



## Online Dispute Resolution Mechanism in Indian Judiciary

This editorial is based on [“A disruption that India’s legal profession sorely needs”](#) which was published in The Mint on 05/07/2022. It talks about the Online Dispute Resolution and related applications.

**For Prelims:** ODR, NICNET, eStamp, Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA), National Digital Communication Policy, 2018, Study Webs of Active-Learning for Young Aspiring Minds (SWAYAM), LIMBS, Block-Chain Technology

**For Mains:** Problems with Online Dispute Resolution System and solutions, Other ODR Systems across the Globe

The [Judicial System in India](#) is under tremendous pressure. **As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary** while nearly **1,82,000 cases have been pending for over 30 years**.

Amid the **rising trend of litigation**, more people and organisations are approaching courts. [National Judicial Data Grid](#), a database of the **Department of Justice**, shows that courts saw an **increase of over 27% in pendency between December 2019 and April 2022**.

Inadequate infrastructure has resulted in **overburdened courts**, which in turn has led to a **massive backlog of cases**. In this context, let’s understand how technology can be leveraged for India’s judiciary.

### What is the Existing Technological Infrastructure In the Indian Judicial System?

#### ▪ **NICNET:**

- In **1990**, the **National Informatics Centre** took up **computerization in respect of the [Supreme Court of India](#)**.
- **All High Courts have been computerised and interconnected** through NIC’s [satellite-based computer-communication network](#) **NICNET**.
  - NIC has also implemented the **List of Business Information (LOBIS)** in all High Court Courts.

#### ▪ **Project eCourts:**

- It aims to **enhance judicial productivity**, both qualitatively & quantitatively and to **make the justice delivery system affordable, accessible, cost-effective, predictable, reliable and transparent**.
  - It also provides efficient & time-bound citizen-centric services delivery as detailed in **e-Court Project Litigant's Charter**.

#### ▪ **Integrated Case Management System (ICMS):**

- It was launched In 2017 for **integrating the Supreme Court and the High Courts of the country** and **enabling e-filing throughout the country**.
- Presently, several High Courts in the country including those at **Delhi, Punjab, Bombay,**

**Andhra Pradesh, Karnataka and Allahabad** have **enabled e-filing and presentation of evidence on electronic platforms in their commercial divisions.**

- **Migration to [Online Dispute Resolution\(ODR\) System:](#)**
  - ODR is the system of resolution of disputes, particularly small- and medium-value cases, using digital technology and techniques of **[Alternate Dispute Resolution](#)**.
    - ODR has received impetus across Government, businesses and even the judicial processes to tide over the constraints due to **[Covid-19 pandemic](#)**.

## **What are the Benefits of the Online Dispute Resolution System?**

- **Managing Time and Cost:**
  - ODR has the potential to reduce legal costs, by way of reduced time for resolution and by doing away with the need for legal advice in select categories of cases.
- **Flexible Nature:**
  - Compared to rigid court procedures followed for ages, **ODR encourages speedy resolution in a versatile and informal way.**
    - It eliminates the need for travel and synchronisation of schedules.
- **Encourages Negotiations:**
  - ODR tools such as **online negotiation and mediation** are premised on **mutually arriving at an agreement**, they make the dispute resolution process less adversarial and complicated for the parties.
- **Simple to Access:**
  - In accordance with the convenience and requirement of the parties, **ODR can be accessed anywhere at any time where the internet is accessible.**
- **Storing Data:**
  - **Document storage has been replaced by the ODR mechanism** as one of the most common problems faced in Indian courts.

## **What are the Problems Associated With Online Dispute Resolution?**

- **Structural Problems:**
  - **Lack of 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.**
  - **Lack of [Digital Literacy](#):**
    - According to the **Ministry of Electronics and Information Technology**, **only 38% of households in India are digitally literate.**
      - In **urban areas**, digital literacy is relatively higher at **61%** relative to just **25% in rural areas.**
    - As per **Internet India Report 2019**, **women constitute only 1/3rd of internet users in India.**
    - Therefore, there is a need for programmes that focus on **boosting internet accessibility in rural areas** combined with dedicated initiatives to **popularise basic skill sets required to access ODR services.**
- **Operational Problems:**
  - **Privacy and Confidentiality Concerns:**
    - It includes **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 outcome of ODR process:**
    - Enforcement of arbitral awards in India is complex and burdensome.
      - It requires stamp duties in most of the States. The **archaic requirement to attach an eStamp certificate to the document creates barriers in an otherwise end-to-end online process.**

- **Behavioural Problems:**
  - **Lack of Trust in ODR Services:**
    - This mistrust stems at several levels from **scepticism( feeling of doubt) regarding technology to questions regarding enforceability of ODR outcomes.**
  - **Mutual Consent of Parties:**
    - Admissibility of the ODR is one of the main and critical problems.
      - **Mutual consent of the parties is necessary for triggering the ODR procedure**, whether through an explicit contractual clause or through a separate mutual agreement between the parties, **otherwise, any decision made impartially is not legally legitimate and binding on the parties.**

## How can We Improve Online Dispute Resolution Mechanism?

- **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.**
    - [National Digital Communication Policy, 2018](#) and [National Broadband Mission](#) aims to provide **universal broadband connectivity** and facilitate effective participation in the global digital economy.
- **Increase Digital Literacy:**
  - Physical access to technology and infrastructure is only one aspect of access to digital infrastructure. To unlock its true potential, users of such technology should be digitally literate.
    - [Pradhan Mantri Gramin Digital Saksharta Abhiyaan \(PMGDISHA\)](#) will go a long way to ensure access to justice in even the remotest and the most marginalised sections of the society.
- **Innovative Platforms:**
  - To maximise access ODR Platforms should be designed mobile friendly to enable their wide adoption. Further, it is also desirable **inclusion of voice prompts technology given the limitations in digital literacy.**
    - **LIMBS** is a **web-based application for monitoring cases** involving the central government of India, in a more effective and transparent manner.
      - It is an initiative of the **Department of Legal Affairs (DoLA), Ministry of Law and Justice.**
- **Capacity Building:**
  - There is a need to introduce training programmes, **strengthen paralegal services within communities**, and introduce **uniform training standards** based on practical skills through demonstrations and simulations for all ODR professionals throughout the country.
    - The Government initiative [Study Webs of Active-Learning for Young Aspiring Minds \(SWAYAM\)](#) can be harnessed for ODR courses and ODR training can be provided by this platform.
- **Suitable Regulation:**
  - 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.** Including, Amendments in the existing legislations to incorporate ODR to introduce **mandatory pre litigation online mediation for certain classes of cases.**
    - Recently, a group of ministers was constituted to evaluate the establishment of a **ODR-enabled [GST Appellate Tribunal.](#)**
      - It will function as an independent body **Section 111 of the [Central Goods and Service Tax Act, 2017](#)** clarifies that the **GST tribunal will have the power to regulate its own procedure.**
- **Mainstream E-stamping:**
  - As **ODR often deals with inter-state disputes where disputing parties are residing in different jurisdictions**, there is a need to harmonise stamp-duty and procedural requirements across different States.
  - **Allow online notarisation:**

- **Online notarisation through secure e-signature and electronic notary seal** can address this challenge and provide an online mode for authentication and validation.
- **Digital lockers can be provided to the notaries** to store and maintain all the necessary records for the documents notarised through online notarisation.
- **Block-Chain Technology:**
  - It can be leveraged for **protection of e-evidence from being tampered** with, thereby providing tamper-proof storage of evidence.
- **Government Participation:**
  - **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.**

## What are the Other ODR Systems across the Globe?

- **United Kingdom:**
  - In the United Kingdom, **CASEMAN**, a part of the local county court management system, performs myriad tasks, like creating initial court records for registration of cases, issuing summons and monitoring them, storing electronic copies of evidence, generating cause-lists, updating records, maintaining court diary, and automatically generating other relevant documents and records.
- **Australia:**
  - In the Australian Federal Court, documents are filed electronically on the **e Lodgment system**, at any time, from anywhere. They are then sealed, or stamped, electronically.
- **Canada:**
  - Canada has introduced its online **Civil Resolution Tribunal (CRT)** which deals with small claims disputes, as well as property issues of any amount in the province of British Columbia.
- **Rwanda:**
  - Rwanda is using the **Electronic Filing System (EFS)** to move towards paperless court services.

### ***Drishti Mains Questions***

Critically examine the role of Online Dispute Resolution Mechanism in the Indian Judicial system and highlight the key challenges associated with its implementation. (150 words)