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REPORT**

**DESIGNING
THE FUTURE OF
DISPUTE RESOLUTION:
THE ODR POLICY PLAN FOR INDIA**

By: NITI Aayog

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DESIGNING THE FUTURE OF DISPUTE RESOLUTION: THE ODR POLICY PLAN FOR INDIA

- **Published by:** NITI Aayog
- **Aim:** to scale dispute avoidance, containment and resolution online.
- **Constitution:** The report is a culmination of the action plan made by a committee constituted at the peak of the Covid crisis by NITI Aayog on ODR in 2020 and chaired by Supreme Court Justice (Retd) AK Sikri.

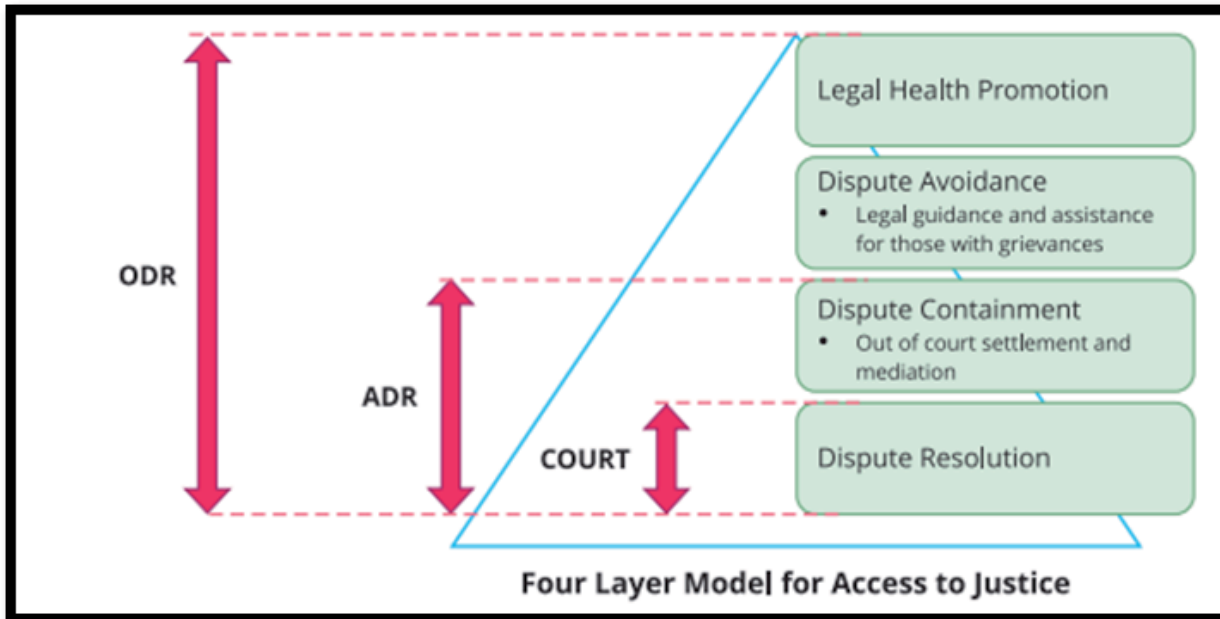
What is ODR?

- ODR is the resolution of disputes, particularly small- and medium-value cases, using digital technology and techniques of ADR, such as arbitration, conciliation and mediation.
- It refers to the process of using technology for dispute avoidance, containment and resolution outside the traditional court system.
- As a dispute resolution avenue it can be provided both as an extension of the public court system and outside of it.
- World over, the potential of dispute resolution mechanisms, especially through technology, is being recognized.
- Increasingly, ODR has received impetus across Government, businesses and even the judicial processes to tide over the constraints due to Covid-19.

ODR IN INDIA:

- The Executive, in the form of Government Departments and Ministries have also been leading the way for ODR.
- For instance, the RBI released an ODR policy for digital payments.
- The MSME sector saw the introduction of the SAMADHAAN portal and,
- The Department of Legal Affairs is in the process of collating the details of ODR service providers across the country.
- If ODR is indeed to be mainstreamed and broad-based in India, sufficient capacity and infrastructure will have to be developed in the country.

- For instance, one of the pre-requisites for ODR in India is greater access to technology.
- This access is both in terms of the physical access to infrastructure as well as increase in levels of digital literacy.



Benefits of ODR:

- **Cost effective and efficient:** It is cost effective and convenient in nature, which also broadens the possibilities of remote resolution.
- **Limits implicit bias caused by human judgment:** It relies on asynchronous communication, eliminates the requirement for the physical presence of parties and removes unconscious bias.
- **In terms of layers of justice:** ODR can help reduce the burden on the court and efficiently resolve categories of cases.
 - ▶ It can be integrated to support the judiciary through technology integration in court-annexed ADR centers and introduced within Government departments for its internal disputes, as well as through e-Lok Adalats.
 - ▶ ODR can help in dispute avoidance, dispute containment and dispute resolution.
- **Improvement in the Ease of Doing Business:** Its widespread use can improve the legal health of the society, ensure increased enforcement of contracts and thereby improve the Ease of Doing Business Ranking for India.
- **In the long term:** ODR can be the preferred mode of solution for, all low-value high-volume disputes such as those involving e-commerce transactions.

Challenges of ODR:

■ Digital infrastructure:

A pre-condition to ODR integration is robust technology infrastructure across the country. This includes access to computers, smart phones and medium to high bandwidth internet connection. The lack of such requirements is likely to disadvantage those that have limited access to digital infrastructure.

■ Digital literacy:

Apart from digital infrastructure, a pre-requisite to ODR is widespread digital literacy. In India, this digital literacy often varies across age, ethnicity and geography. To enable the large scale adoption of ODR it is necessary that such a digital divide be addressed.

■ Divide in access to technology:

In India, there exists a divide with respect to the access to technology across gender, geography, class and age. As per Internet India Report 2019, women constitute only 1/3rd of internet users in India. Further, individuals above 40 years constitute only 15 percent of internet users in India. Such divide in accessing the internet might result in uneven access to ODR services, thereby exacerbating the divide that already exists in terms of access to justice through traditional courts.

■ Legal culture:

It is often difficult to introduce ODR in countries where people rely more on courts and there is low percolation of ADR mechanisms for dispute resolution. Lack of reliance on ADR despite the costs and delays associated with the judiciary is due to multiple reasons. It is necessary to create capacity to provide quality ADR services through mediation and arbitration. This will help in transitioning faster towards ODR.

■ Role of the government and the PSUs:

The Government and Public Sector Undertakings (PSUs) are amongst the biggest litigants in India. Adoption of ODR to resolve inter and intra Governmental disputes would be a key step in boosting confidence in the process. This will automatically address the issue of trust in ODR processes and outcomes.

Measures:

- The report recommends measures at three levels to tackle challenges in adopting ODR framework in India.
 - ▶ **At the structural level:** It suggests actions to increase digital literacy, improve access to digital infrastructure and train professionals as neutrals to deliver ODR services.
 - ▶ **At the behavioural level:** The report recommends adoption of ODR to address disputes involving Government departments and ministries.
 - ▶ **At the regulatory level:** The report recommends a soft-touch approach to regulate ODR platforms and services. This involves laying down design and ethical principles to guide ODR service providers to self-regulate while fostering growth and innovations in the ecosystem.
- The report also stresses on strengthening the existing legislative framework for ODR by introducing necessary amendments to statutes.
- The report offers a phased implementation framework for ODR in India.
- ODR cannot be rolled out and scaled up in India without a supportive ecosystem. There is a need for greater access to technology, both in terms of the physical access to infrastructure as well as increase in levels of digital literacy. Coordinated and systematic efforts have to be initiated by all stakeholders.
- It is recommended that a uniform set of training standards, to upskill ADR professionals to become ODR professionals be introduced.
- Bar Councils, District Legal Services Authorities and Judicial Academies can be encouraged to impart training for lawyers and other domain experts to become ODR professionals. Even court annexed centres can provide practical training through observation and mentorship programs which can be headed by experienced mediators.

RBI's ODR Policy on Digital Payments:

- In 2019, the Nandan Nilekani led High Level Committee on Deepening Digital Payments, established by the RBI recommended the setting up of a two-tiered ODR system to handle complaints arising out of digital payments.

Recommendations:

- First tier of such an ODR system should be based on an automated system driven by machine learning.
- The second tier should be based on human intervention.
- It also recommended providing disputing parties with an option to appeal against the outcome of ODR process to an ombudsman body.
 - ▶ As a consequence, in 2020, through a Statement on Developmental and Regulatory Policies the RBI introduced ODR for resolving customer disputes and grievances pertaining to digital payments, using a system driven and rule-based mechanism with zero or minimal manual intervention.

TOP 100
ALL INDIA RANKING
CSE 2020

8	9	12	13	14	16	17	19	20		
24	26	28	30	31	36	38	41	45	50	
51	52	55	56	58	59	67	68	70	71	73
74	76	78	83	84	85	86	89	93	98	100

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ALL INDIA RANKING
CSE 2019

3	6	10	11	16	17	21	22	28			
30	33	38	39	42	44	46	53	54	59	66	69
70	72	77	78	80	82	84	86	87	94	97	98

TOP 100
ALL INDIA RANKING
CSE 2018

2	3	5	7	27	36	37	40	44	49		
51	52	56	58	62	74	81	89	92	94	98	100

TOP 100
ALL INDIA RANKING
CSE 2017

3	10	19	31	33	35	40	41	44	45	48		
54	57	63	64	68	71	75	77	80	83	93	97	100