will ultimately lead to more efficient dispute resolution," he said. [20]

Covid-19 has instilled an urgent need for ODR, with the likelihood of a spurt in disputes before courts— most notably in lending, credit, property, commerce, and retail. For instance, Udaan, India's largest B2B platform for businesses and shopowners, resolved over 1800 disputes in one month using an ODR service provider. Each dispute took an average of 126 minutes. In the coming months, ODR could be the mechanism that helps businesses with achieving expedient resolution. The ODR handbook enables businesses to do so.

The primary consideration for proper working of ODR in India (or in any other country) is accessibility and penetration of internet along with cost effective internet service. With only 46% [21] of the total population uses internet, India is gradually improving on these statistics. There is also a sense of mental barrier and dilemma among the common citizenry in adopting ODR as many may not be comfortable with data driven communication rather than face to face communication. Apart

[19] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1710900, visited on 02.06.23 at 10 am.
[20] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1710900, visited on 01.01.2023.
[21] https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=IN, visited on 31.05.2023 at 11 pm.

from this, there are a few principles based on which the implementation of ODR in India would be sustainable. According to VIDHI, the Centre for Legal Policy,[22] the following base principles (though not exhaustive) need to be adopted for implementation of ODR in India:

1. Legal Principles

The major consideration for adopting ODR is extending the right to access to justice to its optimum. Hence, while providing ODR, the principles of natural justice can never be compromised. Timely justice, accessibility and accountability are the other legal principles which are required to reduce delay, increase accessibility to justice and regulate the conduct of ODR institutions while using ICT for negotiations and mediations.

2. Technology and Design Principles

While adapting ODR, it must be remembered that the ICT must be from Open Source, adaptable, observable, secure and interoperable. Use of open source will ensure development of ODR ecosystem in the country. Technology with in-built observability is essential to analyse their functioning and efficiency along with ensuring securing which is essential to increase public trust in the ODR process. Interoperability will allow ODR platforms to engage and cooperate with other systems such as civil courts, tribunals and Lok Adalats to provide secure, seamless and timely communication between the systems.

3. Data Principles

Data principles adopted for ODR must ensure integrity, confidentiality, evolvability and actionability. Integrity of data is critical for any legal process thereby ensuring accuracy and authenticity of data and documents to guarantee fair process and an enforceable outcome. ODR platforms will fail to achieve its goal if confidentiality is compromised as ODR is likely to involve confidential commercial and private data. Measures like data anonymisation can help in protecting the data from being tampered. Analysis of metadata is important for continuous improvement of an ODR platform and to prepare it for the challenges and demands of the future.

[22] https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/, visited on 31.05.2023 at 11.15 pm.

IV The Future Of ODR in India

Applying Richard Susskind's analysis of access to justice, in India, access to justice may be looked into from a four dimensional aspect: legal health promotion, dispute avoidance, dispute containment and authoritative dispute resolution.[23] The traditional court system only employs technology for dispute resolution and keeping the court alive virtually, as seen during the COVID-19 period, with no holistic approach. Time has arrived when the focus requires to shift from mere "dispute resolution to dispute avoidance, containment and improving the overall legal health".[24]

Investing in ODR through adoption of more advanced second generation technology, can help India progress towards a futuristic justice system. As has been the case with the evolution of ODR so far, it is likely that these newer technologies, ones which not only employ legal principles but can also expand to better economic principles for settling civil disputes, will in all likelihood originate from the private sector. It will therefore be important for the judiciary and the executive to partner with these capabilities and adopt them for the larger public use

V Conclusion

As discussed above the need of introduction of online dispute resolution in subordinate court is need of the hour. The infrastructure and other facilities have been pushed to its limits in subordinate courts. The online dispute resolution helps to arrest infrastructure issues saving time of both court and litigants. We are in the 75th year of Independence which is one of the major milestones for India: a time to take stock of the developments in various spheres over the last seven decades. Judiciary has worked as a silent revolutionary tool, particularly the Constitutional Courts. India recently on 29 September 2022 roll- out the 5G scheme. On the one hand it is set to enhance efficiency, productivity and security. 5G has high bandwidth and low latency, so its adoption would ensure the best performance. So to take full advantage of the same the Government and the higher judiciary must ensure that the subordinate court must come up with necessary infrastructure. To bridge the technology gap of its judges, staff and other stake holders concerned of the subordinate judiciary investment must be in modern tools, software and infrastructure. There is also a pending recommendation from the Telecom Regulatory Authority of India to the Government of India to develop a national road map for India to implement 5G in the best possible manner which should

[23] Richard Susskind, Online Courts and the Future of Justice (OUP 2019) 61.
[24] Id n. 17.

encompass the technological enablement of Subordinate Judiciary all throughout India. That while we develop scheme mechanism for online dispute resolution we must also see that procedural divergence shall not result in subversion of justice. Subordinate judiciary is sometimes rocked with the allegation of corruption. According to Transparency International (TI 2011), 45% of people who have come in contact with subordinate judiciary between July 2009 and July 2010 had paid a bribe to the judiciary. The most common reason for payment of bribes was to "speed things up". There were fixed rates for quick divorce, bail, and other procedures. The Asian Human Rights Commission (AHRC) (April 2013) estimates that for every Rs 2 in official Court fees, at Rs 10,000 is spent in bribes in bringing a petition to the court. Freedom House's 'Freedom in the World 2016 report for India' states that "lower levels of the judiciary in particular have been rife with corruption" (Freedom House 2016)[25]. The GAN Business Anti-Corruption Portal reports that," {t} here is a high risk of corruption where dealing with India's judiciary, especially at the lower court levels. Bribes and irregular payments are often exchanged in return for favourable Court decisions" (GAN Integrity 2017). The embrace of technology with judicial particularly is to ease the process, where process doesn't become punishment itself. To have trust in its capacities is the hall mark of every institution. While trust in judiciary is to be enforced, collective mechanism can ensure that. With the technological advancement the subordinate judiciary being part of public administration, if one line dispute resolutions can be viewed by the public in general through their smart phones (except in cases of matrimony and offence against women) a proper adjudication being played out in front of common public will instil confidence in the public and the demonstration effect it would create, which in turn would also have a cascading effect on the society. India is poised at a situation where a crisis has left open an opportunity for it to grab, the demographic and technological advancement and access , if used meticulously can make the situation conducive in its favour . The time is ripe for making in a proper process for online dispute resolution system which will not only help in providing justice in a time bound manner , but will also help in weeding out judicial corruption to a satisfactory level. Certainty of justice being delivered is a great virtue. In the words of famous Greek Philosopher Aristotle: "It is in justice that ordering of society is centered."

[25] Vani S. Kulkarni, Veena S. Kulkarni & Raghav Gaiha, "India's Judiciary and the Slackening Clog of Trust", The Hindu, 9 May, 2022.

References

Richard Susskind, Online Courts and the Future of Justice (OUP 2019)

https://njdg.ecourts.gov.in/hcnjdgnew/

ODR – The Future of Dispute Resolution in India, VIDHI Centre for Legal Studies

Inefficiency and Judicial Delay: New Insights from Delhi High Court, March 2017 available at www.vidhilegalpolicy.in

https://www.business-standard.com/article/current-affairs/online-dispute-resolution-s-role-critical-during-covid-justice-chandrachud-121041100071_1.html

https://www.scconline.com/blog/post/2021/02/07/evolution-of-adr-mechanisms-in-india/

https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1710900

https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=IN

https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/

https://ecommitteesci.gov.in/vision-document-for-phase-iii-of-ecourts-project/

United Nations Commission on International Trade Law, 'UNCITRAL Technical Notes on Online Dispute Resolution' (2017)

Vani S. Kulkarni, Veena S. Kulkarni & Raghav Gaiha, "India's Judiciary and the Slackening Clog of Trust", The Hindu, 9 May, 2022

Soma Dey Sarkar, et al., *"Administration of Civil Justice and Its Glorious Uncertainty in the Indian Legal System: A Long, Expensive Journey to Justice",* Advancing Civil Justice Reform and Conflict Resolution in Africa and Asia: Comparative Analyses and Case Studies, 93, Elijah Tukwariba Yin and Nelson F. Kofie (Ed.) [IGI Global, Hershey, USA]

Harshit Agarwal and Poulomi Sen, *"Social Media-Tion: A Constructive Approach to Dispute Resolution?",* Revista Brasileira de Alternative Dispute Resolution - RBADR, Vol. 3 No. 6, pp. 2021., https://rbadr.emnuvens.com.br/rbadr/article/view/143, accessed on 05.05.2023.

Olga N. Tsiptse, *"EU Data Protection Regulation and How It Affects Arbitration and ADR-ODR",* Revista Brasileira de Alternative Dispute Resolution - RBADR, Vol. 3 No. 5, pp. 159-194, 2021. https://rbadr.emnuvens.com.br/rbadr/article/view/104, accessed on 05.05.2023.

Access to Justice Survey, 2015-16, Daksh, www.dakshindia.org

Annual Reports, 2019-2020, Ministry of Law and Justice, Government of India, https://lawmin.gov.in/documents/annualreports

Bhatia, G. (2021), The Past is a Foreign Country, *The Transformative Constitution,* p. xxxi, HarperCollins Publishers India

Gyanendra Kumar Sharma and Pranav Vashishtha, Bottlenecks in Civil Justice Administration before the Courts and the Remedies thereof: A Research, *Uttarakhand Judicial and Legal Review,* p. 3

Hasit B. Seth, Adhering to Statutory Timelines: A Step towards Better Case Management of Civil Trials*, 2021 SCC Online Blog Ex. 6,* https://www.scconline.com/blog/post/2021/01/28/adhering-to-statutory-timelines-a-step-towards-better-case-management-of-civil-trials/

Imran Mohd. Khan, *Alternative Mode of Access to Justice*, https://ujala.uk.gov.in/files/ch10_2.pdf

India's Pending Court Cases in Rise: In Charts, September 29, 2020, https://www.bloombergquint.com/law-and-policy/indias-pending-court-cases-on-the-rise-in-charts

India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid, October 2019, https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf

Inefficiency and Judicial Delay: New Insights from the Delhi High Court, March 2017, www.vidhi-legalpolicy.org

Jeffery Falt, Congestion and Delays in Asia's Courts, *Pacific Basin Law Journal, Vol. 4:90*, p. 107

Judith Resnik (1986), Failing Faith: Adjudicatory Procedure in Decline, *University of Chicago Law Review, 53,* p. 494

Madan B. Lokur, *What is Stopping Our Justice System from Tackling the Pending before Courts?* 12 May, 2021, https://thewire.in/law/india-judiciary-pending-cases-supreme-court

Marc Galanter. (2008). Fifty Years On. In B.N. Kirpal (Ed.), *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* (pp. 59-61). Oxford University Press

Pragadeeswaran and Udayavani, A Study on Delay in Civil Proceeding, *International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5*, p. 2571

Vandana Ajay Kumar, Judicial Delays in India: Causes and Remedies, *Journal of Law. Policy and Globalization, Vol. 4, 2012,* p. 16

Velacharu Narayana Rao. (1990). Courts and Lawyers in India: Images from Literature and Folklore. In Y.K. Malik and D.K. Vajpeyi (Eds.), *Boeings and Bullock-Carts: Studies in Change and Continuity in Indian Civilization* (p. 196). Chanakya Publications

14th Law Commission Report on Reform on Judicial Administration, 1958, Vol. 1, Ministry of Law and Justice, Government of India

27th Law Commission Report on Code of Civil Procedure (1908), 1964, Ministry of Law and Justice, Government of India

54th Law Commission Report on Code of Civil Procedure (1908), 1973, Ministry of Law and Justice, Government of India

77th Law Commission Report on Delay and Arrears in Trial Courts, 1978, Ministry of Law and Justice, Government of India

124th Law Commission Report on High Court Arrears-A Fresh Look, 1988, Ministry of Law and Justice, Government of India

222nd Law Commission Report on Need for Justice Dispensation through ADR etc, 2009, Ministry of Law and Justice, Government of India

245th Law Commission Report on Arrears and Backlog: Creating Additional Judicial (Wo)manpower, 2014, Ministry of Law and Justice, Government of India.

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