The Future of Dispute Resolution

For Prelims: Online Dispute Resolution (ODR), NITI Aayog, Alternative Dispute Resolution (ADR) Mechanisms, United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018, SAMADHAAN Portal, Nandan Nilekani Committee on Deepening Digital Payments, PMGDISHA

For Mains: Online Dispute Resolution (ODR) - India's Progress, Significance and Challenges, ODR and ADR

What are the Key Highlights of the Report?

- It introduces the concept of **Online Dispute Resolution (ODR),** briefly traces its evolution and discusses its benefits.
- It discusses the present status of ODR in India, discussing contributions of the entire stakeholder ecosystem in advancing the various facets of ODR.
- The Report titled **-** Designing the Future of Dispute Resolution has been prepared by the **NITI Aayog Expert Committee on ODR.**

What is ODR?

- **Background:** Traditionally, dispute resolution has always been associated with a place i.e. courts. The advent of **Alternative Dispute Resolution (ADR)** has helped alter this conception.
  - Owing to the circumstances induced by the Covid-19 pandemic, these traditional notions of dispute resolution have come to be challenged and **technology has emerged as a harbinger of change.**
  - At the helm of this technology revolution is **Online Dispute Resolution – ODR.**
- **About:** In its most basic sense, **ODR is the use of technology to 'resolve' disputes.** It is not just any form of technology integration but its active use to help resolve the dispute (such as video conferencing for hearings or electronic document sharing for filing).
  - ODR can use technology tools that are powered by **Artificial Intelligence (AI)** or **Machine Learning (ML)** in the form of **automated dispute resolution**, script-based solution and curated platforms that cater to specific categories of disputes.
- **ODR v/s ADR:** The concept of ODR is still evolving. At a **preliminary level, ODR refers to the usage of ICT tools** to enable parties to resolve their disputes.
  - From instances seen around the world, in its first phase, **ODR shares its fundamentals with** Alternative Dispute Resolution (ADR) Mechanisms such as negotiation, mediation and arbitration.
  - However, the **benefits of ODR extend beyond just e-ADR or ADR** that is enabled through technology.
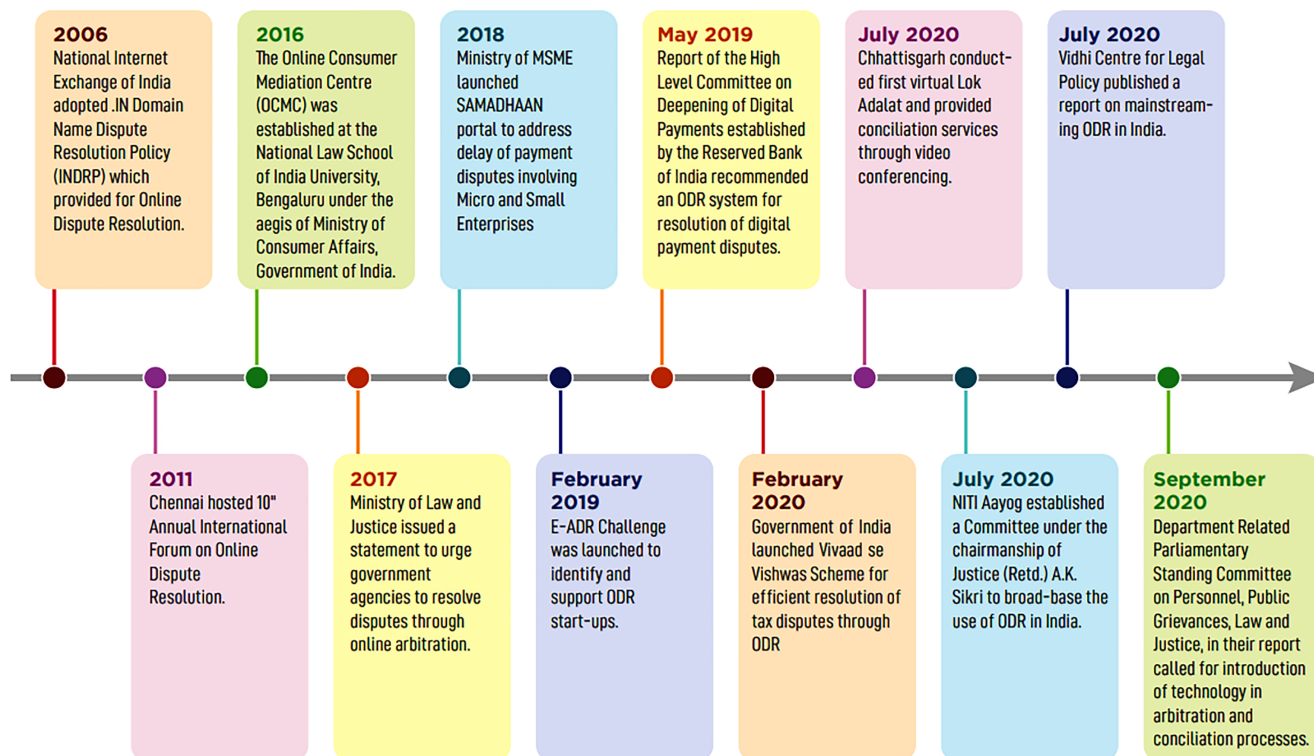
What are the Advantages of ODR?

- **Legal Health Promotion:** ODR can play an important role in promoting legal health **by making people aware about the law, their rights and duties**, and the remedies available with them.
  - For instance, in the European Union, it is **mandatory for merchants to inform the**

- **consumers of the option to avail ODR.**
  - Similar provisions in India can help in moving towards a more 'rule of law' based society.
- **Dispute Avoidance: Data driven development of ODR** tools can provide citizens information to make informed choices based on the strength and weaknesses of the position of law.
  - Additionally, ODR can also **help parties identify the likely outcome of the case** if the rights are agitated in that situation.
  - Thus, ODR can help people recognise and avoid legal obstacles and thereby, disputes.
- **Dispute Containment:** At a primary level, ODR **can enable informal and pragmatic containment of dispute** before it enters court systems.
  - ODR, in effect, can **add a digital layer to ADR** and make it more efficient.
  - For instance, mandatory pre-litigation ODR cases involving e-commerce claims, small cause claims and cheque-bouncing issues can be resolved before they reach the courts system.
- **Cost Effective:** The economic burden of dispute resolution often turns the process itself into a punishment and thereby hinders access to justice.
  - ODR offers a **cost effective mode of dispute resolution** for the disputants as well as the Neutrals.
  - Also, ODR **does not require parties to travel long distances** or rent a facility to conduct the dispute resolution.
- **Convenient and Quick:** The pendency of cases in Courts across India has been one of the major challenges for the justice system.
  - ODR can help reduce the burden on the court and efficiently resolve these categories of cases. It can **address the delays in justice delivery** by providing a **faster and more convenient process** for resolution of disputes.
  - ODR can be integrated to **support the judiciary through technology integration in court-annexed ADR centres** and introduced within Government departments for its internal disputes, as well as through e-Lok Adalats.
- **Limits Implicit Bias caused by Human Judgement:** Studies have identified that implicit bias and anxiety to communicate with members of different communities can influence the outcome of mediation.
  - ODR processes can **lessen the unconscious bias of the Neutral** while resolving disputes.
  - ODR Platforms help in resolving disputes based on the claims and information submitted by the disputing parties rather than who these parties are.

What is the Present Status of ODR in India?

- India, though in its nascent stages of ODR development, has shown **early promise in ODR integration at all three levels–**the judiciary, Government and the private sector.
  - While the courts and to some extent, ADR centres, have been quick to adopt ICT tools, a lot more needs to be done.

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2006
National Internet Exchange of India adopted .IN Domain Name Dispute Resolution Policy (INDRP) which provided for Online Dispute Resolution.

2016
The Online Consumer Mediation Centre (OCMC) was established at the National Law School of India University, Bengaluru under the aegis of Ministry of Consumer Affairs, Government of India.

2018
Ministry of MSME launched SAMADHAAN portal to address delay of payment disputes involving Micro and Small Enterprises

May 2019
Report of the High Level Committee on Deepening of Digital Payments established by the Reserved Bank of India recommended an ODR system for resolution of digital payment disputes.

July 2020
Chhattisgarh conducted first virtual Lok Adalat and provided conciliation services through video conferencing.

July 2020
Vidhi Centre for Legal Policy published a report on mainstreaming ODR in India.

2011
Chennai hosted 10" Annual International Forum on Online Dispute Resolution.

2017
Ministry of Law and Justice issued a statement to urge government agencies to resolve disputes through online arbitration.

February 2019
E-ADR Challenge was launched to identify and support ODR start-ups.

February 2020
Government of India launched Vivaad se Vishwas Scheme for efficient resolution of tax disputes through ODR

July 2020
NITI Aayog established a Committee under the chairmanship of Justice (Retd.) A.K. Sikri to broad-base the use of ODR in India.

September 2020
Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in their report called for introduction of technology in arbitration and conciliation processes.

- **Adoption of ODR by Government Departments and Ministries:**
  - **Legislative Preparedness for ODR:** Though in a piecemeal fashion, there are numerous support legislations which provide **legislative backing for the ADR aspect of ODR** (such as the **Arbitration and Conciliation Act, 1996** or the **Code of Civil Procedure, 1908**) as well as the technology aspect of ODR (such as the **Indian Evidence Act, 1972** and the **Information and Technology Act, 2000**).
    - India has also brought into force the **United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018.**
  - **Role of Judiciary**: The judiciary has also been unequivocal in its support for ODR both in terms of **judges vocally recognizing its potential** and in terms of the judicial decisions that have set the foundation for future ODR integration (such as the **recognition of online arbitration or electronic records as evidence).**
  - **NIXI Domain Dispute Settlement Mechanism:** Under the **National Internet Exchange of India's (NIXI)**'s procedure, **complaints can be filed online and disputes are decided by an arbitrator/s** on the basis of written submissions.
    - The procedure **does not require any in-person hearings to** resolve the dispute.
  - **NCH and INGRAM:** The Department of Consumer Affairs, in 2005, launched the **National Consumer Helpline (NCH)** to disburse information on issues pertaining to consumers and promote consumer welfare.
    - In 2016, the Department launched the **Integrated Consumer Grievance Redressal Mechanism (INGRAM)** to offer a platform for consumers to get their complaints and grievances addressed directly by the companies who have voluntarily partnered with NCH.
  - **SAMADHAAN Portal:** In 2017, the Ministry of MSMEs launched the **SAMADHAAN portal,** with facilities for **e-filing and online settlement of Micro and Small Enterprises' (MSE) dues** against Public Sector Enterprises, Union Ministries, Departments and State Governments.
  - **RBI's ODR Policy:** In 2019, the **Nandan Nilekani led High Level Committee on Deepening Digital Payments** recommended the setting up of a **two-tiered ODR system** to handle complaints arising out of digital payments.
    - As a consequence, **in 2020, the RBI introduced ODR Policy for resolving**

customer disputes and grievances pertaining to digital payments, using a system driven and rule-based mechanism with zero or minimal manual intervention.

What are the Challenges Faced in the Adoption of ODR?

- **Structural Challenges:**
  - **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 for at least the length of time it takes to conduct meaningful hearings.
    - The **lack of such requirements is likely to disadvantage** those that have limited access to digital infrastructure.
  - **Digital Literacy:** Apart from digital infrastructure, a prerequisite to ODR is widespread digital literacy. In India, this **digital literacy often varies across age, ethnicity and geography.**
    - For instance, out of the 743.19 million internet subscribers in India, the **internet rural penetration rate is only 32.24%**, less than 1/3rd of the urban penetration rate (99.12%).
    - Further, out of total 5,97,618 inhabited villages, including Gram Panchayats in the country (Census 2011), about 5,69,897 are covered by mobile services, leaving **around 27,721 villages that are not covered by mobile services.**
    - To enable the large-scale adoption of ODR it is necessary that such a digital divide be addressed.
  - **Digital Divide:** As per **Internet India Report 2019, women constitute only 1/3rd of internet users in India** with women in rural India constituting only 28% of the internet users.
    - Only 27% of the total rural population has access to the internet.
      - Further, **individuals above 40 years constitute only 15% of internet users in India.**
    - Such a divide might result in uneven access to ODR services, thereby **exacerbating the divide that already exists in terms of access to justice** through traditional courts.
- **Behavioural Challenges:**
  - **Lack of Awareness regarding ODR:** At present, the lack of awareness regarding ODR translates into **litigants and businesses having low confidence in ODR processes** and **restricted application of ODR** in sectors with huge potential for such as MSME, consumer disputes etc.
  - **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.
    - It is necessary to create capacity to provide quality ADR services through mediation and arbitration as it will help in transitioning faster towards ODR.
- **Operational Challenges:**
  - **Privacy and Confidentiality Concerns:** Greater integration of technology and reduced face to face interactions **create new challenges for privacy and confidentiality,** especially in dispute resolution. These challenges include
    - **Online impersonation**
    - **Breach of confidentiality** by circulation of documents and data shared during ODR processes
    - **Tampering of digital evidence** or digitally delivered awards/ agreements.
  - **Enforcement of the Outcomes**: There has been uncertainty regarding enforcement of mediation settlements for a long time now. Hence, existing uncertainty regarding enforcement of ODR outcomes is another key challenge.
    - There seems to be a **legal vacuum while considering mediation** processes that are **not initiated by the courts.**
   - For these proceedings, **settlements can only be enforced as an agreement** between the parties.

What Recommendations have been Made?

- **Increase Access to Digital Infrastructure:** Increased physical access to technology and infrastructure can only be achieved by the **combined efforts of two key stakeholders – the Government and the judiciary.**
    - The Government can consider **collaborating with the private sector** service providers to develop pilot programs and customised solutions.
    - Also, such access should not just be understood to mean physical access to technology and its tools but also **include its utilisation and thus necessitate digital literacy.**
        - Additionally, it is important that such access addresses **gaps created by differences in class, caste, gender and age** and include those individuals who are often on the margins.
        - The Government has already taken steps towards increasing digital literacy through its initiative–the **Pradhan Mantri Gramin Digital Saksharta Abhiyan (PMGDISHA).**
- **Increase Capacity:** Increase in **capacity of the professionals and the service providers** is necessary if ODR is to be scaled up in India.
    - This can be achieved only through **systematic and co-ordinated engagement of all concerned stakeholders** ranging from the Government to the businesses and the judiciary.
        - Having **well trained professionals is a prerequisite for a well-developed ODR framework,** it is their existence that can raise the confidence in the end users.
    - The **Para-Legal Volunteers (PLVs)** play a critical role of generating awareness, they are a major resource that can increase the reach of ODR in rural areas and remote locations.
        - **Investment in PLVs should be thought of as an investment in building a community asset.**
- **Build Trust in ODR**: Mainstreaming ODR will require increased trust in ODR processes from its end users- individual disputants, businesses and governments.
    - The Government can also **mandate certain categories of disputes to be resolved through ODR before approaching courts.**
    - **Comprehensive campaigns** can also be run utilising multimedia platforms, such as television, radio shows etc. to guide the public on the ways to use ODR processes.
- **Mechanism for Data Protection**: A robust ODR framework in India will require a **comprehensive data protection law** that can address both the confidentiality and security concerns that frequently arise with ODR processes.
    - The Government introduced the **Personal Data Protection bill in 2019** but it recently **withdrew the bill amid widespread criticism.**
        - It is currently considering a **"comprehensive legal framework" through a new bill.**
    - These parallel developments can assist and foster the growth of ODR in India by providing a robust data security framework.
- **Role of Technology:** The advancement of Information Technology in the form of **AI, big data, ML and blockchain can be increasingly embedded in legal processes.**
    - One example where the true potential of technology can be exploited and harnessed can be in the realm of **blockchain driven arbitration processes for smart contracts.**
        - Smart contracts drafted in computer code can **use technology to automate enforceability** through transfer of rights and obligations.
        - Therefore, blockchain arbitration could administer resolution on the basis of such smart contracts.
- **Suitably Regulate ODR**: It is necessary that the regulatory model adopted by India protect the rights of the end users while ensuring that over-regulation does not stifle innovation.
    - To this end, **a light touch approach to regulation is well suited for India,** especially **during the early stages**, which are likely to see immense growth and innovation of a variety of ODR solutions.
        - The Government can adopt this light touch regulatory model through a two-pronged approach:
            - First, it can **amend the existing legislations** to incorporate ODR and introduce **mandatory pre-litigation online mediation** for certain classes of cases.
            - Second, it can **introduce a set of voluntary principles** that act as

the **ideal set of standards** that stakeholders can follow.
- However, this light touch regulatory model does not need to be adopted indefinitely.
  - With an increase of entrants into the market, diversity of technology innovations and practices, a **more proactive approach to regulation can be considered for the future.**

Guiding Principles for ODR

- It is recommended that the ODR ecosystem be shaped through a voluntary set of principles that will act as guidelines that can lead the future development of standards and best practices.
- The **Design Principles for ODR Platforms include:**
  - **Interoperability**: The ODR platforms should be designed in such a manner that independently developed components can **interact and cooperate with internal and external systems,** networks and entities and with **capabilities for integration with old and new technologies.**
  - **Portability:** The ODR Platforms should be designed in such a manner that **data can be transported from one platform to another** without incurring any additional costs.
  - **Modularity:** Complex designs developed by ODR Platforms should produce **modular solutions that can form the building blocks for future innovations** and allow for iterative development.
  - **Privacy, Security and Trust by Design:** Platforms should take adequate **safeguards to protect the privacy of its users** and **security** and **integrity of the data exchanged** during the dispute resolution process.
  - **Transparency:** Platforms should be designed to be **transparent and accountable to all its stakeholders.**
    - They should be designed in such a manner that both the processes adopted and the outcomes arrived at can be made available to the end user.
  - **User Centricity:** Platforms must be designed to **keep the primary users at the center and ensure choice of access** and ensure accountability among actors on the platform.
    - Platforms should be designed to be **affordable** and users should have the **ability to interact without needing a middleman.**
  - **Data-driven Development**: Platforms should be designed to observe data and identify new behavioural patterns and use cases.
    - Based on such patterns, **additional features and modifications should be made to the ODR Platform.**
  - **Competence:** The platform should introduce an **internal oversight, quality assurance and grievance redressal process** to help **the platform conform with the standards** it has set for itself.
  - **Consent:** The ODR process should be based on **explicit, informed and continuous consent of the parties.**
  - **Neutrality**: Platforms should **develop a code of ethics to check for conflict of interests** and ensure **independence of Neutrals.**
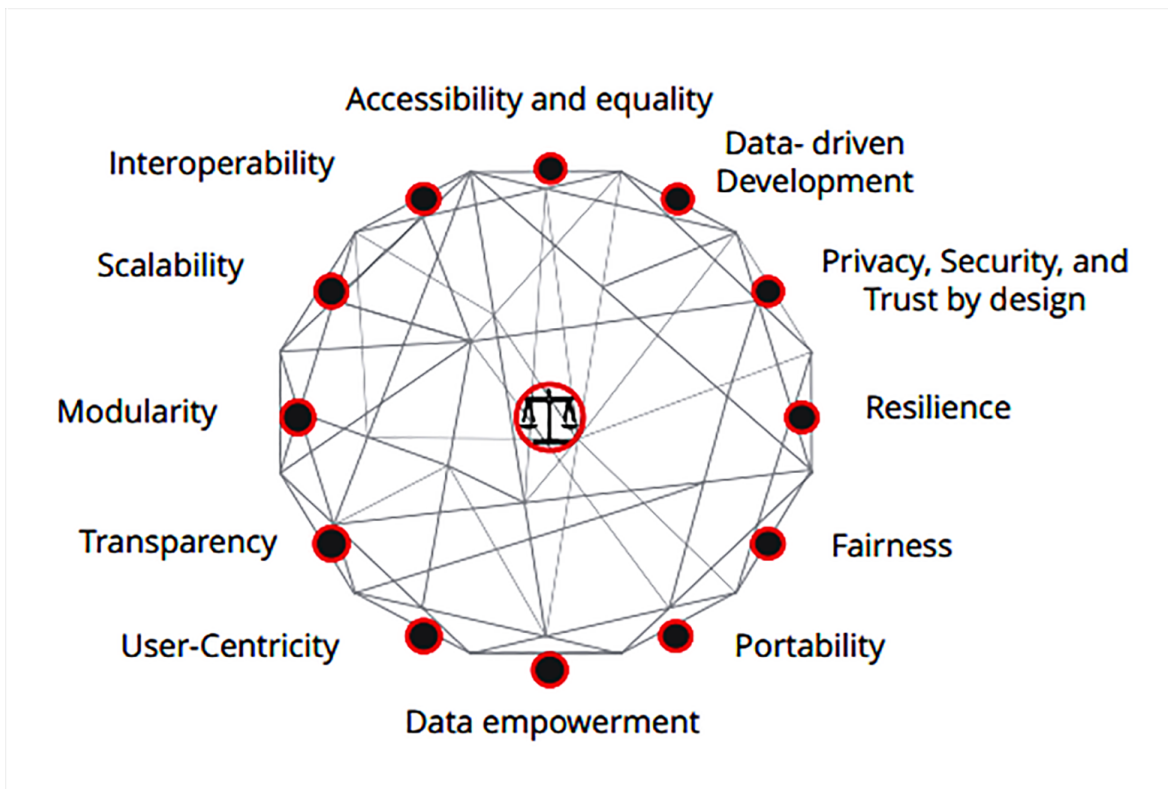
Conclusion

- The future of dispute resolution revolves around ICT innovations and new ideas to make dispute resolution efficient and accessible for every section of the society. ODR can play an important role in this aspect.
- **ODR has the potential to decentralise dispute resolution in India** and empower innovators across communities to create targeted ODR processes to resolve disputes efficiently.
  - Integration of emerging and contemporary technologies including AI and ML tools into the ODR processes can take ODR beyond the contours of dispute resolution and offer services directed towards improving the legal health and awareness in the society.

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