DEVELOPMENT OF ONLINE DISPUTE RESOLUTION AND ITS IMPLICATIONS ON THE INDIAN LEGISLATIVE SYSTEM

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INTRODUCTION TO ONLINE DISPUTE RESOLUTION (ODR):
After globalization in India, people gravitated to form business connections far across the nation. With the growth in e-commerce all across the world, developed a tussle of disputes amongst the parties. However, the aftermath of these legal disputes was expensive, time consuming and inconvenient. To fill this gap an online forum was pioneered by e-bay’s law pilot project and still evolving with the growth in the field of internet. Online Dispute Resolution is an extension of the traditional Alternate Dispute Resolution which involves arbitration, mediation, and conciliation which had been developed with the amalgamation of ICT to make recourse of justice reach to every individual through a single video or audio call. After the world was hit by a pandemic, the situation has been even worse for the Indian judicial system. Therefore, ODR is the most efficient solution, in regard to the current scenario. While putting the technology in the right place of use, ODR is a mechanism to conduct the ADR procedures online, without the physical but virtual presence of the parties. This system of dispute resolution is faster and a transparent option for the companies and individual(s) aiming at a quick solution. Moreover, this paper explains various concepts related to ODR, namely the methods, benefits, ODR in cyber security, challenges, ODR in India, and a few recommendations.

METHODS OF ODR:
The global pandemic has affected the country from all aspects starting from the social, economic field to the legal field. It has affected the pendency of the litigation matters as well as other corporate matters. Added to this, it has also forced people to stay at home and shift to the online mode of communication. Therefore, to bring the dispute resolution mechanism under balance the stakeholders shall adapt to the demand for change in the justice system through technological tools. This establishes the role of ODR which is a convenient tool unlike the judicial system. It functions through the following methods:

- Negotiation, mediation, and arbitration for dispute resolution which are held online are a part of ADR which has now seen a little appreciation in the legal system. Few methods by which ODR can be carried easily are as follows,

  - **Online Mediation**- Being the most favorable one where the majority of ODR platforms are using the same method to reach a conclusion. Online mediation is initiated by sending an email to the party consisting of the proceeding details followed by the virtual meeting to resolve the dispute.
  - **Asynchronous**- It is a method where communication is held over emails or through similar applications.

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• **Synchronous**- This method of ODR uses video conferencing to resolve the dispute between the parties.

• **Electronic Arbitration**- This method involves using video conferences but for the process of arbitration.

**BENEFITS OF ODR MECHANISM:**
The integration of ICT with the dispute resolution mechanism has brought a huge change in the field of litigation. Moreover, it has been addressed as an efficient tool for a swift access to justice in COVID-19. Some of the key benefits of the ODR are:

• **Cost Effective:**
ODR comes up as a solution providing hassle-free, cost-effective mode of resolution mechanism which not only reduces unnecessary travel expenses and time for resolution but also the legal expense of conducting the dispute resolution of both, the disputant as well as the neutral. Here in ODR the parties equally bear the cost of compensation and process which is given to the neutral evaluator with an equal stake in the outcome. This makes ODR the best option when it comes to high-volume, low-cost transactions as it offers timely, cost-effective resolution of the problems.

• **Appropriate, Swift and Reliable source of Dispute Resolution:**
Unlike the court proceedings, ODR has been a convenient tool to provide faster and quick process for resolving disputes and does not hold any complicated procedure or any fixed timeline. The spread of Covid-19 has opened a gateway for ODR mechanism for providing technology based flexible tool, designed to achieve a quick and ideal dispute resolution for all the parties and through ODR, it is now possible for ADR mechanism to go beyond providing multi-door dispute resolution through a tailored process to parties to resolve their matters. With the increased awareness of prejudice and stereotypical decision making process, this dispute resolution body has proved to be a reliable source as it removes unconscious bias and anxiety of neutrality while resolving disputes.

    **Easy and convenient recourse to justice:**
ODR can contribute significantly for the quick and easy access to justice of various dispute resolution processes by allowing for the active participation of the parties who could not otherwise attend a physical in-person meeting due to any sort of disability or financial issues. Hence, parties opt for ODR to settle their disputes through tailored processed technological tool, which in return increases recourse of justice. Especially, it has been seen increasing rapidly in this pandemic situation where in-person meetings and social gathering have completely been restricted.

**DEVELOPMENT IN ODR’S CYBER SECURITY:**
ODR can be better understood as the amalgamation of IT in the form of A.I. in the

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5 Charlotte Austin, ‘Online dispute resolution- An introduction to online dispute resolution (ODR) and its benefits and drawbacks’ (2017) 11.
ADR. However, it should not be merely understood to mean only the integration of these two mediums but also a potential mechanism to provide steady and comprehensive access to justice by offering the parties multi-door dispute resolution through a standardized process that meets the needs of the specific projects without physical congregation of the parties. In this era of Covid-19, there has been an urge for ODR during recent periods of time but still, parties are hesitating to approach the platform because of the cyber-threats. Therefore, the onus is on the arbitral institutions to acknowledge the threat and explore the nature of cyber-security to enhance the integrity of the system. Accordingly, it has outlined some magnificent features to develop and increase the security of these online platforms by impeding hackers from accessing sensitive documents through: the two-way verification authentication, encryption of data’s, asset management of collecting and securing all sensitive information of parties, addressing to comprehensive rules of the higher institutional bodies like ICC, SIAC etc. As a result, has enabled a pragmatic approach in access to justice during this pandemic period by providing all necessary smart negotiation tools and machine learning and automated resolution systems to parties sitting at home without any face-to-face contact process.

CHALLENGES IN ODR:
Online Dispute Resolution being the growing concept in the legal system has a list of reasons that hold back its implementation and activation to the core. Challenges regarding ODR are as follows:

- **Lack of cognizance:**
  ODR is at a very nascent stage in India. Even though it has been helping to resolve the matters between the disputing parties, the lack of awareness for all makes it stand behind a little when compared to ADR in the current days.

- **Lack of trust and faith in ODR:**
  As ODR itself is a concept based on online support, it creates a fear of breach of confidentiality and privacy. Various documents and files are shared online which fears being stolen, tampered or altered.

- **Tussle arising from the non-implication of ODR outcomes:**
  The implication of the outcome from the proceedings of ADR is uncertain at times. As in Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd (2010) 8 SCC 24. The Supreme Court said that the mediation proceedings initiated by the court shall be deemed as Lok Adalat and enforceable under section 21 of Legal Services Authority, 1987. Therefore, if the court-initiated mediation proceedings are taken that way, then the ones which are not initiated by the court can reach a point of problem in its implementation. Outcomes of the mediation process are however taken as an agreement or a contract where the breach of the same shall lead to court proceedings.

- **Lack of well-developed digital infrastructure:**
  For smooth functioning of the ODR process, internet infrastructure requires being strong and effective which is not yet at its best phase in the country yet. It requires a high

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bandwidth internet connection for a long duration for a meaningful resolution session.

- **Digital Literacy:**
  Based on age and geography, the digital illiteracy that prevails in India can be a barrier to the success of ODR proceedings.

**OUTLOOK OF ODR FROM THE EYE OF INDIAN JUDICIAL SYSTEM:**
From the era of globalization, people are more inclined towards the information and communication technology which has impacted not only the social, economic and cultural arena but also the legal realm on the globe. This has brought a revolution in the field of providing justice and has fostered a new medium in the growing field of alternative dispute resolution. This has resulted in the growth of a mechanism called ODR for settling of disputes through application of ICT and has been accepted by the UNCITRAL model working group.

At the domestic level, in India we must understand that the ODR mechanism cannot be distant from court procedures, since various jurisdictions across the globe are adopting technological artificial intelligence advancement to increase access to justice. In our Indian legislation ODR derives its credibility from various statues, which includes right to life and personal liberty, recognition of Arbitration agreement through electronic means, electronic evidence as a secondary copy admissible in the court and promoting settlement through ADR.

According to this it can be said that ODR has set its legitimacy existence in the Indian legislation from a long time. But these benefits can only be attained if we have a well-developed ODR infrastructure in India. From the foregoing discussion, it is clear that our foremost step should be to design an ODR platform as per the requirement of the Indian legal system. Hence, in the midst of COVID-19, it is well suggested to adopt this technological advance system in court as well as in the field of ADR to make resolution of disputes more accessible and faster which in a way would not only benefit the people but to the country as whole.

The development of the ODR mechanism would be very helpful and in the process of developing it, it should be the responsibility of the e-committee and the judges to provide hassle free access, with full data protection. India has to still cover a long gap to fulfill the requirement which they are doing in this COVID-19 situation. The judicial as well as quasi-judicial body along with the government has been promoting the use of ODR mechanism as a model for resolving disputes in this pandemic time. They have also adopted all necessary measures required to tackle the risks of ODR and would prove to make ODR as the future dispute resolution in India.

**SUGGESTIONS:**
The Indian Judiciary is facing a lot of backlogs of pending cases because of which

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8 Kartikey Raja, ‘Online Dispute Resolution (ODR): The future of justice in India’ (2020) 3 (4) IJLMH, 2175-76.
10 Arbitration and conciliation Act, 1996, s 7 (Amendment 2015).
11 Indian Evidence Act, 1972, s 65(a) and 65(b).
12 Code of Civil Procedure, 1908, s 89.
there is a delay in justice. Hence, for speedier redressal of disputes, the ADR forums have been developed. Yet, no one can beat the standards of the ODR mechanism. It is the future of the Indian judiciary system and unlike others can be opted in tough situations i.e. the pandemic. Both the stakeholder namely the judiciary and the government Department related to Parliamentary Standing Committee on Personnel, Public Grievances have recognized virtual courts and ODR and in their recent reports have introduced policies like SAMADHAAN initiative and the National Broadband Mission with the vision to modernize and digitalize the Indian dispute resolution mechanism.

Some suggestions which can be administered for the development of the digitized dispute resolution mechanism are:

- The first and the foremost thing which forefronts the development of the ODR mechanism is to show faith and trust on the ODR and this can be only achieved through cooperative efforts of all the stakeholders like the judiciary, government, lawyers, private sectors, ADR Centre’s etc.
- The condition for a successful ODR mechanism in India is the steady development in the digital infrastructure and specialized institutions for digital literacy which we lack to some extent. Hence, for making India a hub for ODR services initiatives like the ‘Digital India’ and institutions like the ‘Techno Legal E-courts Training and Consultancy Centre of India’ have been brought up.
- To have well-educated and trained professionals and service providers with uniform training standards in this field is a prerequisite for the development of the ODR in India.
- Re-developing the ODR tool with modern innovative technology to cope up with all stringent situations like COVID-19 in the field of Judicial and quasi-judiciary system.
- Piloting ODR mechanism for resolving matters arising out of COVID-19 like issues related to commerce, family law, employment etc. and providing a futuristic outlook by establishing uniform mediation framework and creating an effective management ecosystem in the country.

CONCLUSION:
Online Dispute Resolution has been an outstanding approach during the times of pandemic and has been so deeply involved in the system that it shall now only grow in the coming time. Many companies and organisations have adopted the online working mechanism which is more feasible, efficient and cost saving. This creates a zone of benefit for ODR’s as well. Where there are a few challenges to adopt the same, there are also a list of benefits in the use of ODR as a technique of dispute resolution. It has proven to be appropriate, swift and a reliable source for dispute resolution. However, the Indian legal system might take a while to completely trust and imply the outcomes from the ODR proceedings. India has to still cover a long gap to fulfill the requirement which they are

doing in this COVID-19 situation. The judicial as well as quasi-judicial body along with the government has been promoting the use of ODR mechanism as a model for resolving disputes in this pandemic time. The above-mentioned suggestions would prove and help ODR to become one of the most successful systems in the country for dispute resolution. Recently Snapdeal, the e-commerce company has also partnered with SAMA for online dispute resolution as it sees a good success. Moreover, NITI Ayog has been working on the grounds to promote and raise awareness about online dispute resolution techniques, being effective and path breaking in the coming time. ODR will have full eyes for few upcoming months as it becomes more favourable for resolving disputes between disputed parties in a pinch of time.

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