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**EXPLORING THE POTENTIAL OF ONLINE DISPUTE RESOLUTION
IN COMMERCIAL DISPUTES**

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I. ABSTRACT

Covid-19 heightened the demand for online dispute resolution as the globe was compelled to shut down its economy, offices, and other government functions, including courts. Even though the court had allowed for electronic filing and virtual hearings of cases, it was anticipated that the courts' workload would intensify due to the disruption caused by the pandemic and its various ancillary consequences, such as employment issues, challenges faced by suppliers, failure to comply with contractual obligations, and potential liquidity distress.² The number of continuing disputes has increased due to all these specific events. Hence, even if the judicial system has embraced socially divisive measures, it must employ the most cutting-edge and modern ways of operation to ensure that everyone has access to justice. In light of this, we investigate the feasibility of using ODR for commercial disputes subject to arbitration.

This research aims to analyse the benefits and drawbacks of adopting Online Dispute Resolution ("ODR") to settle commercial disputes governed by arbitration legislation. Online dispute resolution (ODR) is a method of resolving legal issues between parties when no one needs to appear in court or an arbitration center physically. This study will investigate the current business arbitration law and how alternative dispute resolution (ADR) might enhance and complement the standard arbitration procedure. The research will analyze the possible advantages of ODR, such as more accessible access to justice, quicker and more effective

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²E-Court MMP, Department Of Justice, <https://doj.gov.in/efiling/> (last visited March 21, 2023).

dispute resolution, lower costs, and additional schedule and location options. Data security, privacy, and secrecy are just some of the obstacles that will be examined as part of this study on using ODR in commercial arbitration. The research will also investigate how language and culture play a role in the success or failure of ODR in international business conflicts.

II. CHAPTER 1: INTRODUCTION: *BRIDGING THE GAP BETWEEN ARBITRATION AND TECHNOLOGY*

Disputes of a commercial nature are inevitable. Some disagreements are amenable to being talked out, while others must be settled in court.³ As a quicker and more adaptable alternative to litigation, arbitration has grown in popularity to settle business conflicts. Nonetheless, substantial expenses are still associated with the arbitration process, making it inaccessible to certain smaller enterprises and people.

Online dispute resolution (ODR) has developed as a good replacement for more conventional dispute settlement processes since it facilitates the quick and inexpensive resolution of legal disagreements. With ODR, parties may resolve their differences over a dispute without having to set foot in a courtroom or arbitration center. Successful applications of ODR include the e-commerce, consumer, and labor spheres.⁴ However, ODR's potential in commercial arbitration is still largely untapped. Because of the law's intricate nature and the high financial interest involved, any transition to ODR in commercial arbitration must be carefully studied. To determine how ODR might complement and enhance the conventional arbitration procedure, the current legislative framework for commercial arbitration must be scrutinized.

In addition, specific difficulties are associated with using ODR in commercial arbitration, such as data security, privacy, and confidentiality concerns. Moreover, cultural and language variations may hinder the efficacy of ODR in cross-border economic conflicts.⁵ As a result, it is crucial to evaluate how cultural and language variations affect the utilization of ODR in international business conflicts. Online dispute resolution (ODR) is both the most promising

³Robert B. Ferguson, "*The Adjudication of Commercial Disputes and the Legal System in Modern England*", 7(2) British Journal of Law and Society 141 (1980)

⁴E. Katsh, "*Online Dispute Resolution As a Solution to Cross-Border E-Disputes*", LAW IN A DIGITAL WORLD <https://www.oecd.org/digital/consumer/1878940.pdf>. (last visited March 21, 2023).

⁵Ms. Apoorva Dixit, "*Online Dispute Resolution: An Indian Perspective*", 2(1) INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 2581(2018)

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and the most daunting development in the field's history. According to the Rule of Colin, "Our field is being changed by the use of technology," with the remaining mystery being how long this transformation will take to play out in its entirety (one, two, five, or ten years). Meanwhile, we need to collaborate on the design of systems that use the lessons of ADR's past while also meeting the demands of today's interconnected, globalized, and online society. With an effective ODR system in place, we can better serve our clients, respond to their needs more quickly, keep our business afloat, and fulfill the promise of our industry.

This research aims to examine the advantages and disadvantages of adopting ODR in business conflicts governed by arbitration legislation. The study will look at the current business arbitration law and how alternative dispute resolution (ADR) might enhance and complement the standard arbitration procedure. The initiative will also examine how language and culture affect the effectiveness of ODR in international business conflicts.

III. LITERATURE REVIEW

1. *"Cyber justice and International Development: Reducing the Gap Between Promises and Accomplishments," by Renaud Beauchard⁶*

This book investigates how the use of technology and online dispute resolution (ODR) can ameliorate access to justice in underdeveloped nations. The author observes that traditional means of conflict settlement may need to be improved or inaccessible in many poor countries, and that technology may give a mechanism to resolve disputes that is more efficient and cost-effective. This book examines many case studies of alternative dispute resolution (ADR) initiatives in developing nations, including programs in Brazil, India, and Kenya. The author makes the observation that these projects have proved the ability of ODR to improve access to justice, particularly for populations who are disenfranchised. The book also covers the difficulties connected with adopting ODR in poor nations, such as concerns relating to infrastructure, access to technology, and disparities in cultural norms. The author explains that solutions to these problems may be found via thoughtful planning, active participation from stakeholders, and increased capability.

⁶Renaud Beauchard, "Cyber Justice and International Development: Reducing the Gap between Promises and Accomplishments" (2016)

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The author makes it clear that a one-size-fits-all strategy is likely to fail, and the book strongly emphasizes the significance of adapting ODR programs to each country's unique requirements and conditions. The author also emphasizes the importance of integrating local stakeholders in the design and implementation of ODR activities to guarantee that these initiatives are suitable and effective. The work of Renaud Beauchard offers a critical study of the chasm between the promises of cyber justice and international development and the actual achievements of both fields. According to Beauchard, even though technology has the potential to democratize access to justice and dispute resolution, implementation challenges, such as a lack of infrastructure, technical expertise, and political will, often impede progress. This is even though technology has this potential. The emphasis placed by the author on narrowing this gap is timely and essential, particularly for less developed nations in which ODR has the potential to be a game-changer in terms of expanding access to justice. In general, the argument made in this book is that ODR has the potential to increase access to justice in developing nations, but that for this to happen, its implementation needs to be adequately thought out and adapted to the specific requirements of the local environment. The author stresses the significance of stakeholder involvement and capacity building and makes the observation that alternative dispute resolution (ADR) may offer a method that is both more productive and less expensive to resolve conflicts in developing nations.

2. ***“Designing the Future of Dispute Resolution: The ODR Policy Plan for India,” by “The NITI Aayog Expert Committee on ODR,” Justice (Retd.) AK Sikri Chairman of the Committee⁷***

Online dispute resolution (ODR) has the potential to be a more productive and time-saving means of conflict settlement, particularly in the circumstances with a large volume and low value, according to the conclusions of the article. The research paper provides a workable plan for expanding the usage of ODR in India that is broken down into three distinct stages. The first thing that must be done is to raise everyone's knowledge and capacity. This includes the consumers, judges, lawyers, and anyone else with a stake in the process. A robust ODR infrastructure will be constructed as part of the project's second development phase. This will involve training programs for ODR professionals and a national platform for online dispute

⁷NITI Aayog, “Designing the Future Dispute Resolution in India”, 2020 <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>. (Last visited March 21, 2023).

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resolution (ODR). In the third stage, more traditional methods of conflict resolution are combined with alternative dispute resolution (ADR) services to form a more comprehensive approach to resolving conflicts.

The report on the issue of the design future design of dispute resolution in India that NITI Aayog produced gives valuable information on the potential of ODR to remodel the Indian court system. The findings of this study call attention to the inadequacies of the traditional legal system and highlight the importance of an efficient and widely accessible alternative dispute resolution (ADR) system that can give a speedy resolution to conflicts. The report also indicates essential obstacles that must be addressed for effective implementation, such as establishing confidence and transparency, generating capacity, and fighting the digital divide.

3. “An Analytical Study on Legal Validity of Online Dispute Resolution (ODR) System in India and Indonesia” by Rahul J. Nikam and N. Bangkim Singh⁸

Dr. Rahul J. Nikam and Dr. N. Bangkim Singh researched to determine whether the Online Dispute Resolution (ODR) system in India has any legal standing. To trace and compare the ODR systems in India and Indonesia, this work makes use of both primary and secondary data, adopting a mixed methodology in the process. According to the study findings, ODR delivery is legitimate and lawfully enforceable within the existing legal framework of both countries. The current laws of both nations have significant room to accommodate and improve the whole process and delivery of the ODR mechanism utilizing changes and different guidelines, and this room is available to them. The online dispute resolution (ODR) platform is a public-facing digital area in which disputing parties can meet to attempt to settle their case or dispute⁵. To ensure that the conflict resolution system provides effective and efficient justice to the parties involved, the benefits of technology should be included. The development of technology has resulted in several unavoidable outcomes that have increased productivity and made life simpler for people.

The ODR method has been adopted and utilized by the systems that dispense justice worldwide. Yet, the question of whether the currently applicable regulations are sufficient to enable the online system to function as an efficient tool for resolving conflicts between the parties still needs to be answered. In conclusion, the legal legitimacy of the ODR system in

⁸Rahul J. Nikam and N Bangkim Singh. “An Analytical Study on Legal Validity of Online Dispute Resolution (ODR) System in India and Indonesia”¹² *INDON. L. REV.* 41 (2022).

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India has been investigated, and it was discovered to be lawful and enforceable within the existing legal framework of the nation. The current regulations offer a great deal of leeway to adjust and improve the overall operation of the ODR mechanism, as well as how it is delivered, through revisions and independent guidelines. The Online Dispute Resolution (ODR) system is a digital forum open to the public where parties can meet to settle their disagreement or legal matter. The benefits of technology should be included in the framework for the resolution of disputes so that justice may be delivered effectively and efficiently.

4. State of Maharashtra v. Praful Desai⁹

In this particular instance, the question was whether video conferencing may be used to capture evidence during a criminal trial. The court expressed the opinion that the purpose of the provision in Section 273 of the Indian Criminal Procedure Code might also be achieved by recording evidence through video conferencing. The court determined that the accused and his pleader were able to view the witness with the same degree of clarity as if the witness were physically seated in front of them. That, in point of fact, the Accused would be in a position to view the witness better than he would have been able to if he had been sitting in the dock in a packed courtroom because they would be in a position to watch the demeanor of the witness.

Even more so, the capability to play back the recording would permit more excellent behavior monitoring. They would listen to the witness's deposition many times before deciding. The accused would be able to promptly teach his pleader, and as a result, the cross-examination of the witness would be equally successful, if not more so.

Throughout the process of cross-examining the witness, having the ability to play back what was said would be an additional benefit. In precisely the same way that they would if the witness were testifying in court, the papers, other materials, or statements would be presented to the witness for examination. When the evidence was to be captured through video conferencing, all of these goals would be accomplished. So, the accused would suffer no disadvantage, regardless of such disadvantage.

⁹*State of Maharashtra V. Praful Desai* (2003) 4 SCC 601

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The court, in this matter, made the further observation that due to the rapid growth of science and technology, it was now conceivable to install video conferencing equipment within the courtroom itself. In that scenario, the Magistrate would be the one to record the evidence in open court, either directly or under his dictation. If it were done, then all of the requirements outlined in Section 273 of the Criminal Procedure Act would be satisfied in their entirety.

And that in addition to this strategy, there was a disadvantage to it. Because the witness would be present in court, there would be complications if they committed contempt of court or perjured him or herself, and it was immediately noticed that they had perjured him or herself. This would be the case, especially if the witness lied about something in court. Therefore, as a matter of common sense, evidence by video-conferencing in open court would be only if the witness was in a country with an extradition treaty with India and under whose laws contempt of court and perjury were also punishable offenses. This would be the only circumstance in which such evidence would be admissible.

Yet, even if the equipment could not be put up in court, there were still provisions in the Indian Criminal Process Act for examining witnesses on commissions. Examination of witnesses during commission hearings was the focus of Sections 284 through 289. The application of Sections 284 and 285 was appropriate in this regard.

5. **Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.**¹⁰

The judgment handed down by the Supreme Court of India stated that the online arbitration agreement is the single most significant document associated with the arbitration. Because the parties only interact online, it is critical that the contract clearly explain all facets of the dispute resolution procedure. This is because the parties can't meet in person. According to the provisions of Section 7 of the Arbitration and Conciliation Act of 1996, there must be a consensus, and the agreement must comply with this consensus.

This case addresses the establishment of contractual relationships in India. A petition for establishing an arbitral tribunal was submitted to the Supreme Court of India by Trimex International FZE Limited per Section 11(6) of the Indian Arbitration and Conciliation Act of 1996. In relation to a deal, Trimex and Vedanta Aluminium had an email conversation with

¹⁰*Trimex International FZE Ltd. V. Vedanta Aluminium Ltd*(2010) 3 SCC 1

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one another. After receipt of an email from Trimex requesting an extension of the offer's validity by one extra hour, Vedanta Aluminium revised the proposal and resent it to Trimex. Unfortunately, the parties could not reach an agreement over the stipulations of the contract, and as a result, the case was brought before a court. The court concluded that the email conversation that took place between the parties did not establish a legally enforceable agreement.

6. *Grid Corporation of Orissa Ltd. v. AES Corporation*¹¹

This is a landmark case decided by India's Supreme Court in 2002. The case involved a power purchase agreement dispute between Grid Corporation of Orissa Ltd. (GRIDCO) and AES Corporation, a US-based power company. The dispute arose due to both parties' failure to adhere to the terms of the agreement, resulting in significant financial losses.

One of the critical points in this case concerning online dispute resolution is that the Supreme Court recognized the possible uses of technology to facilitate dispute resolution. The Court pointed out that using technology, particularly in cross-border transactions and commercial disputes, could provide a quick, easy, and inexpensive way for parties to resolve their disputes.

IV. STATEMENT OF THE PROBLEM

Traditional dispute resolution has been replaced with online dispute resolution (ODR) since it is more efficient and saves money. ODR has been increasingly popular in India in recent years, although its usefulness in the context of the digital divide is still an issue of concern. But when things are virtual, there is always an issue about privacy, confidentiality, and data security. The significant variations in internet availability and infrastructure across the globe are also a concern.

Now this paper will examine the “*effectiveness of online dispute resolution in commercial disputes*” and provides insights into the opportunities, and challenges in online dispute resolution and provides suggestion to overcome those challenges.

V. HYPOTHESIS

¹¹*Grid Corporation of Orissa Ltd. V. AES Corporation* 2002 7 SCC 736

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The hypothesis of the paper, based on the preliminary readings, was that, ODR has the potential to significantly reduce the time and cost associated with resolving commercial disputes under arbitration law, making it a viable alternative to traditional dispute resolution methods. The effectiveness of online dispute resolution in commercial disputes under arbitration law depends on the level of technology literacy and access to technology among the disputing parties and the quality and usability of the online dispute resolution platform. When tested, the hypothesis is proved to be true to an extent. However, the suggestions offered in this paper show a possibility of effective execution of Online Dispute Resolution in commercial disputes.

VI. SCOPE OF THE STUDY

The research was limited to online dispute resolution in commercial disputes. The authors attempted to provide an analysis of Future Prospects and Potential Challenges in Commercial Dispute Resolution Online.

VII. RESEARCH OBJECTIVES

1. To understand the legal and situational basis for online dispute resolution as an alternate-to-alternate dispute resolution.
2. To evaluate the potential challenges which shall arise if online dispute resolution is implemented robustly
3. To examine the overall viability or feasibility of online dispute resolution being implemented in India

VIII. RESEARCH METHODOLOGY

The research work for this paper will be completed following the '*Doctrinal Research Method.*' This research will use Primary sources including statutes, Official government reports, and secondary sources including case laws, journals, books, websites, and other relevant sources. This method will provide a comprehensive understanding of the ODR in commercial disputes and enables the researchers to conduct an in-depth analysis of the findings.

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IX. CHAPTERIZATION

Chapter 1: *Introduction: Bridging the Gap between Arbitration and Technology*

Chapter 2: *The Power of Technology: The Rise of Online Dispute Resolution in India*

Chapter 3: *The Future of Dispute Resolution: Exploring the Potential of Online Dispute Resolution in commercial disputes*

Chapter 4: *Challenges in the Digital Era: Navigating the Complexities of Online Dispute Resolution in commercial disputes*

Chapter 5: *Beyond Traditional Boundaries: Assessing the Viability of Virtual Dispute Resolution in commercial disputes*

Chapter 6: *Conclusion and Suggestions*

X. BODY OF THE WRITE-UP:

CHAPTER 2: POWER OF TECHNOLOGY: THE RISE OF ONLINE DISPUTE RESOLUTION IN INDIA

It is imperative first to lay down the fundamental premise on which Alternate Dispute Resolution emerged, that is, to act as an ingenious solution to lessen the burden of the courts. Before beginning the discussion on Online Dispute Resolution, it is necessary first to lay down the fundamental premise on which Alternate Dispute Resolution emerged. Not only does the digitalization of alternative dispute resolution sound appealing for the originally intended aims of alternative dispute resolution, but it also lays the foundations for what we imagine will be the future of alternative dispute resolution in India: online dispute resolution. Keeping this spirit in mind, the digitalization of alternative dispute resolution sounds appealing to the original intended aims of alternative dispute resolution.

In layperson's terms, online dispute resolution (ODR) is an expanded arrangement of alternative dispute resolution (ADR) in which the mode of operation to resolve disagreements takes place over the Internet. In other words, ODR is a simplified version of ADR. Online Dispute Resolution is defined as "a system for resolving disputes that are facilitated via

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electronic communications and other information and communication technologies” by the Online Dispute Resolution Working Group of UNCITRAL.¹²

In addition, there are several other instances in which the Internet Dispute Resolution process has been mentioned in the context of India. It was determined during a meeting on Online Dispute Resolution that “Online Dispute Resolution is the resolution of disputes, minimal [as well as] medium-value cases, using digital technology and techniques of Alternate Dispute Resolution (ADR), such as negotiation, mediation, and arbitration.” NITI Aayog hosted this meeting in collaboration with Omidyar Network India. In addition, it was claimed that even though the judicial system is working on digitising the courts, there is an immediate need for containment and resolution processes that are more effective, scalable, and collaborative. At the conference, participants concluded that online dispute resolution is a mechanism that has the potential to successfully assist in resolving conflicts in a manner that is both efficient and affordable.¹³

While e-filings and virtual hearings for litigation are conforming measures due to the epidemic, technology has always encouraged different Alternative Dispute Resolution processes, including online dispute settlement. This has been the case since the invention of the internet. Even though there is not yet a separate legislative framework that regulates online dispute resolution, the judicial system has expressed support for a combined application of the existing laws that can accommodate the digitalized components of “e-Alternate Dispute Resolution.”

The Supreme Court of India has ruled that an online arbitration is legal if it complies with Sections 4 and 5 of the Information Technology Act, 2008,¹⁴ as well as Section 65B of the Indian Evidence Act, 1872.¹⁵ This ruling was made under the stipulation that the arbitration must be conducted per these provisions.

These rules must be interpreted in conjunction with the provisions of the Arbitration and Conciliation Act 1996,¹⁶ with a variety of alternatives to in-person dispute resolution being

¹²UNCITRAL “*Technical Notes on Dispute Resolution*”, UNITED NATIONS (United Nations, 2017), https://uncitral.un.org/sites/uncitral.un.org/files/mediadocuments/uncitral/en/v1700382_english_technical_notes_onodr.pdf. (last visited March 21, 2023).

¹³*Supra* note 7.

¹⁴The Information Technology Act, 2008 § 4,5.

¹⁵The Indian Evidence Act 1872, § 65B.

¹⁶Arbitration & Conciliation Act 1996.

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available, such as video conferencing and digital signatures. Hence, Online Dispute Resolution has been able to stage more beneficial aspects in comparison to traditional offline Alternative Dispute Resolution.

CHAPTER 3: THE FUTURE OF DISPUTE RESOLUTION: EXPLORING THE POTENTIAL OF ONLINE DISPUTE RESOLUTION IN COMMERCIAL DISPUTES

Although ODR provides a sophisticated setup and offers many benefits to the parties, the determining factor of whether opting for ODR would be effective for dispute resolution would be the various stakes involved in the dispute. For example, when it comes to matrimonial or family conflicts, the degree of sensitivity that is applied may call for a robust involvement of the arbitrators or mediators to compel cooperation between the parties, which may be impeded by the present digital barriers.

Similarly, an Online Dispute Resolution may not be the best option for resolving a complicated commercial dispute involving multiple claims brought forward by a large number of parties and substantial evidence that calls for an expert level of case management. Despite this scepticism, the full potential of online dispute resolution is seen in its numerous advantages., which can be comprehended by looking at the following arguments in its favor:

1. Resource and Cost Efficiency:

Online Dispute Resolution (ODR) is a burgeoning discipline that offers opportunities for efficient and cost-effective resolution of legal disputes. ODR comprises a wide range of technologies beingutilized to resolve an increasing number of business and consumer conflicts worldwide. It has grown into a separate and highly successful dispute resolution system. The courts have implemented ODR for low-dollar personal injury claims, landlord-tenant disputes, small claims, and minor traffic and code violations.¹⁷

ODR enables courts with opportunities to augment services while simultaneously reducing costs and enhancing customer satisfaction. ODR can be more efficient in time and money than traditional in-person dispute resolution. ODR is more popular than ever due to advancements in video conferencing technology and the increased demand for remote options caused by the ongoing pandemic. ODR options have been available since the 1990s, but their

¹⁷ Arbitration and Conciliation Act, § 24, 29B(3)(a).

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use has grown substantially. ODR has transitioned from processes that attempted to replicate online equivalents to ones that reimagine the design of procedures to suit party needs better and address the justice system's enduring issues. In conclusion, ODR represents an optimistic future for dispute resolution, as it provides a cost-effective and efficient method of resolving legal disputes. As a result of the ongoing pandemic, ODR is more popular than ever, and its use has expanded substantially over the years. The courts have implemented ODR for low-dollar personal injury claims, landlord-tenant disputes, small claims, and minor traffic and code violations. ODR allows courts to grow services while simultaneously cutting expenses and satisfying all stakeholders.

The Online Dispute Resolution (ODR) mechanism employs technology to settle online disputes. ODR incorporates online mediation, online arbitration, and even blockchain-based arbitration.¹⁸ ODR is becoming increasingly prominent and is regarded as the future of alternative dispute resolution. ODR can potentially reduce infrastructure costs by removing the need for physical courtrooms and reducing the time and expense of travel for disputing parties. ODR has evolved to incorporate smart tribunals and intelligent contracts, which are under consideration for resolving Belt and Road Initiative disputes.

ODR+ includes smart tribunals and intelligent contracts, which can result in a more timely and efficient resolution of disputes. ODR+ has the potential to address gaps in the current framework for dispute resolution¹. Commercial disagreements in industries such as energy, mining, infrastructure, and urban development necessitate lengthy timelines and the coordination of many organizations, causing friction. Techniques for conflict management and dispute resolution have advanced rapidly in these sectors. Alternative Dispute Resolution (ADR) is regarded as a way to reduce the trillions of dollars spent resolving commercial disputes.

ODR is a form of ADR that can reduce the cost of resolving disputes and is viewed as ADR's future. In conclusion, online dispute resolution (ODR) is a mechanism that utilizes technology to settle disputes online and is considered as the future of alternative dispute resolution. ODR can potentially reduce infrastructure costs by removing the need for physical courtrooms and reducing the time and expense of travel for disputing parties. ODR+ consists

¹⁸Kartikeya Raja, "Online Disputes Resolution(ODR): The Future of Justice in India"³ INT'L J.L. MGMT. & HUMAN, 2171 (2020).

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of smart tribunals and intelligent contracts, which can result in a more timely and effective dispute resolution. ODR is being regarded as a means of reducing the trillions of dollars spent resolving commercial disputes.

2. *Greater Party Autonomy*

Online Dispute Resolution (ODR) is a rapidly expanding discipline that enables parties to resolve disputes online. Parties' freedom to choose the applicable law to regulate their dispute is crucial to online dispute resolution (ODR). Working Group III has been tasked by the United Nations Commission on International Trade Law (UNCITRAL) with drafting instruments to provide the framework for a global ODR system. Beginning in December 2010, negotiations had not borne any fruit, and all that was achieved out of them was an incomplete set of procedural regulations for ODR. It is anticipated that three additional documents will be drafted, addressing substantive principles to be applied in ODR, guidelines and minimum requirements for ODR providers and neutrals, and a cross-border enforcement mechanism for ODR decisions. Party autonomy is also essential in international commercial arbitration, where parties can choose their arbitrator. In contrast, parties have less influence over the judge or jury who will hear their case in court.¹⁹

International commercial arbitration is expanding in popularity because it provides a reliable and user-friendly alternative to court systems that may be unreliable or present jurisdictional obstacles. In conclusion, party autonomy is indispensable to ODR and international commercial arbitration. It gives parties more control over resolving their disputes and can result in more efficient and effective outcomes. As the field of online dispute resolution (ODR) continues to expand, party autonomy will likely play a more significant role in determining the future of online dispute resolution.

Another significant benefit of ODR in commercial disputes under arbitration law is the greater flexibility and control it offers to parties and the principle of “party autonomy.”

ODR platforms allow parties to customize the dispute resolution process according to their specific needs, such as selecting the arbitrator, setting the hearing schedule, and choosing the

¹⁹Akash Singh & NILI Khandelwal, “Party Autonomy: A Grundnorm to Arbitration” MONDAQ (Nov 18, 2021) <https://www.mondaq.com/india/trials-amp-appeals-amp-compensation/1132244/party-autonomy--a-grundnorm-to-arbitration> (last visited April 21, 2023).

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language of the proceedings. This level of flexibility and control can result in a more tailored and efficient dispute resolution process.²⁰

3. *Makes Asynchronous Communication Possible*

A further advantage of ODR in commercial disputes subject to arbitration law is that it makes it possible for parties to communicate asynchronously with one another. Due to the nature of asynchronous communication, the people involved do not need to be available simultaneously to interact and negotiate with one another. This makes the process both more efficient and more accessible.

ODR platforms make it possible for the parties to engage with one another and negotiate using various online methods, including email, chat, video conferencing, and several others. Depending on the availability and interests of the persons involved, these communication mechanisms make it possible for them to converse in real time or asynchronously.²¹

Asynchronous communication is constructive in situations where many time zones separate the parties involved or have a lot on their plates. There is no requirement for parties to be physically present to communicate and negotiate; parties can do so at their own leisure, reducing the need for travel and accommodations.

ODR systems frequently provide translation services, which can make it easier for parties who speak various languages to communicate with one another. This can help overcome language hurdles, which can slow down the resolution process. Therefore, the capability to engage in asynchronous communication through ODR platforms can lead to a more efficient and accessible dispute resolution process. This is especially beneficial for parties located in different time zones or who have busy schedules, as asynchronous communication allows parties to access the platform at their convenience. A reduction in the necessity for parties to be physically present can also result from using asynchronous communication, saving both parties time and money.

²⁰*Id.*

²¹*Id.*

CHAPTER 4: CHALLENGES IN THE DIGITAL ERA: NAVIGATING THE COMPLEXITIES OF ONLINE DISPUTE RESOLUTION IN COMMERCIAL DISPUTES

Although there are many advantages to using online dispute resolution, it is necessary to recognize the difficulties that come along with it in practice. The technological innovation that has prevailed will transform the approach taken towards conflict resolution; however, the essential question remains whether or not the existing legal system is prepared for such a transformation. The following are some crucial arguments, all of which, in our opinion, calls into question the viability of online dispute resolution and work to undermine its effectiveness:

1. Difficulty for all the Stakeholders to Adapt to Technological Interventions

While ODR in commercial disputes under arbitration law has many benefits, one of the challenges faced is the difficulty for all stakeholders to adapt to technological interventions. ODR requires parties to have access to technology and to be familiar with its use, which can be a challenge for some stakeholders, particularly those who are not tech-savvy or need access to reliable internet.²²

To use ODR systems, all parties need access to a dependable internet connection and a computer or mobile device. To successfully connect and negotiate using the platform, the parties involved need to be comfortable using various online technologies, including chat, video conferencing, and document sharing.

Using online dispute resolution platforms can be intimidating for parties who are not accustomed to using technology and may need additional training or help. Further, the ability of some stakeholders to participate in the dispute resolution process may be improved by the fact that they may need access to a reliable internet connection or the appropriate technology. This is especially likely to be the case for stakeholders located in more remote or rural areas. As a result, the fact that it might be difficult for all parties involved to adjust to new technology interventions can be a barrier to implementing and adopting ODR in business disputes governed by arbitration legislation. This problem may be solved by providing training and assistance for the many parties involved and by developing online dispute resolution tools that are both safe and easy to use.

²²*Bright Simmons V. Sproxil, Inc* 2018 SCC OnLine Del 9038

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2. *Privacy and Cyber Security Concerns*

Using ODR systems might give rise to issues regarding the privacy and safety of one's data. The parties involved should have faith that the platform is trustworthy and that their private and sensitive information will be preserved. Platforms for online dispute resolution (ODR) frequently entail the transfer of sensitive and secret information, such as personal data, financial information, and confidential company information; this information must be kept safe and confidential at all times.

Protecting the confidentiality and safety of such sensitive data presents one of the problems faced by online dispute resolution (ODR) systems. Threats to cybersecurity, such as hacking and data breaches, can put the data's confidentiality and integrity at risk, which can have severe repercussions for all parties concerned.²³

In addition, there might be questions over the ownership and management of the data stored on the platform. There is a possibility that parties will be concerned about who has access to their data, how that data is being used, and who has control over it. A further problem is ensuring that the technology utilized in ODR systems is secure and up to date. ODR systems need to have frequent updates and maintenance performed on them to guarantee that they are safe and free of vulnerabilities that hackers might exploit.

Thus, issues relating to privacy and cybersecurity might be a substantial barrier to the implementation and adoption of ODR in business disputes governed by arbitration legislation. To solve these difficulties, online dispute resolution (ODR) systems need to be developed with a concentration on privacy and cybersecurity at the forefront, and stakeholders need to be educated on the significance of protecting the sensitive information they possess. In addition, each party should have authority over its own data, and the platform should be updated and maintained regularly to guarantee that its safety is not compromised.

3. *Hostile towards On-the-Spot Communication*

Some stakeholders may view on-the-spot communication as confrontational or intimidating, particularly in cases where there is a power imbalance between the parties. This can lead to a

²³Daniel Rainey, "Third Party Ethics in the Age of Fourth Party", 1 International Journal of Online Dispute Resolution 37 (2014).

communication breakdown and make it difficult for parties to negotiate a resolution effectively.²⁴

Furthermore, in some cases, parties may prefer a third-party mediator or arbitrator present during the negotiation process. This can be particularly helpful in cases where there is a power imbalance between the parties or complex legal or technical issues.

Therefore, stakeholders' hostility towards on-the-spot communication can challenge ODR mechanisms in commercial disputes under the arbitration law. However, ODR platforms offer various forms of communication, such as video conferencing and chat tools, allowing parties to communicate effectively and negotiate a resolution.²⁵ Additionally, parties can have the option to have a third-party mediator or arbitrator present during the negotiation process to help facilitate the conversation and ensure a fair resolution.

CHAPTER 5: BEYOND TRADITIONAL BOUNDARIES: ASSESSING THE VIABILITY OF VIRTUAL DISPUTE RESOLUTION IN COMMERCIAL DISPUTES

ODR does not compete with ADR but rather supplements it, and it is unavoidable that a more significant role for technology in conflict resolution will be played in the future. Because of this, we should always be asking what effect the advancement of technology has on access to justice. Not only does technology redefine how we communicate with one another, but it is also redefining how we disagree with one another and how we settle our disagreements. It is further generating new types of differences, many of which are growing out of our unique capabilities.

The notion that ODR can only be utilized in an online setting is widely held.²⁶ This is an incorrect assumption because ODR is open to more than just a single technology or application. For example, it can support text-based, asynchronous conversations that help parties be more reflective in their communications while enabling them to access information relevant to their dispute in real-time. Online dispute resolution can also provide video links between geographically separated parties. It can support real-time joint single-text

²⁴Virginia La Torre Jeker, Ms Hamna Anwar, “*E-Transaction Law and Online Dispute Resolution: A Necessity in the Middle East*” 20(1) Arab Law Quarterly, (2006).

²⁵*Id.*

²⁶Matthew Gearing & Joe Liu, “*International Organisation & Promotion of Effective Dispute Resolution*”(2019).

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negotiation along with collaborative editing, as well as enable participation from individuals located anywhere in the world. The ODR can provide “wizards,” which are software tools that help parties explore their options or provide early resolution for issues, and this can happen sometimes, even before the complainant has informed the respondent about their concerns.²⁷ It can quickly address simple misunderstandings before they escalate or offer a library of creative possibilities to help parties craft their ideal solution.

India has a limited amount of support that it provides for the ODR process in some respects. Regarding issues involving e-commerce, online purchases, and disputes over online shopping, India is making progress toward accepting the ODR as a potential means of conflict resolution. This is true for all three of these areas. Since the beginning of the 21st century, the applicability and scope of the internet have expanded, along with the rate at which discoveries are being made and how quickly they are being made. ODR has a significant and long-lasting impact on resolving dispute cases, making it a viable option for those seeking a quick and effective method.

To broaden the range of situations in which ODR can be utilized, a number of new subject areas, such as labor law and telecommunications law, are currently being incorporated into the process. The ODR process promises to make alternative dispute resolution (ADR) more efficient, successful, and cost-effective. When conducting a comprehensive review of the legal foundations of the cases, it is obligatory to refer to the legislation associated with various alternative dispute resolution strategies. On the other hand, if any form of non-binding alternative dispute resolution (ODR) is successful, it results in a successful binding of a settlement contract between the parties that would be enforceable in a court of law.

Therefore, alternative dispute resolution will very quickly turn into the mode of arbitration utilized by the world and a requirement for every party involved in a dispute.²⁸ In relation to India, developments in technology and patterns of arbitration have experienced explosive growth over the past few years.

CHAPTER 6: CONCLUSION & SUGGESTIONS

²⁷Morenike Obi-Farinde, “*Online Dispute Resolution (ODR): A Viable Solution to Speed and Efficiency Issues in ADR*”, *MEDIATE* (August 7, 2020) [https://mediate.com/online-dispute-resolution-odr-a-viable-solution-to-speed-and-efficiency-issues-in-adr/\(last visited April 21, 2023\)](https://mediate.com/online-dispute-resolution-odr-a-viable-solution-to-speed-and-efficiency-issues-in-adr/(last%20visited%20April%2021%2C%202023)).

²⁸“*Online Dispute Resolution*”, 45 U.N. Commission on International Trade L. Y.B. 171 (2014).

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The pandemic-induced lockdown, without a doubt, resulted in significant changes to how disputes are resolved by facilitating the use of technology. However, in a developing country like India, where less than half of the population uses the internet, implementing Online Dispute Resolution as a future method of providing justice will not be a walk in the park. Gordon Moore, one of the co-founders of Intel, predicted that the processing power of silicon chips, a primary component in computers, would double every eighteen months. On the other hand, the capacity of humans to adapt to such advancements would either remain the same or become slower. Because of this, it is indispensable for the executive branch, the judiciary, and the legislature to take the initiative to deal with the current technological environment and begin gaining the public's trust in the current method of conflict resolution.

Online Dispute Resolution is undeniably the path ahead in today's technologically and artificially intelligently advanced world.²⁹ Not only does it provide the most effective solution to lower the burden on the courts, but it also satisfies the social norms of social distancing. The executive branch and the administration will most likely be behind the private sector in adopting new technologies in the early stages of their development. Therefore, to make Online Dispute Resolution the future of successfully settling disputes, the institutions currently in play must develop a timely strategy and recognize the opportunities offered by online dispute resolution. This is because Online Dispute Resolution is the future of successfully resolving disputes in commercial disputes.

Some of the suggestions are listed below to resolve disputes in commercial disputes through ODR successfully:

- It is essential to establish a connection with individuals through an online community at the beginning of the ODR process to make the process more appealing to general individuals. Because it educates them on the merits and uses of the ODR process, it alters the conventional method of dispute resolution they use in commercial disputes.
- By incorporating information and communication technology, the online community will be able to assist the ODR, change its direction, and overcome its current limitations. In circumstances where the payment form involves a default or damages in a dispute, it is possible to use it.

²⁹Janet K Martinez, *Designing Online Dispute Resolution*, 2020 J. DISPUTE. RESOLUTION. 135 (2020).

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- It is essential to educate the general public about all of the benefits ODR offers. In general, the ODR is willing, in a manner that is efficient about costs, to settle actual conflicts in commercial disputes. This helps save more time for a better procedure for resolving disputes than the traditional system, which is now equipped with technology that allows for resolutions to be reached online.
- Through the use of ODR, the tools used to define options and interests can now function more quickly and conveniently in commercial disputes. This approach is not limited to resolving only online disagreements; instead, it provides mediators and arbitrators with a helpful automated program that they can use in their work.

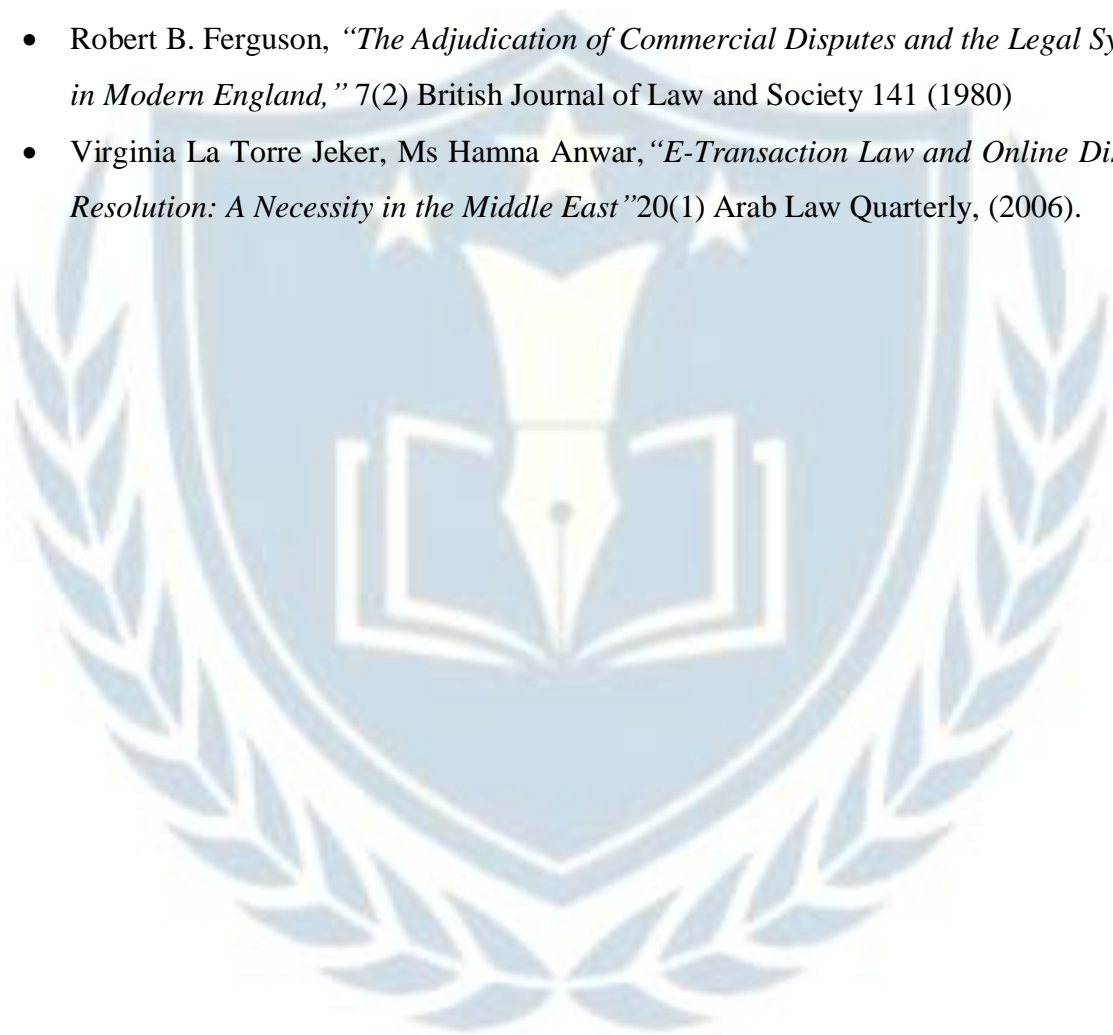
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