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Online Dispute Resolution in the Field of Consumer Protection in India

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Abstract

Objective: to explore the advantages, challenges and implications of integrating technologies, particularly online dispute resolution, into the dispute resolution system in India, with a particular focus on consumer protection disputes.

Methods: the authors use general scientific methods of analysis and synthesis, as well as systematic, functional and comparative-legal approaches to systematically study the concept of online dispute resolution, its historical evolution and practical application with an emphasis on mediation procedures. The work is based on a doctrinal, qualitative approach with an analysis of current legislation, consumer protection standards, and the practice of judicial systems.

Results: The results obtained indicate that online technologies significantly increase the efficiency and accessibility of dispute resolution. However, in India, their development faces serious obstacles, including the technical illiteracy of the population, the digital divide, concerns about the security and confidentiality of personal data, and the lack of clear regulatory legal documents. These restrictions hinder equal access to justice and highlight the need to develop comprehensive public policies and improve digital infrastructure. The work revealed a complementary role of artificial intelligence, electronic mediation and blockchain technology in ensuring fair and effective resolution of consumer disputes.

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Scientific novelty: it consists in a comprehensive review of the role of online dispute resolution within the Indian consumer protection system, taking into account modern technological transformations. The authors identify technological, legal and ethical issues that arise in this process and offer a vision of how digital transformation affects the administration of justice in the field of consumer protection.

Practical significance: The study highlights the critical importance of strengthening digital infrastructure, increasing the level of digital and legal literacy of the population, and creating legislation to support the effective implementation of online dispute resolution in the Indian justice system. The work contains suggestions and recommendations for public and judicial authorities, technology developers and all stakeholders involved in the integration of digital tools into resolving consumer disputes, while ensuring fairness, inclusiveness and equal access for all participants in legal relations.

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Introduction

The concept of access to justice has evolved with growing pervasiveness of technology increasing the demand for greater access to fair and efficient means to legal remedies (Schmitz, 2019). Traditional litigation, which requires the physical presence of the parties to a case in the court of law is no longer the sole means of accessing justice. It is a barrier in terms of its cost-effectiveness, time-consumption, and accessibility for many including the marginalized communities of the society. The challenge is also reflected in matters of consumer disputes where sometimes, the cost of litigation

exceeds the value of disputed goods or services, in turn discouraging the consumer from seeking justice.

In India, the main document that gives the first room to ADR mechanisms to procure and protect the rights of consumers is the Constitution of India. Article 19(1)(g) of Constitution procures the interests of business entities whereas the right of consumers emanating from the right against exploitation is constructively interpreted under Article 21 right to life under the Constitution. Parties to the dispute can interpretatively demand the clause of confidentiality and make the parties abide by the procedure established by law. Similarly, it provides due regard to the principles of natural justice which envisages the right to be heard and represented as well as to demand impartiality, accountability, and transparency while opting for dispute resolution. The same constitutional ideals also have the potential to push and bind the government to provide ease in this kind of mechanism for better access to justice and to extend the facility of free legal aid to forward the same. Similarly, Section 89 of the 1960 Civil Procedure Code Arbitration and Conciliation Act has recognized mediation and arbitration as respectively.

Online Dispute Resolution is an extension of Alternate Dispute Resolution which aims at covering the dispute resolution of the area broadened by virtue of growing technology and the internet arena (Katsh & Rifkin, 2001). ODR can be accessed just by a meeting or connection made through the internet or technology within the comforts of one's home, office, or any place of one's choice at the time mutually agreed upon¹.

ADR is more cost-efficient and less time-consuming as compared to the traditional litigation of courts (WIPO, n.d.). The advantages of ODR are similar to that of ADR but with an added benefit of its relevance and need in the digital world. An important advantage of the process of ODR would be that if needed meetings can be confidential but, if necessary, with the mutual agreement of parties, all the meetings pertaining to a dispute resolution being conducted online can be recorded for future evidence. The ease of technique of dispute resolution may vary depending upon the nature of a dispute and the comfort of the parties.

Globalization has led to the expansion of consumerism, especially with the rise of cross-border e-commerce transactions, ODR has become the need of the hour to remain a step ahead in not just procuring the ethics of market and rights of the consumer but also for the accessibility of justice. NITI Aayog has also pushed for the adoption of ODR to take the lead in different areas². As per the UN Commission on International Trade Law³, an ODR procedure could be especially helpful for disagreements resulting from

¹ Government of Canada, Department of Justice, Electronic Communications. (2022, August 25). Dispute Resolution Reference Guide: Online Dispute Resolution. <https://goo.su/Fvozf>

² The NITI Aayog Expert Committee on OPC. (2021). Designing the future of dispute resolution: The OPC policy plan for India. NITI Aayog. <https://goo.su/8WTpLpL>

³ UNCITRAL. (2017). Technical notes on online dispute resolution. <https://clck.ru/3RrNk3>

low-value, cross-border e-commercial transactions. Disputes resulting from business-to-business and business-to-consumer transactions may be handled more efficiently through an ODR process.

According to the UN Consumer Protection Guidelines, the right to access justice, the existence of effective redress mechanisms, and the availability of dispute resolution systems are essential consumer rights⁴. Similarly, the United Nations Conference on Trade and Development (UNCTAD) Manual on Consumer Protection⁵ offers comprehensive guidance on these principles. Recently, the UNCTAD Working Group published a report focusing on e-commerce and cross-border cooperation, emphasizing the increasing significance of global Online Dispute Resolution⁶.

After COVID-19 pandemic and the evolution of the digital era, ADR has become not only a necessity in various disputes of a civil nature, but ODR has also become a widely adopted mechanism that protects a person from complex processes and legal jargon that has always acted as a deterrent against availing the remedy. One of the major challenges faced in consumer court matters is that they arise from the transaction between parties who are on an unequal footing. This study aims to examine the multifaceted role of ODR in consumer dispute resolution and evaluate its potential to support a more accessible and efficient justice system.

Methodology. This article uses a doctrinal, qualitative research approach to explore how Online Dispute Resolution can improve access to justice, especially in consumer cases. Because consumer disputes involve both legal principles and practical challenges, a qualitative method helps in understanding the strengths and weaknesses of ODR and how it may influence the justice system. By examining existing laws, consumer protection standards, and the functioning of the courts, the study aims to better understand the legal and theoretical issues surrounding ODR. The data collected for the research is primarily based on the review of literature and secondary data. The paper emphasis predominantly on descriptive and critical analysis of the existing legal framework and digital arena, to reflect a way forward in dispute resolution.

1. Legal Theories of Justice and Dispute Resolution

Rooted in the natural law theory's moral imperatives and positive law structured frameworks, the pursuit of access to justice evolves with technological advancement. Natural law theory, which asserts that legal norms are derived from moral principles

⁴ United Nations Conference on Trade and Development. (2016). Guidelines on Consumer Protection. United Nations. <https://clck.ru/3RrNLu>

⁵ United Nations Conference on Trade and Development. (2019). Manual on Consumer Protection. United Nations. <https://clck.ru/3RrNBZ>

⁶ UNCTAD. (2024, November 21). UN Trade and Development: Online dispute resolution key to boosting consumer trust. <https://clck.ru/3RrNZt>

inherent in human nature, raises questions about the legitimacy of ODR. Proponents of natural law might argue that justice must be administered through human engagement, emphasizing fairness and moral reasoning. However, ODR, by integrating artificial intelligence and automated decision-making, may challenge traditional notions of justice by reducing human intervention. A natural law advocate would stress the need for ODR mechanisms to incorporate ethical considerations and procedural fairness to align with fundamental moral principles.

Legal positivism emphasizes that law is a set of rules established by a recognized authority, independent of moral considerations. Only when ODR is sanctioned by legal frameworks and institutionalized norms is it a legitimate legal mechanism. The increasing inclusion of ODR in formal legal systems, such as United Nations Commission on International Trade Law⁷ and various national regulations, reflects its acceptance within the positivist paradigm. However, making sure that ODR complies to procedural requirements to maintain its legitimacy within the legal system is still an issue.

The use of ODR as a practical tool to enhance efficiency is supported by legal realism, which focuses on the pragmatic implementation of law and the role of judicial discretion. Realists argue that law must be adaptable to societal needs, and ODR addresses contemporary challenges by reducing costs and expediting resolutions. However, legal realists also caution against over-reliance on technology, advocating for continuous evaluation of ODR's effectiveness in delivering just outcomes. From this perspective, ODR may be seen as a mechanism that could perpetuate existing power imbalances, especially if designed in ways that favor corporations or technologically adept parties over marginalized individuals. There is a need for framework that provides for transparency, inclusivity, and safeguards against bias in ODR processes to ensure equitable access to justice. Jurisprudential perspectives provide valuable insights into the strengths and challenges of ODR (Beyleveld & Brownsword, 1985).

This paper highlights the role of enhancing Access to Justice; thus it becomes imperative to focus on John Rawls' idea of justice as fairness promotes equitable access to justice through institutional frameworks that prioritize fairness and personal rights assuring substantive equality over mere formal access (Nagel, 1973). Amartya Sen's theory of justice in *The Idea of Justice*, Sen (2009), critiques traditional transcendental institutionalism, particularly John Rawls' idealized models, arguing that justice should focus on practical improvements rather than defining a perfectly just society. His capability approach, shifts the focus from resources or welfare to individuals' actual freedoms and opportunities. Unlike Rawls' institutional focus, Sen's pluralistic and pragmatic theory prioritizes eliminating real-world inequalities, making it particularly relevant for global justice and development (Boot, 2012).

⁷ UNCITRAL. (2017). Technical notes on online dispute resolution.

2. Evolution and Forms of ODR in India

The Consumer Protection Act of 2019⁸ marks a significant advancement in enhancing consumer rights within India, especially considering the swift expansion of digital transactions and e-commerce. By updating the legal framework and acknowledging the necessity for quicker, technology-based methods for resolving disputes, CPA 2019 established the groundwork for the creation and implementation of ODR systems in consumer-related conflicts. CPA 2019, unlike the previous act, the Consumer Protection Act⁹, which focused primarily on traditional consumer grievances, established procedures such as the Central Consumer Protection Authority (CCPA), which has the authority to take suo-moto actions, recall faulty products, and impose penalties. The Act also incorporates provisions for product liability, e-commerce regulation, and simplified dispute resolution through mediation. The goals of these reforms are to improve consumer protection accessibility, efficiency, and compatibility with the evolving marketplace.

Despite these advancements, a number of obstacles hinder the full realization of the Act's goals. Since the effectiveness of CCPA and Consumer Disputes Redressal Commissions (CDRCs) is often constrained by inadequate resources, lack of awareness among consumers, and sluggish legal proceedings, enforcement remains a challenge. The cross-border nature of e-commerce complicates jurisdictional enforcement, making it challenging to regulate online transactions effectively. Although mediation offers a quicker alternative to litigation, its success depends on both parties' willingness to negotiate, which is not always the case. To enhance the Act's effectiveness, there is a need for stronger enforcement mechanisms, increased digital literacy, and continuous legal updates to keep pace with technological advancements. (Singh & Saxena, 2024).

Online Dispute Resolution (ODR) is a wide category of alternative dispute resolution procedures that capitalize on the accessibility and growing sophistication of internet technology. It is a group of conflict resolution. The use of technology in ODR employs AI to assist with automotive administrative processes, recommendations, and analyzing data patterns to predict case outcomes. Even machine learning could help in help streamline repetitive processes, making ODR an efficient option for high-volume cases like consumer disputes. Furthermore, secure file-sharing and encryption protocols are vital for protecting the confidentiality of parties involved in ODR, particularly in consumer disputes where sensitive financial and personal information is exchanged.

ODR is distinct from general technology-enabled ADR, as it actively incorporates tools such as AI and machine learning to assist in resolving disputes digital platforms.

⁸ The Consumer Protection Act, 2019. (2019). <https://clck.ru/3RrBmF>

⁹ Consumer Protection Act. (1986). In Consumer Protection Act. <https://clck.ru/3RrBnb>

E-mediation, a widely used form of ODR in regions in Europe and Asia, demonstrates its growing global relevance. In India, the NITI Aayog Expert Committee on ODR (2021) has recommended amendments to the “Insolvency and Bankruptcy Code” to formally recognize e-mediation through authorized ODR service providers. Letting parties take part in meetings online, submit documents digitally, and choose whether the process happens in person, online, or in a mixed way can make dispute resolution much easier and faster. It also helps reduce paperwork and makes the whole process more efficient.

ODR has three types i.e., Automated Negotiation, Online Arbitration, and Video Mediation. The first is Automated Negotiation- In this mediation as the name suggests, this is without any human intervention i.e. computer facilitated negotiation process. Users input information about their demands and preferences and the system employs an algorithm to suggest potential compromises between the parties. This mechanism is useful where the issue is very straightforward generally in small claims and consumer disputes. They provide quick and satisfactory outcomes making them ideal for e-commerce and customer service claims. Additionally, the Online Arbitration is another type. This is a process where the arbitrator evaluates the disputes based on the evidence that is submitted online and makes a binding decision. This is done to allow parties to submit evidence digitally, reducing time and cost, unlike traditional arbitration. It provides for parties in dispute to seek a definitive and enforceable decision without the complexities of court proceedings. Digital document submission and electronic signing make this an effective mechanism for business-to-business (B-B) and business-to-consumer (B-C) including international transactions. Finally, video mediation is a way for a neutral mediator to help people in a dispute talk to each other over a video call. It lets everyone explain their side, and the mediator guides the discussion to help them reach a solution that works for both.

3. Mediation As an Effective Tool of ODR in Consumer Disputes

Mediation as technique of dispute resolution, is more adaptable and efficient than traditional litigation, making it a desirable option. In mediation, the mediator’s role is to assist the parties in reaching an agreement in a confidential and exclusive setting. The mediator’s technique may differ depending on the nature of the conflict and the desired outcome, with popular approaches including facilitative, evaluative, court-mandated, and transformative mediation. As Patil explains, a mediator has several crucial tasks to ensure that the process runs smoothly and efficiently. Furthermore, the mediator must keep control of the process, direct the conversation, manage the contact between the parties, and, if necessary, assist in the writing of a written agreement once a resolution has been reached¹⁰.

¹⁰ Patil, A. R. (2021). Consumer handbook on mediation: Frequently asked questions. <https://goo.su/Qyq9>

Mediation is a mechanism where a neutral third party facilitates the negotiation to achieve an amicable settlement (Andrews, 2017). It plays a crucial role in addressing conflicts between states as well as disputes stemming from commercial and investment agreements. In this regard, the UN Charter requires states to settle disputes peacefully, adhering to the principle of abstaining from the use of force (UN Charter, Art 2 and 33). It is often used to end armed conflicts, especially for border issues, occupations, and post-conflict arrangements in international disputes (Bhuta, 2005). Whereas parties in commercial and investment disputes can resolve their dispute through institutions like UNCITRAL, ICSID, and ICC, which have mediation rules. However, these rules do not specifically address the use of technology during the mediation process.

Technology may enhance the mediation process by enabling video conferencing, online document sharing, private virtual caucuses, electronic filing, and electronic signatures, making the mechanism more efficient and accessible (Gómez, 2019). The Singapore Mediation Convention (2020), makes sure that agreements reached through mediation can be enforced. It also allows the use of electronic signatures, so technology can play a role in mediation. Other than this, there are no global rules for using technology in mediation, so each country's laws mainly decide how it can be used.

Consumer disputes can be broadly categorized into objective and subjective claims, each requiring distinct resolution mechanisms (Tan et al., 2024). Objective disputes, such as warranty claims, product defects, or breaches of guarantee, often involve quantifiable and verifiable data, making them well-suited for automated, data-driven decision-making systems (Cortés, 2017). Automated dispute resolution mechanisms, leveraging AI and rule-based algorithms, can efficiently adjudicate such matters based on predefined legal standards and contractual terms, thereby ensuring consistency and reducing resolution time (Katsh & Rabinovich-Einy, 2017).

Conversely, subjective disputes, such as deficiency in service, consumer dissatisfaction, or unfair trade practices, require a more nuanced approach involving interpretation, contextual analysis, and equitable considerations¹¹. Since these disputes often require the application of judicial or quasi-judicial discretion, making E-mediation the preferred resolution mechanism (Schmitz, 2019). E-mediation, which uses technology to help parties negotiate, lets everyone share their concerns and reach a fair solution while keeping basic principles of fairness and justice (Rule, 2020). Thus, while automated ODR systems enhance efficiency in resolving objective consumer disputes,

¹¹ Panetta, J. (2023). AI is smart, but it can't replicate the human touch in mediation. Bloomberg Law. <https://clck.ru/3RrXGC>

subjective human-centric approach is reinforcing the complementary role of technology and human decision-making in consumer justice¹².

4. Why Opt For E-Mediation as Compared to Other ODR Mechanisms in Consumer Disputes?

Mediation serves as a vital tool in achieving real justice in consumer disputes by offering a more accessible, efficient, and fair resolution process. Unlike traditional litigation, which often results in a win-lose scenario, mediation fosters a collaborative approach where both parties work toward mutually acceptable solutions. Justice A. K. Sikri (2017), in his article, emphasizes that mediation is not merely a mechanism for reducing court backlog but a means of delivering a distinct form of justice, one that is more responsive, inclusive, and rehabilitative. Mediation allows disputing parties to communicate openly, comprehend each other's views, reach agreements that go beyond legal formalism to safeguard their underlying interests. This technique not only resolves conflicts but also rebuilds relationships, assuring long-term harmony amongst consumers and service providers.

Furthermore, mediation facilitates access to justice, particularly among economically disadvantaged individuals who may find the traditional legal system prohibitively difficult due to its complexity, costs, and delays. The adversarial nature of litigation frequently disadvantages weaker parties, while mediation provides a level playing field by promoting direct dialogue and encouraging equitable solutions. Mediation is very efficient in consumer disputes, particularly due to the mass nature of grievances, such as disputes over banking fees, online transactions, or defective products. The developing trend of e-commerce emphasizes the necessity of online mediation, enabling speedy and cost-effective resolution without regard to geographical barriers. While mediation has gained impetus worldwide, India is still working to integrate institutionalizing it within the consumer protection framework. Strengthening mediation mechanisms and promoting awareness about their benefits can ensure a more just, inclusive, and consumer-friendly dispute resolution system (Sikri, 2017).

Mediation plays a crucial role in resolving disputes by offering a more equitable and accessible alternative to traditional litigation, particularly for parties with unequal bargaining power. Unlike adversarial court proceedings, where outcomes often favor the more resourceful party, mediation fosters a collaborative process where disputing parties negotiate mutually acceptable solutions. This ensures that justice is not merely a legal resolution but a fair and sustainable outcome that restores relationships and addresses

¹² Shonk, K. (2024). AI mediation: Using AI to help mediate disputes. Program on Negotiation, Harvard Law School. <https://clck.ru/3RrRsp>

underlying concerns. In consumer disputes, where big companies often have more power than individual consumers, mediation lets the weaker party speak up and resolve issues without high legal costs, complicated procedures, or unfair advantages (Sourdin, 2002).

Drawing a parallel with arbitration, particularly in cases of «forced arbitration,» mediation stands out as a more just and voluntary dispute resolution mechanism¹³. Forced arbitration, as discussed in the concept of contracts of adhesion, often places the weaker party at a disadvantage, compelling them to accept unfavorable terms without meaningful negotiation. Such contracts are prevalent in consumer agreements, employment contracts, and digital transactions, where corporations impose arbitration clauses that limit access to courts, set procedural barriers, and create financial hurdles. Mediation, by contrast, does not impose such constraints; it prioritizes fairness, self-determination, and accessibility, making it a preferable alternative for ensuring justice in cases where parties have unequal bargaining power (Ijaodola, 2020).

There is a need for a client-centered approach, emphasizing mediation and unbundled legal services to empower individuals in legal disputes and consumer matters, where power imbalances often exist between large corporations and individual consumers, these principles can be instrumental. Mediation provides a platform for consumers to actively participate in resolving disputes, allowing them to voice concerns and negotiate fair settlements in an informal, cost-effective setting. This process reduces the intimidation factor posed by corporate legal teams and promotes equitable outcomes. Mosten also promotes unbundled legal services, where attorneys offer limited-scope representation. In the context of consumer disputes, this approach enables consumers to access specific legal assistance, such as preparing for mediation or understanding settlement offers, without bearing the high costs of full representation, his model addresses financial disparities and makes legal support more accessibly focusing on interest-based negotiation rather than adversarial tactics, mediation fosters solutions that meet the needs of both parties, which is particularly beneficial in ongoing consumer relationships like those between tenants and landlords or service providers and clients. Implementing Mosten's peace making strategies can thus mitigate power imbalances and lead to fairer resolutions in consumer disputes (Mosten, 2009).

The recent enactment of the Mediation Act of 2023¹⁴ emphasizes the growing relevance of institutionalized mediation in resolving both commercial and non-commercial issues. The committee has noted, however, that the success rate of mediation remains poor¹⁵.

¹³ PON. (2024). What are the three basic types of dispute resolution? What to know about mediation, arbitration, and litigation. Program on Negotiation, Harvard Law School. <https://clck.ru/3RrYE9>

¹⁴ The Mediation Act, 2023. (2023). The Gazette of India. <https://goo.su/UaMzY>

¹⁵ Viswanathan, T. K., Shukla, S., Mani, R., Shroff, S. S., Batra, S., Roul, S., & Shukla, S. K. (2024). Framework for use of mediation under the insolvency and bankruptcy code, 2016. Insolvency and Bankruptcy Board of India. <https://goo.su/njkVBeV>

One contributing reason is the lack of a comprehensive infrastructure for the training and growth of professional mediators, which contributes to parties' reluctance to participate in mediation. Furthermore, there is an urgent need for a cultural shift to promote trust in the mediation process. Building trust is critical for enabling parties to accept mediation as a legitimate and successful method of dispute resolution. This cultural shift will necessitate not just institutional backing, but also a determined effort to illustrate the long-term benefits of mediation in promoting mutually beneficial results.

For example, in Bangalore, only 4.3 % of newly filed cases, around 31,441 between 2011 and 2015, were referred to the Bangalore Mediation Center, showing how rarely mediation is used (Bangalore Mediation Center, 2015). The Delhi High Court and Conciliation Center referred only about 13,646 cases for mediation which is nearly 2.66% of all the cases before the court. As for Allahabad Court Mediation and Conciliation Centre, the freshly instituted cases were 0.85 % which is about 11,618 cases in 2011-2015¹⁶.

Pearson examines the effectiveness of mediation and arbitration as alternatives to litigation. The study reviews various programs and finds that while mediation does not always significantly reduce court congestion or public costs, it consistently yields high user satisfaction, better compliance with agreements, and reduced relitigation rates. Pearson highlights that mediation provides a more informal, cooperative setting that allows parties to resolve disputes amicably, focusing on mutual understanding rather than adversarial confrontation. This approach is particularly effective in cases where maintaining relationships is crucial, such as family disputes and small claims matters. The research also notes that mandatory mediation and arbitration programs tend to be more successful than voluntary ones in reducing court backlogs and encouraging participation. Mediated agreements are generally more durable because parties are more likely to comply with settlements they voluntarily negotiate. However, the study acknowledges that mediation cannot always resolve deep-rooted conflicts and may not be effective in all legal contexts. Overall, Pearson concludes that mediation serves as a valuable complement to formal adjudication, offering a more humane and effective resolution method for many disputes (Pearson, 1982).

5. The Role of Technology and Artificial Intelligence in the Development of ODR

One of the major challenges faced in consumer court matters is that they arise from the transaction between parties who are on an unequal footing. With technology, the market for competition and disputes thereto, over quality, performance, and delivery of goods and services over online shopping have increased along with the cross-jurisdiction matters. Traditional litigation has become redundant to address the jurisdictional issue. The major

¹⁶ Kumar, A. P., Jauhar, A., Vohra, K., & Tripathi, I. (2016). Strengthening Mediation in India. Vidhi Centre for Legal Policy. <https://clck.ru/3RrWiu>

elements of technology opened the gateway to dispute resolution, as technology has overcome the geographical, financial, and temporal barriers providing a promising solution to cross-border disputes.

ODR mechanism has seen a significant enhancement in effectiveness, case management, documentation, and analytics. It has made dispute resolution more accessible and manageable for the user and administrators alike. Case Management and documentation done through AI-driven management systems can help to handle high volumes of disputes efficiently by organization, categorization, and tracking of cases. It would provide for collection, and storage of case-related information and ensure that parties have access to relevant documents. Streamlining of documentation by using natural processing language can help to summarize and analyze documents reducing the burden on the mediators and arbitrators.

Technology can further provide predictive analytics and decision support that can help the ODR system approach decision-making and outcome prediction which can help the parties make informed decisions on whether to pursue resolution. This mechanism is particularly useful in automated negotiation and arbitration models where the algorithm can learn from case history to make suggestions based on similar resolved cases. Decision support tools can provide data-driven insights that can be used to support fair and transparent decisions. Further, the technology can provide Chatbots and Automated Assistance where ODR platforms can provide real-time guidance, provide frequently asked questions (FAQ), and provide case updates. These tools may communicate with users in natural language and guide them through the resolution process, thus reducing human dependency. Their importance can significantly be pronounced dealing with common, low-complex queries, allowing human mediators and arbitrators to focus on complex cases.

Emerging technologies like blockchain, artificial intelligence (AI), and chatbots (Amin, 2024) have had a significant impact on the evolution of Online Dispute Resolution (ODR). These innovations have transformed consumer protection procedures, enhancing efficiency, accessibility, and trust in digital dispute resolution. Blockchain technology, for example, provides a decentralized and immutable ledger for recording transactions and dispute resolutions, assuring transparency and minimizing fraud (Linden, 2019). Smart contracts improve ODR by automating settlements based on established criteria. The Kleros protocol, a blockchain-based arbitration system, shows how decentralized decision-making can be used in disputes, using economic incentives to promote fair judgment¹⁷. However, blockchain confronts legislative hurdles, security concerns, and technical complexity, limiting its broad use adoption in ODR systems.

Artificial intelligence has also transformed ODR by automating case management, predictive analytics, and document analysis. AI-driven language translation and natural

¹⁷ Jain, S. (2024). Blockchain empowered online dispute resolution: A decentralized approach to enhancing trust and efficiency. Live Law. <https://clck.ru/3RrWRt>

language processing (NLP) break down linguistic barriers, allowing cross-border dispute settlement. Machine learning models can also assess past conflict outcomes to predict potential resolutions, which aids mediators and decision-makers. Case studies such as AI-powered consumer complaint platforms have demonstrated increased efficiency in addressing large volumes of cases. However, concerns regarding algorithmic bias, data privacy, and the necessity for human oversight remain major roadblocks. Ethical considerations, such as fairness in automated decision-making, necessitate the ongoing refining of AI models to ensure fair dispute resolution.

Chatbots have developed as an important tool in ODR since they provide real-time assistance to consumers navigating dispute resolution processes. These AI-powered virtual assistants can categorize complaints, provide legal guidance, and automate responses, easing the burden on human mediators. Consumer protection organizations are increasingly looking into chatbot integration to expedite their services. However, issues such as the inability to answer complicated legal queries, potential inaccuracies in automated responses, and lack of human empathy in sensitive disputes underscore the need for a hybrid approach in which chatbots supplement rather than completely replace human mediators. Initiatives like incorporating OpenAI's ChatGPT into ODR platforms highlight the potential of chatbots in improving user experience and accessibility (Barnett & Treleaven, 2018).

Despite these technologies' transformational potential, there are still challenges that remain in their implementation. Many countries lack the necessary legal framework, technological competence, and financial resources to develop cutting-edge ODR systems. To combat this, multinational collaborations, such as UNCTAD's projects, advocate for open-source ODR platforms that can be tailored to regional needs. By leveraging blockchain for transparency, AI for intelligent decision-making, and chatbots for accessibility, the future of ODR holds enormous potential in delivering impartial and efficient digital justice¹⁸.

Traditional online mediation methods face major challenges, including enforceability issues, trust deficits, and reliance on centralized authorities. Whereas major change is the use of blockchain in e-mediation, which makes dispute resolution more secure, transparent, and easier to enforce. With its decentralized and unchangeable ledger, blockchain ensures that agreements reached during mediation are recorded transparently and securely, eradicating concerns about document tampering or manipulation¹⁹.

¹⁸ UNCTAD. (2024, November 21). UN Trade and Development: Online dispute resolution key to boosting consumer trust. <https://clck.ru/3RrNZt>

¹⁹ Cianci, M., Longo, A., Ward, D., & Iwry, J. (n.d.). Litigation, professional perspective – Benefits & risks of decentralized dispute resolution. Bloomberg Law. <https://clck.ru/3RrWLu>

Furthermore, smart contracts, a crucial component of blockchain technology ensure compliance by automating the execution of mediation agreements without the need for external enforcement tools. This automation fosters efficiency, reduces the risk of non-compliance, and eliminates the need for intermediaries, thus significantly reducing processing time and mediation expenses (Ast & Deffains, 2021).

ODR has been incorporated into the legal systems of several nations, especially in small claims, consumer, and business disputes. CyberSettle (USA), SquareTrade, Modria (USA) – Developed in collaboration with the American Arbitration Association (AAA), it offers a multi-stage resolution process, handling complex disputes, including e-commerce and property disputes, Small Claims Mediation Scheme (UK) – A government-backed initiative offering one-hour phone mediation for small claims, reducing court congestion, MoneyClaim Online (UK) – Designed for borrower-lender disputes, it facilitates claims up to £100,000, improving efficiency in financial dispute resolution, Mediation.RF (Russia) – Focused on family disputes and divorce mediation, this system automates negotiation processes to speed up settlements, e.Dogovor.ru (Russia) – A commercial dispute resolution platform ensuring secure and systematic online arbitration for business conflicts. These platforms highlight the global shift toward technology-driven dispute resolution, streamlining legal processes while reducing costs and delays (Kavita, 2023).

The move of mediations to an online platform has greatly reduced travel time and associated costs. Furthermore, the elimination of travel constraints has made arranging mediations easier, which would have been logistically difficult in the past. However, despite its various benefits, online mediation has several negatives, the most noteworthy of which is a decreased ability to comprehend nonverbal communication (Martin, 2021).

India's ODR implementation strategy takes two steps: first, it strengthens current ADR laws with ODR-specific reforms, such as those pertaining to digital notarization, mediation laws, data privacy, and required pre-litigation mediation in some situations. The second is the introduction of optional rules for ODR service providers. A progressive deployment is advised, with a focus on a simple, self-regulating approach at first. If necessary, this model can develop into more stringent control. This framework covers the possible advancement of institutional accreditation and auditing procedures in the future. The ultimate objective is to use technology-enabled conflict resolution to realize the constitutional promise of accessible, reasonably priced justice²⁰.

²⁰ The NITI Aayog Expert Committee on OPC. (2021). Designing the future of dispute resolution: The OPC policy plan for India. NITI Aayog. <https://goo.su/8WTpLpL>

In 2005, the Supreme Court of India formed an E-committee to integrate technology into the judiciary, marking the beginning of ODR development in India. Despite a delayed start, several noteworthy initiatives followed, including the establishment of E-ADR in 2019, the SAMADHAAN platform for MSME payment disputes in 2018, the Digital India campaign in 2015, and the Online Consumer Mediation Centre in 2016²¹. The VIVAAD SE VISHWAS system (2020) for tax disputes was the result of the COVID-19 epidemic, which expedited the use of ODR. By introducing «The ODR Policy Plan for India» in 2021 with the help of organizations like the RBI and SEBI, NITI Aayog played a significant role. Under the leadership of Justice (Retd) A.K. Sikri, a high-level group was established to advance ODR with an emphasis on data-driven development for conflict resolution and legal health²².

To improve consumer protection and grievance redress, the Department of Consumer Affairs has put in place several important measures. In 2005, the National Consumer Helpline (NCH) was established. In 2016, the Integrated Consumer Grievance Redressal Mechanism (INGRAM) was introduced, offering a direct channel for consumer complaints and voluntary collaborations with businesses. The agency also introduced the Consumer Protection (E-commerce) Rules, 2020, and created a consumer app for simple complaint submission. Consumer rights laws were reinforced by the Consumer Protection Act of 2019²³. The E-Daakhil portal, which enables electronic complaint submission and expedites the dispute resolution process through enhanced ICT integration in the Consumer Disputes Redressal Commission, was a noteworthy technological advancement. (Centre Launches E-Daakhil Across All States and Union Territories of India, n.d.)²⁴. CORD and SAMA are two prominent Online Dispute Resolution (ODR) platforms in India that offer effective and accessible digital solutions for resolving disputes i.e., SAMA and CORD.

Sama, originally launched as a mediation platform in 2015, has been expanded to a comprehensive ODR service for integrated arbitration, conciliation, and mediation. It follows well defined procedural guidelines, ensuring streamlined case resolution under stringent deadlines. Notably, Sama has collaborated with different State Legal Services Authorities to enable online Lok Adalats, effectively settling a large volume of cases with sizeable monetary settlements. The platform's broad acceptance across cities and languages, positioning it as a viable alternative to traditional litigation while enhancing access to justice. Sama has around 2 crore disputes filed and out of which 34 lakhs were resolved on Sama and the average resolution time is 45 days. It provides for OCR-based

²¹ Gaur, R. (2024). Tech-driven justice: Unraveling the dynamics of online dispute resolution. Live Law. <https://clck.ru/3Rrae7>

²² Ibid.

²³ The Consumer Protection Act, 2019. (2019). <https://clck.ru/3RrBmF>

²⁴ Centre launches E-Daakhil across all states and union territories of India. (n.d.). <https://goo.su/wk287gx>

Evidence review, document led case filing, detailed insights across cases and transcription support. There is a secure and trusted platform and panel based appointed of mediators across 500 districts in India. Through Sama, individuals can get consultation from a highly qualified subject matter experts, and if the matter is appropriate for ODR it will be filed on Sama for online mediation. Online mediation Pilot project Report for online mediation in criminal compoundable cases was conducted in Jabalpur, Bhopal and Gwalior through women help desk setup in collaboration with MP State Legal Services Authority and Police authority. The same could be applied in the cases of consumer disputes²⁵.

Centre for Online Resolution of Disputes (CORD) provides a secure digital environment for dispute resolution through arbitration and mediation. Both Sama and CORD exemplify the growing acceptance of ODR in India, demonstrating its potential to alleviate the burden on courts while fostering a more accessible and technology-driven legal ecosystem (Gupta & Bajpai, 2023). The rapid digitization of India, particularly under the Digital India Programme, has raised critical concerns about data privacy and the digital divide, which have direct implications for ODR and mediation²⁶. As legal processes move online, personal data can be at risk due to weak data protection laws. The Information Technology (Amendment) Act, 2008, covers some cybersecurity issues but does not fully protect personal data in online dispute resolution (ODR) or mediation. As mediation requires the exchange of confidential information, the lack of explicit privacy safeguards can undermine confidence in digital dispute resolution. In addition, India's digital divide, marked by differences in access to the internet, digital literacy, and technological infrastructure, creates barriers to fair and accessible ODR mechanisms. Those in rural areas or from lower socio-economic backgrounds may struggle to use digital mediation platforms, which would exacerbate already-existing disparities in access to justice (Ghosh, 2020).

To combat these challenges, India must enact stronger data protection regulations aligned with global best practices while also bridging the digital divide to make ODR and mediation available to all citizens. A dedicated regulatory body for data protection, as suggested by legal experts, could enhance digital trust and security. Additionally, investment in digital literacy and infrastructure would ensure that marginalized populations can benefit from ODR services. Without such measures, the effectiveness of online mediation and dispute resolution remains compromised, limiting its ability to provide equitable justice in a digitally evolving society (Ghosh, 2020). The 2022 Guidelines of the

²⁵ Gupta, S. (2024). Looking for a lawyer? Startup helps resolve disputes outside courts, solved 35 lakh cases online. The Better India. <https://clck.ru/3RrW48>

²⁶ Chopra, A. (2024). Revolutionizing justice: NITI Aayog's ODR blueprint for India. NLR Blog. <https://goo.su/zzDv4PB>

Association of Southeast Asian Nations (ASEAN) on ODR insist upon a government-led system of ODR and ODR administered by the negotiator, conciliator, or mediator holding sufficient knowledge and capability to assist B2C disputes²⁷.

Conclusion

The ODR mechanism has the potential to provide for a transformative change in access to justice in matters pertaining to consumerism, but it is still at a very nascent stage. There are various challenges pertaining to the digital divide, data privacy, and security concerns, legal recognition, enforceability, and resistance from the traditional legal system as far as the future of ODR is concerned. To address this challenge, there is a need to create a robust framework on ODR and the related law to ensure the effective implementation of ODR as a mechanism and it cannot be done without the efforts and contribution of policymakers, legal practitioners, and technology developers (Schmitz, 2018). Further, effective mediation requires a skilled mediator. There is a need for a comprehensive curriculum for training the mediator. Mediators must remain impartial, which makes a Code of Ethics essential to define the minimum standards they should uphold.

The government ought to enact laws to recognize ODR as a legitimate form of dispute resolution and to provide clear guidelines to implement the ODR mechanism²⁸. This includes defining the legal status of ODR agreements, the procedures ODR systems must follow, and how the outcomes can be enforced. The provisions needed for ODR have not yet been fully formulated or integrated into the current framework of consumer protection regulations. Policymakers should collaborate with stakeholders including legal professionals, technology experts as well as consumer rights organizations while drafting comprehensive regulations (Schmitz, 2018). Consumer must be educated about the ODR mechanism through outreach programs including workshops, informational brochures, and online resources. It is crucial to create comprehensive data protection rules to address problems like customer data privacy and security concerns in order to guarantee that ODR is widely accepted. Lastly, addressing the issue of the digital divide is of paramount importance. Governments and Organizations must prioritize tech access programs for underprivileged groups with the necessary tools to engage in ODR platforms successfully. This would entail investing in public internet points, providing subsidized technology for the low-income strata, and programs for digital literacy. ODR platforms should be user-friendly with features such as multilingual support and accessibility for people with disabilities.

²⁷ Resolutions System Institute (n.d.). Online Dispute Resolution. <https://clck.ru/3RrVi2>

²⁸ OECD. (2024). OECD online dispute resolution framework. <https://clck.ru/3Rr7Kv>

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Онлайн-разрешение споров в сфере защиты прав потребителей в Индии

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право,
цифровые технологии,
электронная коммерция

Аннотация

Цель: исследовать преимущества, проблемы и последствия интеграции технологий, в частности онлайн-разрешения споров, в систему разрешения споров в Индии, уделяя особое внимание спорам в сфере защиты прав потребителей.

Методы: в исследовании использованы общенаучные методы анализа и синтеза, а также системный, функциональный и сравнительно-правовой подходы для системного изучения концепции онлайн-разрешения споров, его исторической эволюции и практического применения с акцентом на медиационные процедуры. Работа основана на доктринальном, качественном подходе с анализом действующего законодательства, стандартов защиты прав потребителей и практики функционирования судебных систем.

Результаты: полученные результаты свидетельствуют о том, что онлайн-технологии значительно повышают эффективность и доступность разрешения споров; однако в Индии их развитие сталкивается с серьезными препятствиями, включая техническую неграмотность населения, цифровой разрыв, опасения по поводу безопасности и конфиденциальности персональных данных, а также отсутствие четких нормативных правовых документов. Эти ограничения препятствуют равному доступу к правосудию и подчеркивают необходимость разработки всеобъемлющей государственной политики и совершенствования цифровой инфраструктуры. Выявляется взаимодополняющая роль искусственного интеллекта, электронной медиации и технологии блокчейн в обеспечении справедливого и эффективного разрешения потребительских споров.

 Контактное лицо

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Научная новизна: заключается в комплексном рассмотрении роли онлайн-разрешения споров в контексте индийской системы защиты прав потребителей с учетом современных технологических трансформаций. Выявляются возникающие при этом технологические, юридические и этические проблемы и предлагается видение того, как цифровая трансформация влияет на отправление правосудия в сфере защиты прав потребителей.

Практическая значимость: исследование подчеркивает критическую важность укрепления цифровой инфраструктуры, повышения уровня цифровой и правовой грамотности населения и создания законодательства для поддержки эффективного внедрения онлайн-разрешения споров в индийскую систему правосудия. Работа содержит предложения и рекомендации для органов публичной власти, представителей судебных органов, разработчиков технологий и всех заинтересованных лиц, которые занимаются интеграцией цифровых инструментов в процесс разрешения потребительских споров, обеспечивая при этом справедливость, инклюзивность и равноправный доступ для всех участников правовых отношений.

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