



NITI Aayog

DESIGNING THE FUTURE OF DISPUTE RESOLUTION

THE ODR POLICY PLAN FOR INDIA





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The NITI Aayog Expert
Committee on ODR

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FOREWORD

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Chairman of the Committee for the Committee to Formulate
an Action Plan for Online Dispute Resolution, NITI Aayog

The COVID-19 pandemic has been extremely unfortunate, and has necessitated change. An inevitable change that justice delivery systems all over the world have embraced is integration of technology. Due to this, justice is now no longer associated with a place i.e. courts, but rather as a service, that can be provided at parties' convenience. In India, the judiciary has led the way in adopting technology solutions to keep the system accessible even while safety measures altered routines. The judiciary's leadership and trailblazing effort in these difficult times has legitimized the use of technology to enable dispute resolution and thereby access to justice.

A culmination of factors—increased appetite for change, the need to decongest our courts, the demands for affordable and effective dispute resolution mechanisms, and lastly, the availability of technology, have prepared India for a potential game-changing transformation in the justice delivery framework— Online Dispute Resolution (ODR).

ODR is often simplistically understood to mean e-ADR or ADR that is enabled through technology. However, its potential benefits extend far beyond its genesis parent system, namely ADR. ODR can help in not just dispute resolution but also in dispute containment, dispute avoidance and promotion of general legal health of the country. ODR has already been integrated in several jurisdictions such as US, Canada, Brazil, and the UAE wherein the government, the judiciary and private institutions are working together to exploit the benefits of ODR towards enabling greater access to justice.

The reason for ODR's success can be attributed to its cost effective and convenient nature, which also broadens the possibilities of remote resolution. It relies on asynchronous communication, eliminates the requirement for the physical presence of parties and removes unconscious bias. Given its vast potential and the constraints placed on our court system owing to the COVID-19 crisis, the time to mainstream it in India, is now.

To usher in this transformational change, NITI Aayog constituted this high-level Committee under my Chairpersonship. This report of the Committee comprehensively examines the current status of ODR globally and in India,

identifies the current and potential challenges and maps the way forward to broad base ODR in the Indian context.

ODR can help reduce the burden on the court and efficiently resolve these categories of cases. It 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.

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.

This Report is the outcome of a collaborative and inclusive exercise, and it should serve as the starting point for a long-term plan of making India the global leader in implementing ODR on a large scale. With consensus visible, I have every reason to be confident that this will indeed be the case.

This Report introduces the concept of ODR, briefly traces its evolution and also discusses its benefits. It provides a detailed discussion with a repository of international use cases for ODR that provide a solid foundation for precedents and leading practices. It discusses the present status of ODR in India, and the contributions of the entire stakeholder ecosystem in advancing the various facets of ODR.

The Report then discusses structural, behavioural and operational challenges that ODR in India currently faces. This discussion on challenges is organically followed by the critical section on recommendations where augmenting accessibility, building capacity, creating trust, designing regulatory frameworks, and finally the phased implementation are discussed for ODR in detail.

I would like to thank the members of this Committee, Shri AK Sharma (Secretary, Ministry of Micro, Small & Medium Enterprises until January 2021), Shri B. B. Swain (Secretary, Ministry of Micro, Small & Medium Enterprises, January 2021 onwards), Shri Anoop K. Mendiratta (Secretary, Department of Legal Affairs), Shri Barun Mitra (Secretary, Department of Justice), Shri Rajesh Verma (Secretary, Ministry of Corporate Affairs), Ms. Leena Nandan (Secretary, Department of Consumer Affairs), and Late Dr. Guruprasad Mohapatra (Secretary, Department for Promotion of Industry and Internal Trade). They have each been extremely supportive and progressive in their approach to ODR and its potential.

The integration of ODR in India has been advanced by the endorsement and learned observations of my colleagues from the judiciary. The support of Justice DY Chandrachud, Justice (Retd.) Indu Malhotra, Justice Sanjay Kishan Kaul and Justice (Retd) BN Srikrishna has helped making this Report actionable, rooted in the needs of today's legal paradigm in India while keeping at the forefront the larger value of justice for all. I take this opportunity also to thank the Ld. Attorney General Shri KK Venugopal for his support to this report and to ODR.

There has been a significant amount of support provided by the entire stakeholder ecosystem. I would like in particular to thank each and every one of them, including

the board members of the International Council for Online Dispute Resolution. I would like to mention the members individually who worked with us through the process- Ms. Chittu Nagarajan Mr. Colin Rule, Mr. Ethan Katsh, Ms. Janet Martinez, and Ms. Leah Wing.

A complete and exhaustive list of the contributors to this consultative process is attached under Annexure B of this Report. I would like in particular to acknowledge the efforts of Ms. Aditi Singh, Ms. Akshetha Ashok, Mr. Badri Narayanan, Mr. Deep Kalra, Mr. Harish Narasappa, Mr. Jyoti Sagar, Ms. Laila Ollapally, Mr. Nandan Kamath, Mr. Pablo Cortes, Mr. Pramod Rao, Mr. Pramod Varma, Mr. Rahul Matthan, Mr. Sachin Malhan, Ms. Shilpa Kumar, Ms. Tara Ollapally and Mr. Vikas Mahendra. Each contribution has been significant in its own place hence I have taken the liberty of enlisting them alphabetically.

The ODR movement from the Government's side has been led untiringly by Shri Amitabh Kant, CEO, NITI Aayog, whose unending support including towards the Report and enabling the process has been invaluable. I would like to also share my appreciation to Dr. Rajiv Kumar, Vice Chairman, NITI Aayog.

The technical expertise and organizational effort of the Convener of the Committee Shri Desh Gaurav Sekhri (OSD and Head- Access to Justice, NITI Aayog) to help create a comprehensive report amidst stringent timelines merits special mention.

I deeply appreciate the efforts of NITI Aayog in guiding and convening the entire process and ensuring the finalization of the Report. I appreciate the dedicated and diligent support provided by Shri Satwik Mishra (Monitoring and Evaluation Lead, Access to Justice, NITI Aayog). I would like to acknowledge the Communications team, consisting of Ms. Indrani Dasgupta (Consultant-Editor, NITI Aayog), and Ms. Rajeshwari Sahay (Young Professional-Communications, NITI Aayog). The Report also benefited from the timely inputs of Dr. Yogesh Suri (Senior Adviser, NITI Aayog), and the support provided by Shri Kulwant Rana (Deputy Secretary, NITI Aayog)

I would also like to acknowledge the noteworthy contribution of the Administrative Secretariat of the Committee, who worked closely with me and NITI Aayog in drafting the Report and supporting the entire consultation process. The Administrative Secretariat included the following members from the JALDI (Justice, Access and Lowering Delays in India) initiative at Vidhi Centre for Legal Policy-Ms. Deepika Kinhal (Team Lead, JALDI), Ms. Vaidehi Misra (Senior Resident Fellow, JALDI), and Shri Aditya Ranjan (Research Fellow, JALDI).

The Report of the Committee was initiated as a part of the longer term agenda of formulating an action plan for ODR in the context of ease of access to justice, ease of living, ease of doing business, and helping justice delivery be efficient, affordable and effective. I am hopeful that this will be an important first step for an active and world-leading role that India can play in a technology-augmented dispute resolution option.

Arjan Kumar Sikri

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GLOSSARY

Account Aggregators (AAs)	AAs are intermediaries that provide data to a Financial Information User (FIU) (such as personal finance management or wealth management companies) from a Financial Information Provider (FIP) (such as a bank, GST platform or insurance provider). In order to protect the security and privacy of individuals, the AAs are not privy to the data that is being transferred. The Reserve Bank of India (RBI) provides approval to recognise these institutions.
ADR	Alternative Dispute Resolution is a method of settling disputes without litigation. While it is usually understood to mean arbitration, negotiation and mediation, it can include other mechanisms such as, but not limited to, resolution through an ombudsman, complaint boards and facilitated settlements. Further, a hybrid model of different forms of ADR mechanisms such as mediation-arbitration (med-arb), med-arb-med, arb-med-arb also qualify as ADR.
Court annexed ODR	A form of ODR that is conducted under the supervision of courts with the use of ICT. The use of court annexed mediation centres using ICT, is an example of court annexed ODR. In the present context, court annexed ODR often refers to court annexed e-ADR.
e-ADR	The term refers to the use of technology in alternative dispute resolution processes. e-ADR forms a subset of ODR.
eCourts Mission Mode Project	A pan-India project, monitored and funded by the Department of Justice, for the implementation of ICT in the Indian judiciary.
ICT	Information and communications technology is an all-encompassing term that refers to the use of technologies such as computers and other electronic equipment to collect, store, use and send data electronically.
Neutrals	The term includes all dispute resolution professionals involved in conducting ODR proceedings such as arbitrators, mediators and conciliators. With future growth in technological innovation this term would also include algorithms that perform adjudicatory or facilitative roles.

ODR	The term ODR is ever evolving and will continue to remodel itself based on new technological innovations. That said, Online Dispute Resolution in simple terms is the use of technology to resolve disputes outside of the public court system. However, rudimentary integration of technology in the dispute resolution processes does not qualify as ODR. ODR is also more than just e-ADR for it can include the resolution of disputes through AI/ML tools and has no determined set of procedures. A detailed section [Chapter I, Section B: Understanding ODR] has been dedicated in this Report towards understanding the different aspects of the phrase ODR.
ODR centres	The term refers to all the institutions that offer dispute resolution services through aggregated use of ICT tools or through technology platforms developed in-house or by any external developer.
ODR Platforms	The term refers to the technology layer in any ODR process, irrespective of whether the platform is attached to any ODR centre. ODR Platforms could be integrated by ODR centres or be a part of internal dispute resolution frameworks in businesses or governments. It therefore has a wide import attached to it.
ODR service providers	The term collectively refers to ODR Platforms and ODR centres.
Virtual Courts	The term refers to dispute resolution within the court system through the use of ICT tools. Resolution of disputes through court annexed ODR centres is not included under virtual courts as they are intended to resolve disputes out of the public court system.

EXECUTIVE SUMMARY

Traditionally, dispute resolution has always been associated with a place i.e. courts. The advent of ADR has helped alter this conception, to an extent. However, communication during these dispute resolution processes – both verbal and non-verbal continues to require the physical presence of parties. Owing to the circumstances induced by the COVID-19 pandemic, these traditional notions of dispute resolution have come to be challenged. In these trying times, technology has emerged as a harbinger of change and neutralizer of circumstances. At the helm of this technology revolution, is Online Dispute Resolution – ODR.

UNDERSTANDING ODR AND ITS BENEFITS

In its most basic sense, ODR is the use of technology to ‘resolve’ disputes. It is not just any form of technology integration (such as electronically scheduling a session), but its active use to help resolve the dispute (such as video conferencing for hearings or electronic document sharing for filing). Though derived from ADR, ODR’s benefit extends beyond just e-ADR or ADR that is enabled through technology. ODR can use technology tools that are powered by AI/ML in the form of automated dispute resolution, script-based solutions and curated platforms that cater to specific categories of disputes.

ODR’s benefits are also manifold. It is cost effective, convenient, efficient, allows for customizable processes to be developed and can limit unconscious bias that results from human interactions. In terms of layers of justice, ODR can help in dispute avoidance, dispute containment and dispute resolution. 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. Over time, the benefits of ODR and Digital Courts (technology in the public court system) together can transform the legal paradigm as a whole. A comprehensive detailing of the definition of ODR, its origins, its benefits can be found in Chapter I.

Its immediate benefits can be harnessed during this current COVID-19 crises, which is likely to lead to an upsurge in the number of cases before the judiciary. For instance, consumer, tenancy and labour disputes are likely to see a rise in

numbers. ODR can help reduce the burden on the courts by leveraging the capacity of the private sector, which has already seen some innovation and capacity building in the last few years. In the long term, ODR can be the preferred mode of solution for, though not limited to, all low-value high-volume disputes such as those involving e-commerce transactions.

ODR IN INDIA

In the context of India, fortunately, the current ecosystem and preparedness has been very promising. For instance, the judiciary has 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). The Executive, in the form of Government Departments and Ministries have also been leading the way. 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.

Another aspect that makes India ODR ready is its legislative preparedness. 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). Further, India has also brought into force the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018 this year. A detailed explanation of India's ODR readiness can be found in Chapter IV of this report.

While the future is indeed promising, there are still a lot of challenges that have to be overcome along the way. The challenges that have been identified in Chapter V include – structural challenges (such as lack of digital literacy and digital infrastructure), behavioural challenges (such as lack of awareness, lack of trust in ODR and reluctance on part of the Government to use ODR) and operational challenges (such as difficulty in enforcing ODR outcomes, archaic legal processes and shortage of competent Neutrals). Chapter VI of the report identifies some initiatives that can help resolve these seemingly big issues with innovative solutions. The following section provides these details.

GETTING INDIA ODR READY

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. It is also recommended that targeted initiatives be introduced to increase access among people that are often placed on the margins. Fortunately, some initiatives taken by the Government are already working towards making this a reality.

Apart from infrastructure, even the current capacity of the ecosystem has to be maximized and then progressively increased for the future. For instance, through collaborative and systematic efforts from various stakeholders, the number of trained and qualified ODR professionals can be increased. To expand capacity while ensuring quality, the kinds of institutions that can provide training can be widened and uniform training standards can be mandated. Such training should include practical experience and simulations training on ethics and best practices.

Increase in human resource capacity should not be understood to mean just an increase in the number of Neutrals. There are various other actors who can range from paralegal volunteers (who can assist litigants to use ODR), to the Court Registry officials (who can encourage potential litigants to use ODR and implement the procedure laid down for enforcement of ODR settlements/awards) and judicial officers (who can refer cases to ODR). It is important to impart curated training for each of the above actors at a large scale. Finally, it is important that the private sector be encouraged to innovate and grow in the years to come so that both the dispute resolution ecosystem and the Government can benefit in the long run. To this end, targeted initiatives such as setting up of legal tech hubs and tax incentives can be introduced.

However, to give a boost to ODR in India, the Government and the judiciary must lead by example. For instance, adopting ODR for Government litigation will increase the trust that people place in ODR processes. ODR can also be integrated within some Government Departments such as the Department of Consumer Affairs or help resolve disputes under the Insolvency and Bankruptcy Code, 2016. The judiciary and the Governments, on the other hand, can collaborate to integrate ODR into the workings of the court annexed centres. These centres can especially benefit from the use of AI/ML which can help resolve disputes that have limited questions of law and fact.

SUITABLY REGULATING ODR

Since ODR is still in its nascent stages of development in India, it is important that the governance framework encourages the growth of innovation both within the Government and in the private sector. To enable this, a balance has to be struck between protecting the rights and interests of its users while ensuring that over-regulation does not stifle innovation.

The Committee has adopted a two-pronged approach to governance. First, is to strengthen the existing legislative framework for ADR and introduce ODR related amendments. For instance, there is an immediate need to promulgate a law to regulate mediation and govern data protection. To this end, the Mediation and Conciliation Planning Committee of the Supreme Court has suggested an umbrella legislation for mediation. Similarly, a legislation to regulate data protection will be key in building trust in ODR processes. Even legislations that can see ODR integration such as the Commercial Courts Act, 2015 and Consumer Protection Act, 2020 will have to be amended to specifically recognise ODR. Finally, legislative backing will have to come in the form of digitizing key legal

processes such as notarization and payment of stamp duties. The report also recommends the introduction and integration of technology into mandatory pre-litigation mediation for a few categories of cases, which can be rolled out in a phased manner.

Second, is to introduce a light-touch approach to regulation wherein guidelines or principles that, though voluntary, should be adopted in letter and spirit by stakeholders that provide ODR services. The report recommends three sets of principles – Design Principles for ODR Platforms (which can be hosted within businesses or exist independently) and separate sets of Ethical Principles for ODR centres and third-party Neutrals. To ensure compliance with these principles, it is recommended that a self-regulatory organization (SRO) be constituted with members from the ecosystem. This can follow the model of ‘Sahamati’ which is a collective of the account aggregator ecosystem or a more structured model like the National Payment Corporation of India (NPCI). These recommendations that have been identified do not have to be introduced in one go. Instead, they can be implemented in a phased manner as identified in the final section of the report. Similarly, the model of limited regulation can also be altered over time to enable the Government to adopt a more proactive approach. The question of how and whether such initiatives will be required will be determined by how the ecosystem responds to the current guidance framework in the coming years.

INTRODUCTION

A. BACKGROUND

The future of justice should be conceptualized beyond the confines of brick and mortar. As has been said, courts should be a **service not a place**.¹ It can be a service that is accessible, formidable, intelligible, pervasive, robust and designed with an outcome-oriented framework. However, the burden of delivering this service does not have to fall on the shoulders of the court alone. The advent of ADR has helped push towards this recalibration, to an extent. Today, the next generation's revolution of the dispute resolution ecosystem, world over, comes through the vehicle of **technology**.

Traditionally, communication – both verbal and non-verbal in dispute resolution has existed without technology and required the **physical presence** of parties in a pre-identified, designated physical space.² However, the developments in ICT and increased **access to the internet** has brought into question this assumption – that effective communication and thereby dispute resolution, necessarily requires physical congregation.

In light of the COVID-19 induced pandemic, this assumption, now more than ever, has come under scrutiny. The pandemic has necessitated adjustments that are **adaptive and innovative**, including those in the dispute resolution ecosystem. Across the globe, both private dispute resolution centres³ and judiciaries⁴ have welcomed technology and released guidelines to facilitate **video-conferencing** led remote participation in hearings. Therefore, the future that William Gibson referred to in his famous quote – “*the future has already arrived; it is just not evenly distributed as yet*”⁵, seems to have indeed arrived. It now befalls upon institutions to determine how **equitable distribution** can be achieved, even in the realm of dispute resolution.

The judiciary is leading the way

In India, the judiciary has been leading the way. There have been several pivotal initiatives through the **eCourts Mission Mode Project** whose impact percolates both vertically and laterally.⁶ However, to make dispute resolution far more effective, there is a need for an efficient framework that resolves disputes before they approach the courts. This Committee is concerned with creating one such framework, which builds on past efforts and takes a leap towards truly achieving the ideal enshrined in our Constitution – ‘**access to justice**’ for all.⁷

In the context of the pandemic, the judiciary has led the way by responding positively to the technological needs of the system. It has conducted a large volume of virtual hearings⁸ and as a result, the judiciary has in many ways redefined the very **idea of a traditional judiciary** synonymous with crowded court complexes, overflowing paper files and courtroom hearings.⁹ However, the successful use of technology has not been limited to just the courts but extended to other institutions. The Lok Adalat has been transformed into online versions- **e-Lok Adalats**.¹⁰ It is this kind of integration of technology, which holds the potential to make the resolution of disputes more affordable and convenient. Moving forward, there could be a spate of new technologies, beyond what seems currently possible, that could be deployed towards the goal of improving access to justice. This report deals with one such relatively new way of resolving disputes facilitated by technology under the head of the all-encompassing terminology- Online Dispute Resolution (ODR).

Ushering in a brighter future

In light of the pandemic, building trust, confidence and efficiency is crucial for reviving the economy. There is hence a need to explore new systems to **prevent, manage and resolve** disputes in an expedient and collaborative manner. To meet this goal, technology will play a crucial role. It is in this context that this Report is looking at the potential of ODR. However, the success of ODR as a solution will depend to a large extent on multi-pronged, diverse stakeholder involvement. The commitment to collaboratively build this framework should therefore be unerring. To this end, the Government has been playing its part with a few Departments and Ministries already adopting ADR mechanisms to resolve disputes.¹¹ The private sector has also seen innovation with the **evolution of legal tech start-ups** who are advancing the cause of out of court settlements fairly and with finality for various disputes. This development in India is building a milestone for dispute resolution, which will be revered by posterity as a **disruptive shift in modalities** advancing the quality of life for the common person as well as quality of business environment for industries.

However, there is still immense potential to **exploit technology** towards meeting the above objective. The advancement of information technology in the form of **artificial intelligence** (AI), big data, machine learning (ML) and blockchain can be increasingly embedded in legal processes.¹² Further, India is on the path towards ubiquitous connectivity, e-learning tools for legal guidance for the common man, opportunity for enhanced choice and agency exercised by the litigants from legal service providers, AI/ML led document automation, analysis and drafting and finally workflow and case management automation.¹³ One such 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.¹⁴ 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.

B. UNDERSTANDING ODR

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. This includes using simple to complicated communication technologies such as audio-visual tools ranging from telephones to smart phones to LED screens, spread sheets, e-mail and messaging applications, with the crux of it being to enable dispute resolution without physical congregation of the parties.

From instances seen around the world, in its first phase, ODR shares its fundamentals with ADR mechanisms such as negotiation, mediation and arbitration.¹⁵ To this extent, most of the early ODR efforts have **mirrored ADR processes** through aggregated use of simple ICT tools.¹⁶

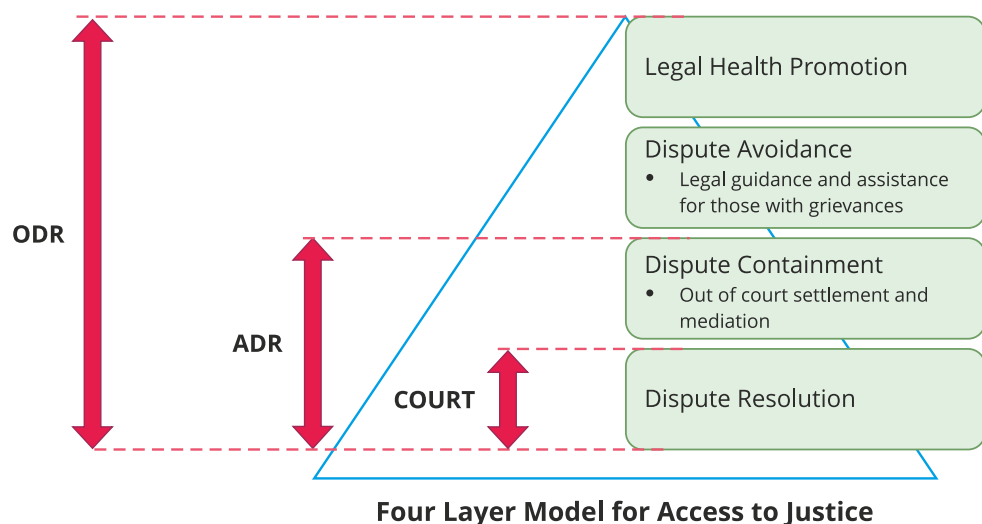
ODR however is not to be understood to mean just e-ADR. At a more advanced stage, ODR can work as the fourth party through the use of algorithmic assistance tools that help parties find resolutions. Such technology can take the form of **intelligent decision support systems**, smart negotiation tools, automated resolution, and machine learning. Eventually, ODR can also offer multi-door dispute resolution through tailored processes for specific parties and their dispute.¹⁷ With the help of technology tools, these **tailored processes can be designed** to achieve ideal dispute resolution for all the disputants. A few of these advanced ODR systems, already underway in some jurisdictions, are described in Chapter III of the report.

Even the manner in which ODR can impact the dispute resolution ecosystem is expansive. It can function as more than merely a method to 'resolve disputes'. Instead, ODR can provide a comprehensive system for access to justice, as articulated by Professor Richard Susskind. It can do so by encompassing the following stages in the life cycle of a dispute:¹⁸

1. **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. Similarly, tools can be developed where parties can feed in questions and get answers on the rights and protections. Thus overall, ODR can help in moving towards a more **'rule of law' based society**.
2. **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. For example, the study of thousands of credit disputes can help parties identify, even before a dispute has arisen, the stages at which the disputes are likely to occur, thereby providing them an opportunity to pre-emptively address any likely challenges. 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.

3. **Dispute Containment:** At a primary level, ODR can enable informal and pragmatic containment of disputes before they enter court systems.¹⁹ ADR processes such as **mediation and arbitration** already provide an avenue where disputes can be resolved before they reach the courts. In this light, 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. This is extremely critical for the Indian judiciary, which has a burgeoning case-load.



Even though ODR has evolved over the years as explained in the next section on its origins, a few undisputable features of ODR which have also lent themselves to circumscribing this Committee's mandate are listed below:

1. A mandatory component of ODR is the use of ICT tools. To this end, a certain threshold in terms of integration of ICT needs to be met for a dispute resolution process to be categorised under ODR. For instance, mere scheduling of hearing dates through email or exchange of documents online would not classify as ODR. If substantial communication (verbal and non-verbal) between parties or the parties and the neutrals occur through an **aggregated use of ICT tools** or over an ODR Platform, it would fall within the ambit of ODR.²⁰
2. ODR is **distinct from virtual courts**. The use of ICT tools within the judiciary is covered under the term 'virtual courts' or 'online courts'.²¹ On the other hand, ODR is the use of ICT tools outside the court system. That said, cases could be referred to ODR during the various stages of a life cycle of a case. ODR can be used prior to a case being filed into court (e.g. pre-litigation mediation) or referred to ODR after a case is filed in court (e.g. reference under Section 89 of the Code of Civil Procedure,

1908), or even after a case is resolved in a court and considered closed (e.g. for modifying divorce orders post-separation).

3. ODR is **not a completely new mode of dispute resolution**. For many variants of ODR, such as e-arbitration and e-mediation, the prescribed processes used during resolution, are informed by the traditional processes, which ODR is intending to elevate with technology. Thus, pre-existing formal ways of dispute resolution outside the court system can be considered to be ODR if they satisfy the requirements mentioned under feature one above. That said, there are indeed other variants of ODR, which are new and continue to evolve, especially in the realm of AI/ML driven ODR.

C. ORIGINS OF ODR

Before describing the challenges with the status quo, it is important to understand the origins of ODR, identify the pattern and pace of its development, and the challenges that have already been overcome.

The origins of ODR can be traced to the **evolution of the internet in the 1990s**, which increased online transactions, and thereby disputes related to such transactions. Broadly, ODR's development across the world can be divided into three phases, with each phase benefiting from the subsequent innovations in ICT.

1. First Phase: eBay's experiment leads the way

The first initiatives on ODR projects were launched in 1996 in the University of Massachusetts and the University of Maryland.²² In the late 1990s, with the expansion of the internet and the evolution of e-commerce, **a robust system** was required to address the disputes originating from commercial activities over the internet.²³ ODR offered a solution to this problem.

Around the same time, ODR was pioneered in a few early e-commerce entities. In 1999, **eBay started a pilot project** to provide online mediation facilities for disputes arising between buyers and sellers on its platform.²⁴ The pilot project handled **two hundred disputes in a two-week period**, which then was by far the largest number of disputes ever handled online. It prompted eBay to include dispute resolution as an option for buyers and sellers in the event a transaction was unsuccessful. Initially, eBay's dispute resolution process was contracted out to an internet start-up, **SquareTrade**, and several years later was taken over by eBay.²⁵ The number of disputes handled by eBay grew steadily over the next decade and by 2010 eBay was handling over 60 million disputes per year through its ODR Platform.²⁶

2. Second Phase: Growth of ODR start-ups

The success of this model, and the rapid growth of the internet kick-started the evolution of ODR, leading to the boom of ODR Platforms.²⁷ There were up to **21 new ODR programs that were launched in the year 1999** from only 9 in

the previous year.²⁸ By 2004, the number had reached 115.²⁹ Even the Internet Corporation for Assigned Names and Numbers (ICANN) instituted a **Domain Name Dispute Resolution Policy**,³⁰ that started off as an offline process, but eventually became increasingly online. However, most of these start-ups failed. Only a few successful platforms such as Cybersettle, Smartsettle and the Mediation Room were able to make a sizeable impact to the dispute resolution ecosystem.³¹

The technology innovation that this phase saw was also not a replication of those initiated by eBay. The most prominent innovation for eBay for example, was their **online mediation model**. Cybersettle, on the other hand followed a functionality acquired through creating a network of specialised internet applications that enabled various forms of communication. The system enabled negotiations to be conducted using the Internet platform through a **blind-bidding process**. The goal of the process was to let parties arrive at a settlement without disclosing to the other party the maximum amount that they would be willing to settle at.³² Thus, during this phase innovation grew and expanded while those that **did not provide novel solutions disappeared**.

3. Third Phase: Adoption by the Government and judiciary

The success of a few of these private ODR Platforms drew the **interest of governments** towards this emerging addition to the dispute resolution ecosystem. One of the first steps towards this adoption was taken in 2004 when the City of **New York adopted an ODR system** developed by Cybersettle to clear their backlog and expedite the settlement of personal injury claims.³³ This resulted in reduction of settlement time by 85 per cent and an impressive 66 per cent settlement rate within 30 days of submission of the dispute.³⁴

Subsequently, governments across jurisdictions have adopted ODR programs for efficient dispute redressal. The wider expansion of the internet and innovations in ICT has fuelled these initiatives. The development of **Consumidor.gov in Brazil**³⁵ and the **European Online Dispute Resolution Platform** in the European Union³⁶ are some of the examples of initiatives being taken to resolve consumer disputes.

Recognising the efficiency of ODR, some governments also undertook initiatives to integrate ODR into their judicial structure. Some of the most notable examples of court annexed ODR include Rechtwijzer 2.0 in Netherlands,³⁷ Civil Resolution Tribunal in British Columbia,³⁸ Canada, Money Claim Online in United Kingdom,³⁹ and the New Mexico Courts Online Dispute Resolution Centre in the USA.⁴⁰

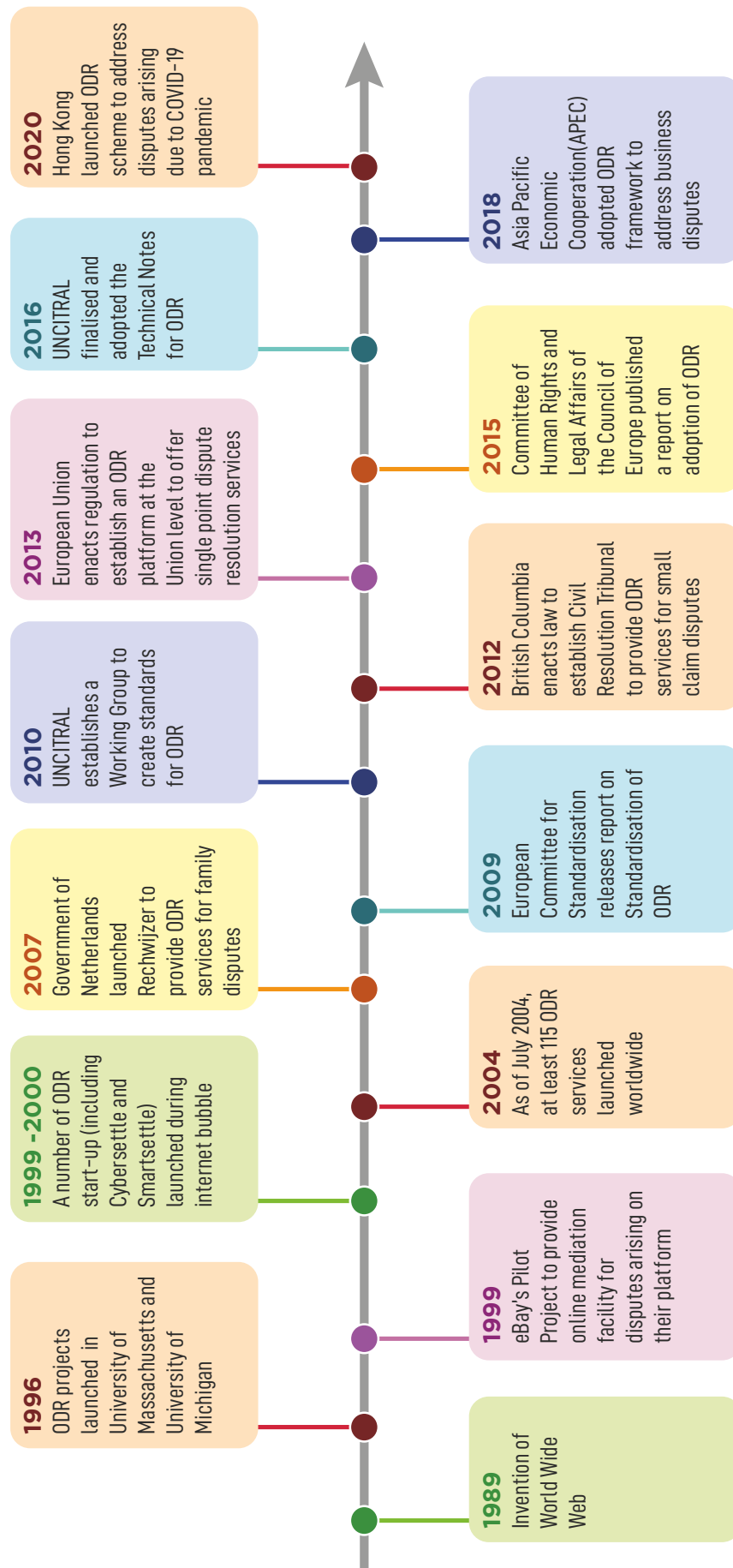
The successful integration and co-option of ODR across the world, has ultimately led to the development of a few models of ODR all of which have been running in parallel across the globe. They are:

1. **In-house private ODR** Platforms run by individual businesses;
2. **Private ODR Platforms or service providers** catering to different categories of disputes and multiple modes of resolution;
3. **Government run** or state-sponsored ODR programs and platforms **and**
4. **Court-annexed ODR systems**

Detailed explanations of the methods followed to resolve disputes and the frameworks used to regulate them are provided in **Chapter III** of this report. The timelines of how ODR has evolved in India and across the globe are starkly different. The international timeline, some of the details of which have been explained previously can be found below.

In the context of India, on the other hand, the development of ODR has been unique in the sense that the progression that spanned across two decades has occurred **in quick succession**, that too mostly in the latter half of this decade. While multiple attempts have been made over the last two decades,⁴¹ it is only now that the **potential of ODR has come to be recognised** and is undisputed. The timeline that details out the progression in India is present in Chapter IV of the report, which details out the present status in India.

INTRODUCTION



D. BENEFITS OF ODR

The integration of ICT into dispute resolution provides immense potential to overcome challenges typically associated with Courts and those that have come to plague the ADR systems as well. Some of the key benefits of ODR, already felt across adopting jurisdictions are indicated below:

1. Cost effective

The **economic burden** of dispute resolution often turns the process itself into a punishment and thereby hinders access to justice.⁴² In this light, ODR offers a cost-effective mode of dispute resolution for the disputants as well as the Neutrals⁴³. By its very nature, ODR does not require parties to travel long distances or rent a facility to conduct the dispute resolution. Further, 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.⁴⁴

Apart from these tangible costs, there are other indirect costs, often faced by enterprises, on account of lengthy litigation proceedings. For instance, enterprises see loss of productive time, loss in wellbeing of the individuals, loss in investor confidence, reduced investments and consequently slower economic growth. While all these impacts cannot be completely remedied by ODR, it can help in mitigating them and therefore prove to be cost effective.

2. Convenient and quick

The pendency of cases in Courts across India has been one of the major challenges for the justice system. As per the India Justice Report, 2019, in 21 States and Union Territories, cases in District Courts remain pending for **5 years on average** or more.⁴⁵ Excessive adjournments, vacancy in judicial and administrative staff, and complex processes involving multiple participants are some of the major reasons for such pendency.⁴⁶

ODR can address such delays by providing a faster and more convenient process for resolution of disputes. In itself, ADR employs simpler procedures and a fixed timeline for processes leading to efficient dispute resolution. To add to such benefits, ODR **eliminates the need for travel and synchronisation of schedules**. This reliance on asynchronous communication, allows parties to submit their arguments intermittently, or follow a **'documents-only' process**. Not requiring the physical presence of parties also reduces the need for travel thereby especially benefitting parties involved in cross border disputes. Similarly, use of ODR within businesses such as e-commerce entities also provides consumers a one-stop avenue to resolve their disputes thereby making dispute resolution quicker and more convenient.

3. Allows for customisable processes

Over the past few years, ADR has seen a lot of variants emerge, that go beyond the traditional ADR processes such as arbitration and mediation. Some of the hybrid variants include med-arb, med-arb-med, arb-med-arb. ODR's integration

with such non-traditional ODR processes and use of artificial intelligence can lead to limitless possibilities in terms of the types of models that can be developed. Thus, ODR can allow for multi-door dispute resolution through curated and customised process for certain classes of cases.⁴⁷ This in turn, can make the dispute resolution process more cost effective and convenient for the user.

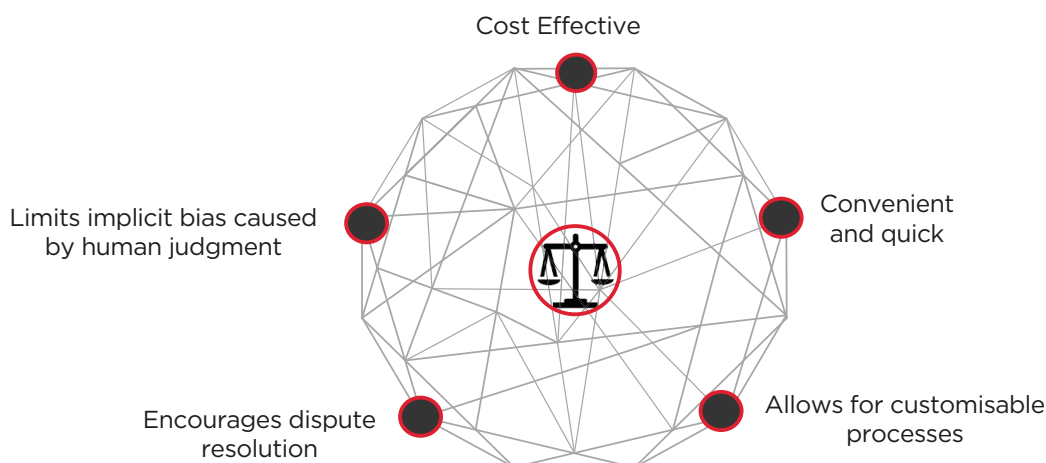
4. Encourages dispute resolution

ODR can contribute significantly to improve access to a variety of dispute resolution processes by addressing major concerns such as lack of access to physical courts or ADR centres, cost of dispute resolution as well as the barriers due to disabilities.⁴⁸ Since 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. Resolving disputes in the comfort of the user's own homes can make the dispute resolution process feel more accessible. This improvement in the overall experience can encourage more parties to opt to resolve their disputes through such formal means as opposed to not agitating their rights at all.⁴⁹

5. Limits implicit bias caused by human judgment

With the increased awareness regarding racial, caste and gender justice, there have been some concerns regarding the impact of biases, prejudice, and stereotypes on decision-making processes and outcomes. Studies have identified that **implicit bias and anxiety to communicate** with members of different communities can influence the outcome of mediation.⁵⁰ ODR processes can lessen the unconscious bias of the Neutral while resolving disputes. ODR Platforms, especially those based on texts and emails, detach audio-visual cues relating to the gender, social status, ethnicity, race, etc. and help in resolving disputes based on the claims and information submitted by the disputing parties, rather than who these parties are.⁵¹

That said, while ODR could indeed limit biases arising from human interactions, ODR stands the risk of introducing new biases through the use of artificial intelligence. Such risks are further detailed in **Chapter V** of the Report.



Long-term benefits

While the above benefits can be directly linked to ODR by its very nature, there are other indirect long-term benefits that can arise by using ODR. For instance, by virtue of being cost effective, convenient and quick, ODR provides parties an opportunity to exercise their rights and explore avenues, that they might have otherwise not pursued given the lengthy and expensive nature of litigation, and to some extent ADR. As a result, it can be one of the mechanisms to increase access to justice.⁵² By introducing mechanisms that can ensure greater procedural fairness, some of which have been identified further in the Report, ODR can attempt to level the bargaining powers of parties.⁵³ That said, given the pre-requisite requirements of technological infrastructure and digital literacy, it will be long journey for ODR to be able to provide access to justice for all.

ODR can also help improve the legal health of the society where individuals and businesses are **aware of their rights and have the means to enforce them**. An example of ODR enabling such legal healthy promotion can be seen in the European Union where **all merchants** in EU countries are mandated to **inform consumers** about the availability of ODR. As a consequence, contracts can come to be stringently enforced improving the business environment in the country. Tangible benefits of such improvements could be felt in the form of improved **‘Ease of Doing Business’** criteria for India especially on the ‘enforcement of contracts’ parameter, thereby bringing in greater investment to the country.⁵⁴

In the larger scheme, through the continued used of ODR and virtual courts, the **legal paradigm as a whole can be transformed**.⁵⁵ For instance, dispute resolution and therefore by extension justice delivery can be democratised through use of everyday technology tools like the mobile phone and video conferencing. Similarly, the way we understand legal processes like filing and hearings can be completely altered through the recognition of digital documents and virtual hearings.

In light of these promising benefits, it is now upon the Committee to identify ways in which the existing framework within India can be modified and the potential of the present ecosystem harnessed by coming up with an action plan for ODR. To this end, the following chapters of the report delve into the **role of the Committee** (Chapter II), the ODR models adopted **across the globe** (Chapter III), present status in **India** (Chapter IV), the **challenges** faced in adoption of ODR (Chapter V) and finally the **recommendations** which can help mainstream ODR in India (Chapter VI).

BACKGROUND TO THE COMMITTEE

BACKGROUND TO THE COMMITTEE

The potential for ODR was on the verge of being recognised globally when the COVID-19 pandemic hit across nations. The resulting lock-down, which brought most judiciaries to a grinding halt, has resulted in adding to the ODR momentum. The current crisis has helped put to rest any lingering doubts that may have been, that the future of dispute resolution, both in India and globally, rests in harnessing the true potential of technology to resolve disputes.

India can be at the forefront of this global ODR movement. This is possible only through a strong, **strategic partnership** between all the relevant stakeholders working towards mainstreaming ODR in India. A first step in this direction was taken by the NITI Aayog on 6th June 2020, which, in collaboration with civil society and other organisations, conducted a virtual consultation titled, '**Catalyzing Online Dispute Resolution in India**'. The objective was to bring together key stakeholders to discuss the manner in which ODR can be introduced in India.⁵⁶ The event included senior judges of the Supreme Court, secretaries from key Government Ministries, industrialists, legal experts, and general counsels of leading enterprises.

During the event, the CEO of NITI Aayog, Mr. Amitabh Kant recognised the need for **progressive and disruptive changes** in justice delivery and their potential to increase access to justice in an unprecedented way.⁵⁷ The session also saw recognition from members of the judiciary, the details of which can be found in the judicial acceptance section of Chapter IV. There was also **common consensus** amongst all the stakeholders that the key to ODR development in India was through **collaboration between the various stakeholders** from the Government to the industry.⁵⁸

In furtherance of this goal to broad base ODR in India, the NITI Aayog held another session on the 8th of August on 'Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business'.⁵⁹ The session saw representation from **top businesses** in India, heads of law firms and leading general counsels. During the session, Mr. Kant observed that the COVID-19 induced crisis is likely to see a **deluge of disputes** in courts, most notably in lending credit, property, commerce and retail that will require **expedient resolution**. It is for this reason that new innovation models such as ODR need **explicit support**.⁶⁰ The session also highlighted the

need to have transparency to generate trust in the system and push innovation to have a diverse set of ODR application across sectors.

To consolidate the ideas gained during these consultations and to create an effective implementation framework for ODR in India, a Committee was constituted by the NITI Aayog under the Chairpersonship of Hon'ble Justice (retd.) A K Sikri.

A. COMPOSITION OF THE COMMITTEE

To ensure that the Committee develops a comprehensive action plan, NITI Aayog sought representation from various Departments and Ministries of the Government of India, which can contribute towards mainstreaming ODR and in-turn benefit from it. The Departments and Ministries represented in the Committee are:

1. The Department of Consumer Affairs,
2. The Department of Justice,
3. The Department of Legal Affairs,
4. The Department for Promotion of Industry and Internal Trade,
5. The Ministry of Corporate Affairs and
6. The Ministry of Micro, Small & Medium Enterprises

The Committee also consists of CEO, NITI Aayog as a Member, and OSD (Law), NITI Aayog as the Convener. An Administrative Secretariat was established to provide research and drafting assistance and co-ordinate the consultations across all stakeholders.

B. TERMS OF REFERENCE

The overarching goal of the committee is to develop an action plan that can aid in mainstreaming ODR in India. The following are the specific objectives with which the committee has been set up:

1. Identifying and **amending existing laws**/regulations/rules to enable ODR;
2. Identifying and **facilitating strategies** to adopt ODR as a means of dispute resolution in relevant sectors;
3. Analysing **global best practices** in ODR, specifically for dispute avoidance, containment and resolution to recommend suitable models for justice delivery;
4. **Collaborating** with the judiciary, industry, and the ecosystem as a whole for ODR; and
5. Any other matter referred to the Committee by the Chairperson in the interests of access to justice.

C. PROCESS FOLLOWED

The Committee has conducted **wide consultations** to make the action plan for ODR inclusive and comprehensive. The Committee conducted consultations and solicited comments at two phases of the drafting process – before the release of the first draft and after the release of the first draft. Before the release of the first draft it:

- a. **Conducted 15 sets of consultations** with key stakeholders. These consultations were held for stakeholder groups and through one-on-one consultations with domain experts. A total of 68 people were consulted.
- b. Views were also solicited in the form of **written submissions to questionnaires** that were curated based on the stakeholder. A total of 65 written responses were received.

The Committee published the report for public comments on October 28th for a period of 14 days, concluding on November 11th, 2020 at 12 pm. 53 responses were received. Further, the Committee also conducted **round tables with domain experts** and members of the **judiciary** to obtain further comments on the draft report.

This report provides a reflection of the inputs received from stakeholder consultations, public comments and round table conferences. These consultations have significantly contributed to the work that has been put out in this report.

A snapshot of the **inclusive approach** followed by the Committee is provided below.

Inclusive approach followed by the Committee





INTERNATIONAL EXPERIENCE IN ODR

The last two decades have witnessed an exponential development in ODR. ODR Platforms and institutions have emerged across the globe to provide efficient redressal to a variety of disputes. These ODR Platforms have not only been effective in resolving disputes arising from online transactions, but also, traditional disputes such as labour disputes, tenancy disputes, etc. This section studies the prominent ODR initiatives around the world to analyse the services provided by them and their effectiveness. These ODR Platforms can be divided under three categories:

1. **Government-run ODR Platforms:** This category includes the ODR Platforms that are established by Government Departments to ensure efficient dispute resolution in the sectors regulated by them. These platforms have been successful in providing fast and cost-effective dispute resolution, especially for consumer and labour disputes.
2. **Court-annexed ODR Platforms:** ODR holds potential to supplement the efforts of the judiciary and reduce the case burden on the courts. This can be achieved by integrating technology in court annexed ADR initiatives and building ODR capacity. Building ODR capacity in court-annexed centres creates a symbiotic partnership between ODR and the judiciary- where ODR receives legitimacy because of the partnership with the judiciary and the judiciary benefits in the form of reduced case-load since the disputes are resolved outside the formal court system.
3. **Private ODR Platforms:** This category includes ODR service providers in the private domain, as well as platforms established by private enterprises such as e-commerce entities to resolve the disputes arising during the course of their business.

The table below provides details of some of the ODR initiatives across the world. These case studies provide an understanding of the way in which the ODR ecosystem is developing around the world. The table offers insights into the variety of partnerships and regulation models that currently exist, from which India can perhaps learn and adapt. Since there are many such cases globally, the following case studies are not intended to be exhaustive. Instead, they identify some of the key initiatives that have provided an impetus to the ODR movement across the globe.

A. GOVERNMENT-RUN ODR PLATFORMS

S. No.	ODR Service	Nature of Disputes	Mechanism for dispute resolution	Partnership and Regulation
1.	Brazil: Consumidor.gov ⁶¹	Consumer disputes: Consumer can use the ODR Platform to resolve disputes against companies registered with the Consumidor.gov. ⁶²	<p>The process for dispute resolution through Consumidor.gov is provided below:</p> <ol style="list-style-type: none"> 1. The consumer can file their complaint against the company registered on the ODR Platform. 2. The company is given 10 days to analyse and respond to the complaint. 3. After the response from the company, the consumer is required to comment and classify the company's response, stating whether their complaint has been resolved or not resolved, within 20 days.⁶³ 	Consumidor.gov platform is integrated with State and Municipal consumer rights protection bodies, 'Procons' (an institution linked to the Secretariat of Justice and Defense of Citizenship, State of São Paulo), Courts of Justice, Office of Public Prosecutor, Public Defenders, Regulatory Agencies and the Ministry of National Consumer Secretariat. The guidelines for the platform provides a data protection framework and prohibits activities such as defamation, harassment, etc. ⁶⁴ Further, ODR services under the platform are provided for free. ⁶⁵

2.	<p>European Union: The European Online Dispute Resolution Platform by the European Commission.</p>	<p>Consumer disputes</p>	<ol style="list-style-type: none"> 1. All online traders are mandated to provide a link to the ODR Platform on their website. 2. Once a consumer files a complaint on the ODR Platform the trader receives a notification. 3. The complainant may resolve the dispute directly on the platform or submit the complaint to an ODR service provider listed on the ODR Platform. 4. Disputes can be resolved directly on the ODR Platform - if the trader is willing to talk, then direct messages can be exchanged on the dashboard along with photographs to resolve the dispute. 5. Resolution of dispute through ODR service provider - The ODR service provider, listed on the platform offers efficient dispute resolution. Both parties are provided 30 days to agree on an ODR service provider to handle their case. 6. If the parties cannot decide upon the ODR service provider, the consumer is advised by the ODR Platform to adopt other modes for dispute resolution.⁶⁶ 	<p>The European Union has partnered with more than 750 ODR service providers across Europe to provide ODR services to the consumers.⁶⁷ The ODR service providers are recognised and accredited by the sector-specific regulators of the member countries of EU. The ODR service providers are also required to undergo yearly audits and publish annual reports.⁶⁸</p>
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3.	Hong Kong: COVID-19 Online Dispute Resolution (ODR) Scheme	The scheme aims to resolve disputes that are arising due to the COVID-19 pandemic where the amount claimed is HKD 500,000 (approximately INR 47 lakhs) or less, and where at least one of the parties is a Hong Kong resident. ⁶⁹	<p>The scheme offers a multi-tiered dispute resolution process:</p> <ol style="list-style-type: none"> 1. initially parties try to negotiate the dispute, 2. if negotiation is unsuccessful, then mediation is attempted, 3. in case the mediation process is unsuccessful, parties proceed to arbitration for resolving their disputes. <p>Parties are free to appoint their own mediator and arbitrator for the process.⁷⁰</p>	eBRAM, an independent not-for-profit organisation established in 2018 under Hong Kong law, has been appointed as the service provider for this ODR scheme. ⁷¹ The proceedings under the scheme are regulated by the rules framed by eBRAM. ⁷²
4.	Mexico: Concilianet ⁷³ by the Federal Consumer Prosecutor's Office (PROFECO).	Consumer disputes: Consumers can file complaints against manufacturers and service providers that have entered into a collaboration with the office of the Attorney General to resolve their disputes through Concilianet. ⁷⁴	<p>The process for dispute resolution through Concilianet is provided below:</p> <ol style="list-style-type: none"> 1. The consumer is required to register an account with Concilianet with proper identification documents. 2. The consumer can submit their complaint along with relevant documents on the ODR Platform. 3. PROFECO analyses the complaint and determines its competence to resolve the dispute. After such analysis, it sends a reply to the complainant within 10 days. 4. Post such analysis, online conciliation hearing is arranged with the consumer, manufacturer, and a conciliator. 5. After the conciliation, the consumer can provide feedback on their level of satisfaction with the service received.⁷⁵ 	Concilianet provides a free ODR Platform for consumer dispute resolution. If a consumer files a complaint regarding a product or a service, the manufacturer or the service provider are mandated to appear for conciliation, failing which a fine may be imposed. ⁷⁶

5.	South Korea: E-Commerce Mediation Committee (ECMC)	E-commerce and E-transactions disputes.	<p>The ECMC offers dispute resolution through different modes of communication, including face-to-face, online, written, and phone call.</p> <ol style="list-style-type: none"> 1. for face-to-face coordination, disputes are resolved with the mediator, the disputing parties, and an investigator being present in one meeting place. It is considered more appropriate for complex disputes. 2. for online coordination, a party can access the online coordination centre (chatting.ecmc.or.kr) to resolve a dispute. 3. written coordination is another means available to disputing parties who are unable to engage in a face-to-face dispute resolution process. This process is considered more appropriate for cases involving specific details and evidences. 4. phone call coordination involves phone calls between a mediator, the disputing parties, and an investigator for resolution of a dispute.⁷⁷ 	<p>The mediation proceedings under ECMC are regulated by the Framework Act on Electronic Documents and Commerce.⁷⁸ The Act includes provisions for the appointment of mediators and conducting mediation proceedings.</p>
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6.	United Kingdom: UK Financial Ombudsman ⁷⁹	Disputes between financial businesses and customers. ⁸⁰	<p>The mechanism for dispute resolution⁸¹ is provided below.</p> <ol style="list-style-type: none"> 1. The consumer is required to give the business an opportunity to resolve the claim themselves. The business should address the issue within 8-weeks.⁸² If the business fails to resolve the issue, the consumer can file a complaint before UK Financial Ombudsman. 2. Initial assessment – Every complaint is assigned a case handler who reviews the complaint and shares their initial thoughts with both the sides. 3. Review by ombudsman – If the parties disagree with the initial assessment, they can ask the ombudsman to conduct a formal review of the complaint. The ombudsman reviews all facts and evidences and decides the case. 4. Binding nature of the decision - The consumer has the option to withdraw from the process at any stage or decline the outcome of the process. However, if the consumer accepts the outcome, then it is legally binding on the businesses. 	<p>The Financial Ombudsman is regulated as per the rules published by Financial Conduct Authority. The rules provide the procedure for handling the disputes, fee for the ombudsman services and jurisdiction of the ombudsman office.⁸³</p>
7.	United States: Technology Assisted Group Solutions (TAGS) by Federal Mediation and Conciliation Service (FMCS)	Labour Disputes	<p>FMCS has employed TAGS to help mediators resolve labour-management disputes efficiently. It uses technology tools for efficient group problem-solving, decision-making, improving the facilitation of meetings and conducting online surveys.⁸⁴</p>	<p>TAGS uses a combination of technology tools including eRoom, mimio, FacilitatePro and NetMeeting to enable online meeting, caucuses and provide efficient internet based dispute resolution.⁸⁵</p>

B. COURT-ANNEXED ODR PLATFORMS

S. No.	Who is the service provider?	Nature of Disputes (eg: MSME, small value, e-commerce)	Mechanism for dispute resolution	Regulation of the ODR Platform	Additional information
1.	Canada: British Columbia Civil Resolution Tribunal (CRT) ⁸⁶	<ol style="list-style-type: none"> 1. Motor vehicle injury disputes up to Canadian \$50,000 (or INR 30 lakhs approximately), 2. Small claim disputes up to Canadian \$5,000 (or INR 3 lakhs approximately), 3. Strata property (condominium) disputes of any amount, and 4. Societies and cooperative associations disputes of any amount.⁸⁷ 	<p>The entire process of dispute resolution is conducted online.</p> <ol style="list-style-type: none"> 1. Negotiation—Once an application is accepted, parties may use the CRT platform to negotiate and resolve some or all of the issues. 2. Facilitation—In this process a Neutral is appointed to clarify the claims of the parties and facilitate mediation to reach a settlement. 3. Tribunal Decision Process—If the parties are unsuccessful in resolving disputes, an independent CRT member adjudicates the dispute.⁸⁸ <p>The decisions taken by the CRT members are binding and can be enforced like a court order.⁸⁹</p>	<ol style="list-style-type: none"> 1. The Civil Resolution Tribunal or CRT has been established under the Civil Resolution Tribunal Act.⁹⁰ 2. Agreements arrived at through negotiation and facilitation can be turned into a 'consent resolution order'. The consent Resolution Order is enforceable through courts like a court order.⁹¹ 	

INTERNATIONAL EXPERIENCE IN ODR

2.	China: Beijing Internet Court	Civil and administrative disputes stemming from e-commerce and internet. ⁹²	The Beijing Internet Court provides comprehensive online mediation service. The parties select the mediation organisation, the mediator and initiate mediation online. If the mediation is successful, the judge confirms the result of the process and withdraws the suit after an agreement is drafted. ⁹³	Beijing Internet Court's Court Hearing Rules has standardised dispute resolution process in the Internet Court. ⁹⁴	In the first year, the Beijing Internet Court conducted online mediation for 29,728 cases. The court successfully mediated 23.9 percent of the disputes. ⁹⁵
3.	China: Hangzhou Internet Courts	Civil and administrative disputes stemming from e-commerce and internet. ⁹⁶	The Court offers online pre-litigation mediation services. The mediation process allows asynchronous exchange of questions and arguments and mediation. ⁹⁷ The platform also allows parties to upload video testimonies and evidence for efficient mediation process. ⁹⁸ Further, the Internet Court has built electronic evidence platform connected with ecommerce websites, financial institutions, notary institutions, etc. The platform uses blockchain technology to store and authenticate evidence filed by the disputing parties. ⁹⁹	Hangzhou Internet Court has promulgated a series of 15 rules to govern online dispute resolution process. ¹⁰⁰	

4.	<p>China: Zhejiang Province's Online Dispute Diversification Resolution Platform (ODDRP)¹⁰¹</p>	<p>E-commerce (sales, copyright, trademark, and small claims of internet financing), divorce and maintenance, road accident liabilities, contractual disputes.¹⁰²</p>	<p>The platform offers a tiered model for dispute resolution: ¹⁰³</p> <ol style="list-style-type: none"> 1. Legal Consultation provides intelligent online consultation through relevant laws and cases. Such consultations are then followed by manual consultations. 2. Online evaluation evaluates litigation risk by relying on data on judgments. 3. Online Mediation offers professional mediation service by combining both online and offline channels. 4. Online Arbitration is provided by 11 arbitration institutions in the province. The full process from application to conclusion of arbitration is conducted online. 5. Online Litigation provides litigation services like filing, evidence, hearing and sentencing through High People's Court of Zhejiang Province Legal Service Official Website. 	<p>As on January 2019, the success rate of mediation proceedings on the platform was 90.66 percent and the platform has successfully mediated 355,973 cases.¹⁰⁴</p>
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INTERNATIONAL EXPERIENCE IN ODR

5.	<p>Singapore: Singapore State Courts e-negotiation and e-mediation platforms¹⁰⁵</p>	<p>Disputes before the Small Claims Tribunal (SCT), Community Disputes Claims Tribunal (CDCT) and Employment Claims Tribunal (ECT)¹⁰⁶</p>	<ol style="list-style-type: none"> 1. E-negotiation: Each party can make multiple offers (three in case of small value claims and five rounds in case of employment claims) in the negotiation process. If no settlement is reached through such offers, the parties are directed to attend the consultation on the provided date and time.¹⁰⁷ 2. E-mediation: Parties may resolve their dispute online with the help of a court mediator. If both parties agree, then the respective tribunal schedules an online mediation session with parties and a court mediator.¹⁰⁸ 	<ol style="list-style-type: none"> 1. The Practice Directions issued by the State Courts have a dedicated section on using ADR avenues for dispute redressal. No amendments have been made to these sections to include ODR. However, there is a presumption of ADR for all cases i.e. the court encourages parties to consider the appropriate Court of Dispute Resolution (CDR) or ADR processes as a 'first stop' for civil disputes.¹⁰⁹ 2. The settlement agreement require consent of the respective tribunal where the case was first filed. 	<p>The first half of 2020 the courts saw a 96% year on year increase in the number of cases filed.¹¹¹</p>
6.	<p>UAE: Dubai International Finance Centre Courts (DIFC)¹¹⁰</p>	<p>Commercial disputes, filings, wills etc.</p>	<ol style="list-style-type: none"> 1. The DIFC Courts are manned by judges who are appointed by the Government. 2. The courts function as courts of first instance and appeal. 3. The DIFC Courts also work as supervisory courts. 4. Hearings are being held through teleconferencing and filing is done through 'e-Registry'. The will service centre facilitates the drafting of wills online. 	<p>Arbitration is conducted based on DIFC Arbitration law based on the UNCITRAL model.</p>	

7.	United Kingdom: Money Claim Online ¹²	Money claims below £100,000 (or INR 90 lakhs approximately) and above £10,000 (or INR 9 lakhs approximately)	<p>The following procedure is followed by Money Claim Online to resolve disputes:¹³</p> <ol style="list-style-type: none"> 1. The claimant is required to register with the platform and issue a claim against the defendant/s through Money Claim Online. 2. Defendant/s is/are provided 14 days from the date of service to file a response to the claim. 3. If the defendant/s admits the claim, the claimant can proceed to request judgment online. 4. If the defendant/s has defended the claim, the case is referred to mediation after the consent of the parties. Alternatively, the dispute is filed before a court for its resolution. 5. After a settlement is reached between parties, they can file request for online or manual judgment. 	The procedure for Money Claim Online is governed through Practice Direction 7E. ¹⁴	
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8.	United Kingdom: Online Civil Money Claim	Money claims below £ 10,000 (or INR 9 lakhs approximately)	<p>The platform uses following procedure to resolve disputes:</p> <ol style="list-style-type: none"> 1. Claimants can submit their claims online or through sending paper copy by post. 2. After a claim is made, the defendant is provided an opportunity to submit their response electronically. 3. Post the initial claim and defence, the platform provides disputing parties opportunity to proceed electronically and offer services such as mediation for resolution of disputes. 	The procedure for the platform is regulated by Practice Direction 51R. ¹¹⁵	Civil Money Claim Online is a pilot run from 7 August 2017 to 30 November 2021 to provide online dispute resolution service for money claim disputes.
9.	United States: Michigan Courts MI-Resolve ¹¹⁶	Civil Disputes	<p>The processes for resolution of disputes through MI Resolve platform includes the following steps:¹¹⁷</p> <ol style="list-style-type: none"> 1. Parties are required to register with their contact details to resolve the dispute on the MI-Resolve platform. 2. If the parties have not filed the case in the court, they are provided seven days to negotiate and reach a settlement. 3. If the dispute is pending in court, a mediator is assigned immediately. 4. If resolution cannot be reached through negotiation, a mediator is appointed. 5. The ODR Platform provides services like direct access to legal information, document sharing facility, asynchronous communication, and video conferencing for efficient resolution of disputes. 	Mediators are trained through programs approved by the Michigan Supreme Court Administrative Office. ¹¹⁸	About 80% of the people who use mediation to resolve a dispute reach an agreement they are comfortable with. ¹¹⁹

10.	United States: New Mexico Courts Online Dispute Resolution Center ¹²⁰	Debt & money due cases	<ol style="list-style-type: none"> 1. Parties are provided with a platform to negotiate and arrive at a settlement. 2. Either party can request the help of a mediator for dispute resolution during the first 14 days of the process. 3. Parties are given 30 days to reach a settlement. In case parties fail to settle the dispute within 30 days, the case is registered for trial.¹²¹ 4. If parties reach an agreement, a stipulated agreement is automatically prepared for the parties to sign. Parallely, the ODR Platform prepares a Stipulation of Dismissal to withdraw the case and automatically submits it to the court. The agreement reached between parties is legally binding and automatically enforceable.¹²² 		
11.	United States: Ohio's Franklin County Municipal Court (FCMC)	Small value claims (up to \$6,000 or approximately INR 4.7 lakh)	<ol style="list-style-type: none"> 1. The court offers a platform for conversation and negotiation between parties to reach a settlement. Parties can document their agreement when a settlement is reached through this negotiation process. If there is no agreement, either party can terminate the negotiation and pursue other legal options.¹²³ 		The FCMC's ODR initiative has shown that an increase in mediation reduces the number of default judgments or negative case

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			<p>2. Settlement reached through the ODR Platform is not automatically enforceable. The parties can enforce the settlement through court by converting it into a written agreement and submitting it to the court. It can also be used as a guide that will prevent future disagreements or lawsuits. This agreement can also be amended in the future with the help of a mediator.¹²⁴</p>		dispositions (i.e. cases that still require further judicial intervention). ¹²⁵
12.	United States: Utah State Courts	Small value claims (less than \$11,000 or INR 8 lakhs approximately)	<p>The Court offers mandatory ODR service for small claims disputes unless a party to the dispute demonstrates that they will not be able to use the ODR system. The ODR is conducted in 4 stages</p> <p>1. Communication: Parties are encouraged to use the chat function to arrive at a possible solution to the dispute. If parties reach a settlement, the facilitator assists them to generate a settlement agreement to be signed and filed. In case the settlement agreement is not signed and filed in 35 days, the case proceeds to the next stage.</p> <p>2. Facilitation and trial preparation: At this stage, the ODR facilitator assists parties in creating the Trial Preparation Document outlining the claims and defences, as well as facts and evidences of the case.</p>		<p>Over the course of one year, about 2,000 cases were resolved. The number of hearings per case for those that do end up in court is down by 44% and the court staff's time per case is down by 45%. ¹²⁶</p>

		<p>3. Adjudication: A judge is assigned to adjudicate the case. The trial must be scheduled within 7-21 days when conducted in person. If conducted online, the trial should begin as soon as the parties submit the Trial Preparation Document.</p>		
		<p>4. Post judgment: After the court issues an order, parties can access the Post Judgement Section of the ODR Platform for information regarding appeal, enforcement, etc.¹²⁷</p> <p>If the parties reach a settlement, the facilitator or either of the parties fill an automatically generated settlement agreement. The facilitator submits it to the court where it is entered in the record. The parties can decide whether the settlement should be entered as a judgment of the court.¹²⁸</p> <p>The parties also retain a complete de novo right of appeal to the District Court.¹²⁹</p>		

C. PRIVATE ODR PLATFORMS

S. No.	Name of the platform and organisation introducing the platform	Industry and types of disputes	Mechanism for dispute resolution	No. of disputes resolved
1.	Australia: Australian Disputes Centre ¹³⁰	The platform is a non-profit that caters to commercial entities, Government and individuals. It is not dedicated to a specific sector.	<p>The centre offers efficient dispute resolution through mediation, arbitration, expert determination, and conciliation. It also provides access to custom designed virtual courtrooms for a better dispute resolution experience.</p> <p>Arbitration: One can register and send an e-notification online to the other party. After the other party serves a notice of response, the parties try to resolve the dispute amongst themselves. If the same fails, then a Neutral is appointed by the parties based on a list provided by ADC. The final award is binding on the parties.</p>	
2.	Canada: Platform to Assist in the Resolution of Litigation Electronically (PARLe) ¹³¹	Consumer disputes	<ol style="list-style-type: none"> The platform encourages the consumer to settle their dispute with the merchant on their own through negotiation. If no settlement is reached within 20 days from the start of negotiation, then a mediator is automatically appointed to intervene in the dispute resolution process. The consumer and trader can request for a mediator soon after the submission of a proposal and counter-proposal as well. Consumers are provided with resource tools such as case law summaries and explainers on statutes to help them through the process of dispute resolution. 	Dispute settlement rate of 70% and user satisfaction rate of 90%. ¹³²

3.	<p>China: Alibaba Internal Online Dispute Settlement Mechanism</p>	<p>Consumer Disputes</p>	<p>Alibaba Group (including Taobao and Tmall that enables consumer-to-consumer and business-to-consumer transactions respectively) have adopted a 4-way process to resolve a consumer dispute online. Buyers can opt for any of these processes to attain efficient dispute settlement.</p> <p>The process adopted by the Taobao platform is provided below. Tmall has also adopted a similar process.¹³³</p> <ol style="list-style-type: none"> 1. Negotiation between parties: The consumer can choose to directly negotiate disputes with the seller. 2. Taobao Consumer Service Intervening: The Consumer Service acts as a neutral third party in the disputes. The parties share the evidence, chat and transaction details with the consumer service. The decision of the consumer service is non-binding, but Taobao may take actions against the seller and enforce the decision by private implementation methods. 3. Public Review Service: Taobao has created a public review system and Taobao Judgment Centre. The public review team is constituted of 31 volunteers who decide on the disputes. Parties should get at least 16 votes to win the dispute. 4. Report to Taobao: Taobao has established a Report platform to allow parties to report irregularities and violations on the platform. Such practice plays a regulatory role to prevent unfair competition and rights of the parties.
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4.	Europe: YOUSTICE ¹³⁴	Consumer disputes The service has been expanded to include travel, gambling, and car-rental disputes.	<p>The ODR Platform follows a two-level dispute resolution mechanism:</p> <ul style="list-style-type: none"> i. Direct negotiations between traders and consumers ii. Submission to resolve: In case of failure of step (i), parties approach an ADR Platform that assigns the case to a neutral third party. 	The platform has partnered with Nubelo, an online directory, and offers services to over 300,000 service providers. ¹³⁵
5.	UAE: Dubai Chamber of Commerce and Industry ¹³⁶	Primarily includes disputes around non-payment and defects in goods	<ol style="list-style-type: none"> 1. To initiate the dispute resolution process, one of the parties must be a member of the Dubai Chamber of Commerce and Industry. 2. Applicants can submit their mediation requests and relevant documents followed by payment. 3. They also have the option to track new and previous applications electronically. 4. The platform offers a smart mediation application, through which users can submit applications, upload documents and pay the prescribed fee. It also enables the user to keep track of their application. 	
6.	United Kingdom: Resolver	Consumer Disputes	<p>The platform offers free dispute resolution services to the consumers. After filing the complaint on the platform, the consumers can add evidence, reply to a communication, track the progress, and download all the documents on their devices.</p> <p>The platform also helps consumers to escalate complaints with an ombudsman and regulator to achieve efficient dispute resolution.¹³⁷</p>	Resolver provided their services to about 1.8 million consumers between April 2018 and March 2019. ¹³⁸

7.	United States: Cybersettle	Monetary Claims	The platform uses blind bidding to resolve monetary disputes between the parties. The online blind bidding service offered by the platform requires the disputants to submit the highest and lowest settlement figures acceptable to them. Based on this information, the platform provides optimal resolution for both parties. ¹³⁹	In 2014, Cybersettle has facilitated settlement of \$1.9 billion in claim-based transactions. ¹⁴⁰
8.	United States: eBay	E-commerce, consumer disputes	<p>The platform developed by eBay follows five steps for efficient dispute redressal:</p> <ol style="list-style-type: none"> 1. The parties are required to file the dispute at the Resolution Centre (RC). 2. RC confirms whether <ul style="list-style-type: none"> — The dispute falls within eBay's coverage for a money-back guarantee — The buyer selected 'pay now' — Asserted the complaint within 30 days of estimated or actual date of delivery 3. RC gathers the proposed resolution and encourages both parties to resolve the dispute via the messaging facility on eBay. 4. RC re-evaluates in case of failure to resolve within 3 days of step (3). 5. Resolution Services team contacts the seller and informs the buyer if they are eligible for a refund. Refunds are enforced through chargebacks. 	In 2010, the platform resolved approximately 60 million cases a year. ¹⁴¹

9.	United States: PayPal	E-commerce, consumer disputes	<p>Follows a two-tiered dispute resolution system.¹⁴²</p> <ul style="list-style-type: none"> i. Dispute: The buyer or the seller can institute the dispute. The time period offered for resolution of the dispute is 20 days. Until the dispute is resolved, PayPal puts a hold on the transaction funds. ii. Claim: In case the dispute has not been resolved within 20 days, either of the parties can escalate the dispute to a claim. PayPal will then intervene, investigate the case, and offer a solution. A limited appeals process follows where the seller is the only party allowed to appeal under three circumstances: (1) item is returned to seller, but not in the same condition as the buyer first received it; (2) no item was returned at all; or (3) wrong item was returned. 	
10.	United States: Smartsettle	Family disputes, insurance disputes, real estate disputes, small claims disputes and disputes regarding domain names.	<p>Smartsettle provide asynchronous communication facility to resolve disputes through negotiation.¹⁴³ It involves three steps:</p> <ol style="list-style-type: none"> 1. Modelling the problem, 2. Identifying preferences and trade-offs, and 3. Providing optimal solution through algorithm.¹⁴⁴ 	

Though not falling under the above three categories, an international institution that is worthy of a mention is the National Centre for Technology and Dispute Resolution (NCTDR), University of Massachusetts- Amherst. Since its inception, the NCTDR has been leading the ODR movement with consistent efforts to develop the processes and systems that forms the basis of ODR. In 2017, fellows of NCTDR created the International Council for Online Dispute Resolution (ICODR) to promote ODR and promulgate standards and best practices.¹⁴⁵ ICODR has since published ethical standards for design, structure, practices, and implementation of ODR,¹⁴⁶ ODR training standards,¹⁴⁷ video mediation guidelines,¹⁴⁸ and video arbitration guidelines¹⁴⁹ to guide the development of ODR worldwide. Even though these open standards are not binding, they encourage ODR Platforms and ODR service providers to constantly strive to achieve a set of aspirational standards and best practices for efficient functioning. In the long term, this approach aims to stimulate continuous innovations. The Committee has engaged with ICODR extensively to gain insight into prevailing leading practices in ODR from across the world.

D. BRIEF ANALYSIS OF THE TRENDS

The above case studies highlight some important trends emerging across the globe which serve as good reference points for India. The three major themes for these trends include:

1. **Structure and model of ODR**
2. **Role of private sector in ODR**
3. **Good practices in ODR**

1. Structure and models of ODR

The three categories of models that have been identified in this chapter are classified based on the institutions that are adopting them, such as the Government (state sponsored ODR Platforms) or the Courts (court annexed ODR Platforms). However, there are also other trends in how ODR has been structured or modelled. For instance, disputes can be resolved through an amalgamation of online and offline tools i.e. hybrid models or ODR Platforms can be developed just to cater to specific classes of cases e.g. platforms for consumer disputes. Some of such structures that have emerged have been identified below.

(a) Tiered dispute resolution models

To maximise the benefits of ODR and enable effective resolution of disputes, institutions across the globe have adopted multi-tiered online dispute resolution models. These tiered models provide disputing parties with an alternative ODR solution when the prior ODR process fails to achieve a settlement. However, the components of these tiered models vary across the ODR institutions. For example, the COVID-19 related scheme in Hong Kong offers a three-tiered model for dispute resolution where the disputing parties can negotiate, mediate and

then arbitrate to effectively resolve the dispute. Alternatively, the Online Dispute Diversification Resolution Platform (ODDRP) at Zhejiang, China provides a five-tier comprehensive model for dispute resolution, where the platform offers online consultation, online evaluation, mediation both online and offline, online arbitration and online litigation. These models filter the disputes through multiple ODR processes and offer an end-to-end solution to resolve the disputes. The types of disputes which are being resolved are most likely to govern which tiered model will be adopted.

(b) Hybrid models of dispute resolution

The goal of ODR tools is not to completely supplant but to supplement existing models of dispute resolution. Working on this principle, a hybrid dispute resolution model strengthens the traditional offline dispute resolution mechanisms along with developing ODR solutions for increased efficiency and access. The parallel introduction of ICT in the traditional dispute resolution processes increase its efficiency while gradually building public trust on the inclusion of technology tools in the dispute resolution process.

For example, the Online Dispute Diversification Resolution Platform (ODDRP) at Zhejiang has integrated many ICT tools such as artificial intelligence, cloud computing, and other information technologies into its ODR mechanism. It has also in parallel introduced ICT innovations to optimise traditional offline resources and new online resources to improve docking mechanism in litigation and alternative dispute resolution mechanisms. This allows for synergetic functioning of ODR Platforms with existing offline systems. With the help of such synergetic systems, the platform allows parties to both mediate online and mediate in person for the convenience of the parties.

(c) Primacy of Consumer Disputes Redressal in ODR

Consumer disputes have been identified as one of the most suitable categories of disputes where ODR can be adopted. To this end, dedicated Government-run ODR Platforms have been developed by the Governments of Brazil, Mexico, the European Commission etc. to provide efficient consumer dispute redressal.

In the private sector, companies like PayPal and eBay have been the pioneers in instituting in-house mechanisms and technology solutions for resolving customer disputes. Further, a large segment of private ODR Platforms are primarily, if not exclusively, dedicated to resolving consumer disputes.

(d) ODR is not limited to e-ADR

The ODR initiatives taken by the governments and the judiciary are currently limited to transitioning offline ADR processes onto an ODR Platform. However, in the private sector, instances such as Smartsettle and Cybersettle have moved onto innovative mechanisms such as blind-bidding, or algorithmic resolutions, which indicate that ODR has as much potential for growth and expansion through technological innovations in this field.

2. Role of private sector

(a) Rise in private players in ODR

Private enterprises, especially those working in e-commerce and other internet-based sectors, are increasingly resorting to ODR to save on time and money in resolving disputes that are arising during the course of their business. While some of these private enterprises, such as eBay and PayPal, have incorporated ODR mechanisms within their own structure, others have partnered with private ODR Platforms for these services. As a logical consequence to this demand, several private ODR service providers have been established across the world. For example, Resolver.co.uk provides free dispute resolution services to the consumers by directing the complaints to the businesses for its resolution. In case the complaint is not resolved, the platform helps the complainant to escalate it to the sector specific regulators and ombudsmen for its resolution. The platform also informs the businesses about the problems faced by the consumer to build a healthy and safe marketplace.¹⁵⁰

(b) Collaboration with private actors can be beneficial

Given the initial requirement for technical expertise, many Government run and court-annexed ODR Platforms have partnered with private ODR service providers and have incorporated off-the-shelf technology solutions to establish a comprehensive ODR framework.

Some of the notable examples of this include:

- i. The e-Mediation platforms in China were built in collaboration with Sina Corporation, a Chinese technology company,
- ii. Franklin County Municipal Court in Columbus, Ohio (US) has launched an ODR service based on Matterhorn ODR platform to provide efficient dispute redressal.¹⁵¹
- iii. New Mexico Courts Online Resolution Centre (US) is powered by Modria to resolve its ODR disputes,¹⁵² and
- iv. Federal Mediation and Conciliation Services (US) uses technology solutions developed by eRoom, mimio, FacilitatePro and NetMeeting¹⁵³ to support their ODR Platform.

3. Good Practices in ODR mechanisms

(a) Education and evaluation are key stages of ODR

While ODR is often seen to be an online version of ADR, it has a lot more to offer. The first stage of the Utah Small Claims Court ODR process is called 'Education and Evaluation'. The stage is intended to inform users about their claims and potential defences. The Singapore Mediation Centre provides for neutral evaluation of the case as a mechanism separate from, and in addition to, arbitration and mediation. Similarly, Australian Disputes Resolution Centre

conducts expert determination where parties present their arguments and evidences to a practitioner who possesses specialist qualifications or experience in the subject matter. These evaluations create better awareness among the disputing parties about their legal position and expedite the dispute resolution process. Educating both the plaintiff and the defendants regarding the methods of dispute resolution, providing detailed Frequently Asked Questions (FAQs), chat and negotiation features, and document preparation can help individuals navigate the dispute resolution process better.

(b) Technological solutions need to be geared towards cyber security

Confidentiality of proceedings is one of the primary concerns for companies while using independent ODR Platforms for dispute resolution. It is probably for this reason that many private companies use in-house mechanisms for maintaining control over their security and confidentiality. Cyber security and safety of the documents submitted to the platform and during virtual proceedings are some of basic requirements that independent platforms must ensure to generate trust in the ODR processes.

(c) Important to have clarity on the enforcement of final agreements

Determining methods of enforceability of ODR agreements has time and again been cited as a key challenge that an ODR framework will have to resolve. However, there is no one size fits all model for enforcement. Three key models have emerged:

- i. **Not automatically enforceable:** Successful resolutions under Ohio's Online Dispute Resolution Franklin County Municipal Court are not automatically enforceable. These resolutions are enforceable only when the disputing parties document the ODR agreement in writing and submit it to the court for enforceability. Alternatively, parties can also use the agreement as a guiding framework to prevent future disagreements or lawsuits.¹⁵⁴
- ii. **Enforceable on consent of the court:** In the Singapore State Courts ODR program, agreements require the consent of the court in the form of consent orders. If the Tribunals do not approve an application for a consent order, parties are required to attend the consultation at the Tribunals.
- iii. **Automatically enforceable:** In the New Mexico Courts (US), if parties reach an agreement, a stipulated agreement is automatically prepared and signed online by both parties. This agreement is automatically submitted to the court and becomes legally binding and enforceable.¹⁵⁵

As seen above, there are different models of collaboration between the judiciary and ODR Platforms; varying levels of regulations and standards; and evolving best practices across the globe. This thorough evaluation of trends highlights the need for a customised ODR framework for India, which while learning from the

experiences across the world, provides for unique opportunities and limitations in India.

(d) Guiding developments in ODR

At present we are witnessing rapid growth of ODR around the world. The adoption of ODR requires sustained efforts to promote and improve the ODR processes. To this end, there is a need for rapid development and scholarship in both theoretical and practical aspects of ODR.

Recently, recognising the growth of ODR and its effectiveness in addressing cross-border disputes, supranational organisations such as United Nations and European Union have taken initiatives to regulate and promote ODR processes. In 2016, United Nations Commission on International Trade Law released Technical Notes on Online Dispute Resolution. This non-binding document provides standards to contribute towards strengthening ODR to address the disputes arising out of cross-border commercial transactions.¹⁵⁶ Further, establishment of European ODR Platform and promulgation of the regulation on online dispute resolution for consumer disputes has guided the development of cross-border ODR processes.¹⁵⁷

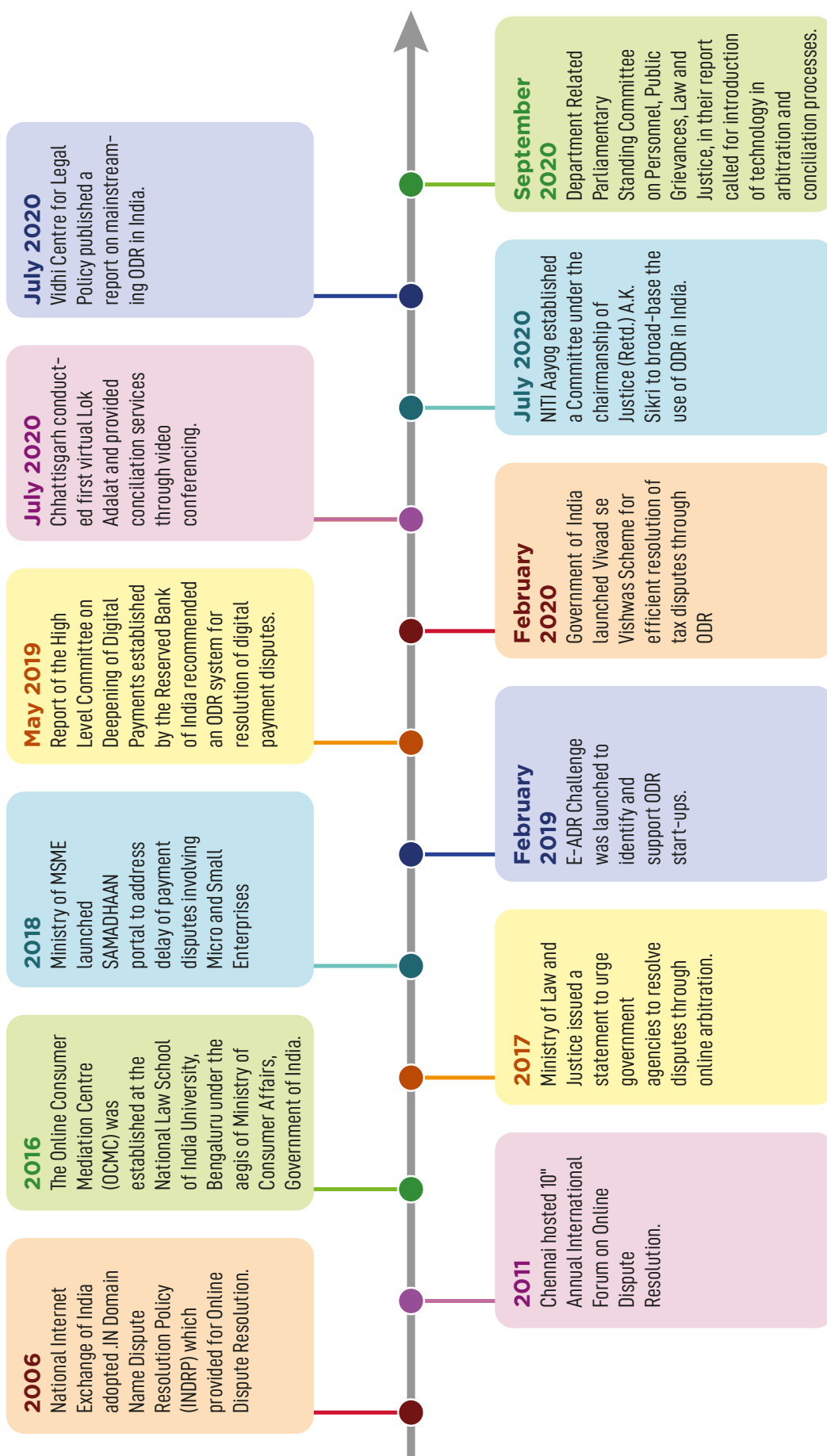
IV

PRESENT STATUS IN INDIA

PRESENT STATUS IN INDIA

As highlighted in the section above, the ODR ecosystem has witnessed exponential growth across the world in the last two decades.¹⁵⁸ 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. Some of the early developments have been of great value during the COVID-19 induced lockdown where the functioning of brick and mortar courts and dispute resolution bodies came to be **severely restricted**.¹⁵⁹ For instance, in April 2020, the Supreme Court was able to list 357 matters for hearing, which amounts to only 2.48 per cent of the number of cases listed before the Supreme Court in April 2019 (14,381 cases).¹⁶⁰ Therefore, while the courts and to some extent, ADR centres, have been **quick to adopt** ICT tools, **a lot more needs to be done** to ensure that the systems do not come to a grinding halt.

The following section analyses the present status of ODR in India and where we are now with respect to integration of technology into our dispute resolution system. It **analyses the preparedness** of the Government in incorporating ODR, the legislative position vis-a-vis ODR, acceptance of ODR by the judiciary and the innovations in the private sector. The following timeline provides an overview of some of the key initiatives that have paved the way for ODR growth in India.



PRESENT STATUS IN INDIA

A. EXECUTIVE PREPAREDNESS

1. Adoption of ODR by Government Departments and Ministries

In the recent past, Ministries and Departments within the Government have acknowledged the potential of ODR and launched programmes that help resolve disputes in the sectors regulated by them. Some of the initiatives that are paving the way for ODR integration with the Government are identified below.

(a) National Internet Exchange of India's (NIXI) Domain Dispute Settlement Mechanism

National Internet Exchange of India (NIXI) has adopted a .In Domain Name Dispute Resolution Policy (INDRP), which sets out the terms and conditions for resolving a dispute arising out of the registration and use of the .in Internet Domain Name.¹⁶¹ Under its procedure, **complaints can be filed online** and disputes are decided by an arbitrator/s on the basis of **written submissions**.¹⁶² The procedure **does not require any in-person hearings** to resolve the dispute.

(b) Initiatives by the Department of Consumer Affairs:

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 August 2016, the Department of Consumer Affairs extended this service with the launch of **Integrated Consumer Grievance Redressal Mechanism (INGRAM)** initiative to offer a platform for consumers to get their complaints and grievances addressed directly by the companies who have voluntarily partnered with NCH.¹⁶³ To this end, the Department has also launched a “Consumer App” to solicit complaints from the consumers and provide prompt redressal.¹⁶⁴ The **Consumer Protection (E-Commerce) Rules, 2020** further strengthen this by encouraging e-Commerce entities to partner with the NCH initiative on a ‘best efforts’ basis.¹⁶⁵

The Department has been a pioneer in acknowledging the importance of ODR for efficient dispute redressal. In 2016, **Online Conciliation and Mediation Centre (OCMC)** was established at the National Law School of India University under the aegis of Ministry of Consumer Affairs with an aim to propel online mediation as a first choice for resolving consumer disputes.¹⁶⁶

Further, after the enactment of Consumer Protection Act, 2019, the Department has taken important steps towards the integration of ICT in the Consumer Dispute Redressal Commissions such as the development of e-daakhil portal to facilitate e-filing. Such initiatives can assist in mainstreaming ODR into the consumer protection ecosystem.

(c) Initiative by Department of Justice:

In 2017, the Department of Justice initiated the discourse on the use of ODR to address disputes involving Government bodies by releasing a list of ODR Platforms and **urging Government Departments to resolve their disputes online**.¹⁶⁷

(d) **SAMADHAAN Portal**

In October 2017, the Ministry of Micro, Small and Medium Enterprises 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,¹⁶⁸ which accounts for nearly 94 per cent of the dues payable to MSEs.¹⁶⁹ The platform can also be used by MSEs to file payment due applications against private enterprises, proprietorships and others in State specific MSE Facilitation Councils. Since its launch, SAMADHAAN portal has assisted disposal of 3982 payment due complaints worth Rs. 721.59 Crores.¹⁷⁰

(e) **Draft National e-Commerce Policy**

In February 2019, the Department for Promotion of Industry and Internal Trade (DPIIT) released the Draft National e-Commerce Policy. The policy suggests the use of an **electronic grievance redressal system** including dissemination of compensation electronically for **disputes arising from e-commerce**.¹⁷¹ The draft policy states, *"It is only rational that a transaction completed online should have an online system of grievances redressal which will, in turn, boost consumer confidence"*.¹⁷²

(f) **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.¹⁷³ The Nilekani Committee recommended that the **first tier** of such an ODR system should be based on an **automated system** driven by machine learning and 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, on 6 August 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.¹⁷⁴ Subsequently, Payment System Operators (PSOs) have been advised to put in place ODR processes for resolving disputes involving failed transactions.¹⁷⁵ Over time, the RBI aims to extend the ambit of ODR to cover other kinds of disputes and grievances as well.¹⁷⁶

The above examples illustrate that even though ODR might be in its nascent stages of development in India, some Government Departments have started leading the way in ODR integration. The e-assessment of the **Income Tax Department**¹⁷⁷ and the **e-challan**¹⁷⁸ system introduced by the Ministry of Road Transport & Highways are some key examples of how technology has been used for easier containment and resolution of disputes. Moving forward, such sustained

efforts by the Government will be required to assist growth of ODR in India. As explained below, one such area that can see an immediate benefit from ODR is 'Government litigation'.

2. Underutilised potential of ADR in reducing Government litigation

Government litigation contributes to about 46 per cent of all litigation in the country.¹⁷⁹ Litigation by public enterprises and Government Departments contributes not only to the court's burden, but also imposes significant costs on the public exchequer.

In 2017-18, the expenditure incurred by the Central Government in contesting cases in the Supreme Court alone was Rs. 47.99 Crore.¹⁸⁰ According to the Legal Information Management and Briefing System (LIMBS) portal, as on 23 September 2020, the Government has 5,80,132 cases pending in different courts across the country. Given the numbers, it is worth considering any small impact that ODR may have on Government litigation.

Apart from the initiative by the Department of Justice highlighted above, there have been a few other attempts in the past to tackle Government litigation. In 1991, the Government set up a High Powered Committee with the objective to prevent litigation by offering in-house conciliation services.¹⁸¹ However, the Committee was decommissioned in 2011 for failing in its objective to prevent litigation and causing delays in filing cases.¹⁸² The Government had also established the '**Permanent Machinery of Arbitrators**' in the Department of Public Enterprises to expedite the settlement of commercial disputes between Public Sector Enterprises and Government Departments. However, this process has faced delay in settlements due to non-submission of documents by the parties.¹⁸³ Subsequently, the Government has wound up and replaced it with the Administrative Mechanism for resolution of CPSEs Disputes (AMRCD).¹⁸⁴

In this light, the Committee endeavours to **identify ways** in which Government Departments and Public Sector Enterprises can derive benefit from ODR. **Mainstreaming ODR** as the preferred mode of dispute resolution for the Government will **help unclog the courts** for citizens' grievances while also unlocking large number of Government projects stuck due to litigation.¹⁸⁵ However, unlike the litigation management policies at the state and the national levels, ODR initiatives need to be customised as per the needs of individual sectors and Departments for them to achieve the intended impact.

As a starting point, the individual members of this Committee are **exploring ways and means** through which litigation pertinent to their Departments can be avoided and resolved through ODR. Parallely, other Departments at the central and state level need to **strategize integration of ODR** to resolve inter-departmental and intra-departmental disputes. A few successful initiatives at that stage can have two benefits – one, it will pave the way for **ODR to be used in all disputes where**

Government is one of the parties; and two, Government's adoption of ODR will **boost confidence in ODR processes and outcomes**, thereby encouraging private parties to readily opt for ODR as a preferred mode of dispute resolution.

B. LEGISLATIVE PREPAREDNESS

1. Key Legislations

As this section shall identify, even in its current form, there does exist a governance framework to regulate ODR in the country. There are a range of support legislations, which address both the technology and ADR aspects of the ODR. In the realm of ADR, the most prominent of these legislations is the **Arbitration and Conciliation Act, 1996**. The arbitration framework in India has been supplemented through **the Arbitration and Conciliation (Amendment) Act, 2019**, which recommends the establishment of a regulatory authority i.e. the Arbitration Council of India.¹⁸⁶ and the **Arbitration and Conciliation (Amendment) Act, 2020** which has removed the qualifications requirements for arbitrators.

While this legislation recognises arbitration procedure, the power of the court to refer parties to not just arbitration but all forms of ADR comes from **the Code of Civil Procedure, 1908**. Section 89 of the code empowers the court to refer a case for resolution through one of the ADR modes recognised under the provision—arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation. In turn, the requirement to set up Lok Adalats comes from the **Legal Services Authorities Act, 1987** which provides for conciliation services through Lok Adalats. These Lok Adalats are required to be established in every district and thereby enable greater access to justice to the weaker sections of the society.

Further, there are a range of other legislations, which also provide for the use of ADR in India. They are:

- a. **The Family Courts Act, 1984:** Section 9 of the Act read along with the 'statement of object and reasons' requires the court to assist and persuade the parties to arrive at a settlement through conciliation. Further, through *K. Srinivas Rao v D.A. Deepa*, the Supreme Court has mandated that mediation as an avenue must be exhausted in matrimonial disputes.¹⁸⁷
- b. **Securities and Exchange Board of India (Ombudsman) Regulations, 2003:** The regulation provides ombudsman services to resolve disputes regarding allotment of securities, receipt of share-certificate, dividends, interest on debentures and other related matters. Regulation 16(1) mandates the Ombudsman to attempt settlement of the complaint by agreement or mediation between the complainant and the listed company or its intermediary.¹⁸⁸
- c. **Commercial Courts Act, 2015:** Section 12A of the Act introduced **mandatory pre-litigation mediation** in India. Owing to the legislation, parties are required to initiate mediation before filing a suit unless a

party to the dispute requires an urgent interim relief. Such a concept has been successful across countries such as Italy and significantly reduced the litigation burden on civil courts.¹⁸⁹ Currently, Schedule II of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 specifies that the mediation fee payable should be in accordance with the quantum of claim in commercial cases. To incentivise the use of mediation, the Department of Justice has set up a Committee on the Simplification of Rules to examine the reduction of the fees that are required to be paid under the Act,

- d. **Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016:** The Model Bye Laws under the Regulations mandates establishment of Grievance Redressal Committee by the Insolvency Professional Agencies.¹⁹⁰ As per the Model Bye Laws, such Committee should receive complaints against the professional members of the Agency or any person who has engaged the services of the concerned professional members of the agency and attempt its redressal through mediation.
- e. **Companies Act, 2013 and the Companies (Mediation and Conciliation) Rules, 2016:** Section 442 of the Act requires the Central Government to maintain a panel of experts called the 'Mediation and Conciliation Panel'. The Act empowers any party to initiate proceedings before the Central Government, National Company Law Tribunal (NCLT) or National Company Law Appellate Tribunal (NCLAT) to request for the dispute to be referred to mediation. In furtherance of this provision, the Ministry of Corporate Affairs has also released the Companies (Mediation and Conciliation) Rules, 2016, to regulate the empanelment of mediators and prescribing the procedure for the mediation proceedings.
- f. **Consumer Protection Act, 2019:** Section 74 provides for the establishment of Consumer Mediation Cells in every district to broad-base mediation facilities for consumers. Chapter V of the Act encourages parties to undergo mediation at any stage of the proceeding.¹⁹¹ The **Consumer Protection Act (E-Commerce) Rules, 2020** devised under this legislation require e-commerce entities to develop **internal grievance redressal mechanisms** within their companies thereby setting down the foundation of ODR.¹⁹²
- g. **Industrial Relations Code, 2020:** To promote the settlement of industrial disputes, the Industrial Relations Code, 2020 provides for appointment of conciliation officers. As per the code, if any industrial dispute exists or is apprehended, the conciliation officer should hold the conciliation proceedings to persuade and assist parties to reach an amicable settlement.¹⁹³

The act also promotes voluntary arbitration of the industrial disputes. It provides the procedure for efficient resolution of disputes through such arbitration proceedings while ensuring the protection of labour rights.¹⁹⁴

While the above legislations identify the strides that the Government has taken in terms of ADR, another aspect of ODR i.e. technology has also seen some legislation. These include:

- a. **Indian Evidence Act, 1872:** Section 65-A and 65-B of the Act **recognise electronic evidence** and provides conditions for its admissibility. Such provisions can provide guidance to regulate sharing of virtual documents and conducting virtual hearings.
- b. **Information Technology Act, 2000:** Section 4 and 5 of the Information Technology Act provide **recognition to electronic records and electronic signatures**. Such legal recognition can be crucial to enable end-to-end digitisation of justice delivery processes.

Even though these legislations provide a framework for introducing ODR, India can still take further strides in terms of legislative preparedness for ODR. At a preliminary level, **amendments can be introduced** within these legislations **to explicitly recognise ODR** to increase its legitimacy and acceptability in the long run.

Further, as identified by the Supreme Court in *M.R. Krishna Murthi v. The New India Assurance Co. Ltd.*¹⁹⁵, there is a pressing need for a mediation legislation for India. To this end, in January 2020, the Supreme Court formed the **Mediation and Conciliation Planning Committee** (MCPC) to draft a law that gives legal sanctity to disputes settled through mediation.¹⁹⁶ This draft legislation prepared by the MCPC was submitted to this Committee. Some of the key features suggested in this draft legislation includes:

1. Recognition of ODR,
2. Mechanism for recognition and enforcement of settlement agreements,
3. Establishment of a central regulating body for mediation, mediation institutes and mediators,
4. Incorporation of pre-litigation mediation, and
5. Provision for enforcement of international mediation settlements.

Such an extensive **legislative framework for mediation** will go a long way in augmenting the ADR ecosystem in India.

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. In December 2019, the Ministry of Electronics and Information Technology tabled the **Personal Data Protection Bill, 2019** in Lok Sabha.¹⁹⁷ As of today, the Bill is being analysed by a Joint Parliamentary Committee (JPC) in consultation with experts and stakeholders.¹⁹⁸ Further, the Committee of Experts on Non-Personal Data Governance Framework, established by the Ministry of Electronics and Information Technology, has also recommended regulations for data to achieve social and economic value and encourage innovations in India.¹⁹⁹ These parallel developments can assist and foster the growth of ODR in India by providing a robust data security framework.

2. Parliamentary Standing Committee report on Virtual Courts

Recently, due to the COVID-19 pandemic, the Government and the judiciary have actively embraced technology tools in justice delivery processes. In the past few months, technology has played a crucial role in supporting judicial functioning.

The **Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice** in its recent report on 'Functioning of the Virtual Courts/ Courts Proceedings through Video Conferencing' has recognised this contribution of technology.²⁰⁰

The report noted that virtualisation of proceedings will help overcome major challenges in justice delivery, such as **distance, delays and cost**. It further stated that justice delivery through virtual courts will **increase access to justice** and result in an affordable and citizen friendly legal system.²⁰¹ Recognising the benefits of digital justice systems, the Committee recommended **extending the concept of virtual courts to arbitration and conciliation** to make justice delivery efficient and cost-effective.²⁰²

While it is true that report comes in the context of virtual courts and not ODR, it is reflective of shift in outlook of the judiciary and the Government towards technology in the dispute resolution processes. It therefore, sets the stage for further technological innovations in dispute resolution such as ODR.

3. United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018

In addition to internal legislative efforts, the Government has also chosen to be governed by international obligations and standards of global best practices to strengthen ADR in India. One of the recent steps in this direction is bringing to force the **United Nations Convention on International Settlement Agreements Resulting from Mediation (also referred to as the 'Singapore Convention')**.²⁰³ The Convention came into force in India on 12 September 2020.²⁰⁴ It allows for direct **enforcement of mediated settlement agreements** and enables swift enforcement of settlement agreements arising from international mediation.²⁰⁵

C. JUDICIAL PREPAREDNESS AND ACCEPTANCE

In addition to the executive and the legislature, the judiciary, through its judgments and practices, has created an enabling framework for ODR in India. The judiciary, through increased reliance on ICT in judicial processes and explicit recognition of the need for technology solutions to address the challenges of the judicial system gave legitimacy to similar efforts in ADR mechanisms. Further, acknowledgment of the benefits of ODR and its potential by several senior Judges has helped in establishing legitimacy of ODR in the dispute redressal ecosystem.

1. ICT Integration in the Judiciary

a. eCourts Mission Mode Project

The judiciary's road to ICT integration started out in 1990 with attempts at computerisation of judiciary initiated by the National Informatics Centre (NIC).²⁰⁶ However, it was in 2005, that efforts were made to integrate ICT across all levels of the judiciary from the Tehsils to the Supreme Court, in a phased manner. These efforts started off as a part of the 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary'²⁰⁷ and culminated into one of the judiciary's flagship projects—the **eCourts Mission Mode Project** (eCourts Project). Under the leadership of the **E-Committee for Monitoring the Use of Technology and Administrative Reforms in the Indian Judiciary** (E-committee) this project continues to advocate and work towards **greater reliance on ICT tools in the justice delivery process**.

Over the course of the decade, among its many deliverables²⁰⁸, the eCourts project has deployed technology infrastructure and standardised software in District Courts across the country. Some of its key successes include the **setting up the eCourts websites**, creation of the **National Judicial Data Grid** (NJDG) and establishment of a **unified CIS** (Case Information System).²⁰⁹ It has also streamlined judicial process through litigant centric services like electronic cause lists, e-filings, e-payments and easy access to case status and daily orders.²¹⁰ Further, under the project, funds have also been allocated for ICT integration in District Legal Services Authority (DLSA) and Taluk Legal Services Committees (TLSC).²¹¹ Additionally, CIS modules have been introduced for Lok Adalats and mediation.²¹²

b. E-filing of cases

As mentioned above, the eCourts Mission Mode Project has already launched the eFiling Portal for the District Courts and the High Courts.²¹³ The portal has been successfully tested in a lot of High Courts such as the one in Delhi which has seen 21,790 cases being filed in the year 2016-2017.²¹⁴ These numbers are likely to have seen a further rise during the COVID-19 induced crises.

To address the burgeoning need to mainstream e-filing, in May 2020, the Supreme Court issued Practice Directions for eFiling to enable Advocates-on-record to file cases online through an e-filing platform.²¹⁵ Similarly, the High Court of Andhra Pradesh,²¹⁶ High Court of Delhi,²¹⁷ Patna High Court,²¹⁸ and other High Courts have also issued directions to enable online filing of cases during the pandemic.

c. Electronic Signature

Electronic signature is a crucial step towards digitising legal processes. Considering the low availability of the hardware cryptographic token for eSignature on pdf documents,²¹⁹ the eFiling Portal launched under the eCourts Mission Mode Project also provides a facility for eSigning.²²⁰

d. *Integration of Artificial Intelligence*

Taking ICT integration one step further, the Supreme Court has now harnessed the potential of artificial intelligence through the development of **SUVAS i.e. Supreme Court Vidhik Anuvaad Software**. This artificial intelligence powered software has the capability to translate judgments, orders and judicial documents from English to nine vernacular language scripts (Marathi, Hindi, Kannada, Tamil, Telugu, Punjabi, Gujarati, Malayalam and Bengali) and vice versa.²²¹

2. Support through judicial precedents

a. *Recognition of online arbitration*

The Supreme Court, in *Shakti Bhog v Kola Shipping*,²²² and in *Trimex International v Vedanta Aluminium Ltd.*,²²³ **recognised the validity of the use of technology in the arbitration process**. The court also upheld that the validity of online arbitration agreements through emails, telegram or other means of telecommunication which provide the record of the agreement.

b. *Recognition of video conferencing*

The Supreme Court in *Grid Corporation of Orissa Ltd. v AES Corporation*²²⁴ allowed consultation amongst people through electronic media and remote conferencing for the purpose of appointing an arbitrator. In the case of *State of Maharashtra v Praful Desai*²²⁵ the court extended this recognition for modern modes of communication and **upheld video-conferencing** as a valid mode for recording evidence and testimony of witnesses. Further, in *Balram Prasad v Kunal Saha and Ors*, the Supreme Court upheld the use of video conferencing as a means to obtain the expert opinion of a foreign doctor.²²⁶

c. *Expansion of disputes that are arbitrable*

The question about the categories of disputes that can be subject to arbitration has always been heavily contested. To address some of these doubts, in 2011, the Supreme Court, in *Booz Allen & Hamilton Inc. v SBI Home Finance Ltd.*²²⁷ listed the matters that are incapable of being settled through arbitration. This list included disputes such as those relating to criminal offences or involving tenancy rights, among others. Subsequently, through other judicial precedents, other subject matters were added to the list, such as those involving consumer disputes²²⁸ or arising out of trust deeds.²²⁹ Over time, such restrictions have limited the use of arbitration to resolve disputes and thereby impeded the use of ODR in online arbitrations.

However, precedents over the past few years have tried to relax such criteria of arbitrability. For instance, in 2018, the Supreme Court in *A. Ayyasamy v A. Paramasivam*²³⁰ held that mere allegation of fraud does not make a dispute non-arbitrable. The latest judgment in *Vidya Drolia v Durga Trading Corporation*²³¹ furthered such a pro-arbitration approach and held that landlord-tenancy

agreement disputes, apart from those controlled by special rent control legislation, could also be resolved through arbitration. Through such a precedent, the Supreme Court has now laid down a four-fold test to determine arbitrability and thereby provided a boost to the arbitration and ODR ecosystem in India.

As per the four-fold test laid out in the judgment, a dispute is not arbitrable—

1. when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;
2. when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;
3. when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and
4. when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

While this judgment provided helpful clarity on tenancy disputes and the overall law on arbitrability, its express overruling of the judgment in *HDFC Bank v Satpal Singh Bakshi*,²³² has the consequence of making banking disputes under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDDBFI Act') unarbitrable. Such an exclusion leaves out a substantial number of disputes and majorly impacts a sector, which could potentially immensely benefit from ODR solutions. Further, varied application of the test in the future might further lead to ambiguities on how arbitrability comes to be understood and the question of who decides on arbitrability, open and uncertain. It is thus recommended that the Central Government may consider making suitable amendments to the RDDBFI Act to clarify that the disputes under the Acts are arbitrable, effectively re-instituting the status-quo prior to the Supreme Court verdict. It is also urged that this matter be referenced to a larger bench of the Supreme Court to identify and segregate different categories of disputes, including banking disputes, to which the judgment will not be applicable.

d. Recognition of electronic summons

The Supreme Court in *Central Electricity Regulatory Commission v National Hydroelectric Power Corporation Ltd*²³³ allowed **service of summons through email** along with other modes. Further, Delhi High Court in *Tata Sons Ltd v John Doe*²³⁴ and Bombay High Court in *Kross Television India Pvt Ltd v Vikhyat Chitra Production*²³⁵ has recognised service through instant messaging applications and permitted **service of summons through WhatsApp**.

Recently, considering the restrictions in physical service of summons during the

lockdown period, the Supreme Court, in a suo moto writ petition *In re Cognizance for Extension of Limitation*²³⁶ directed all service of summons, notices and pleading to be effected by email, facsimile and commonly used instant messaging applications, such as WhatsApp, Telegram and Signal.

e. Admissibility of electronic records as evidence

Section 65B of the Indian Evidence Act, 1872 provides for the admissibility of electronic evidence. In recent years, the Supreme Court, through judicial precedents has strengthened this procedure for the admissibility of electronic records.

In 2005, the Supreme Court in *State of NCT Delhi v Navjyot Singh*²³⁷ held that electronic evidence can be admitted as secondary evidence, regardless of compliance with section 65B. However, in 2014, in *Anvar P.V. v P.K. Basheer*,²³⁸ the Supreme Court overruled this position and held that the compliance with the conditions mentioned in section 65B at the time of proving the record is necessary for the admissibility of any electronic evidence. In July 2020, the Supreme Court in *Arjun Paditrao Khotkar v Kailash Kushanrao Gorantyal and Ors*²³⁹ further clarified the principle laid down in *Anvar P.V.* and strengthened the procedure for admission of electronic evidence.

f. Virtual Courts for traffic challenges and cheque bouncing cases

The Supreme Court in *M/S Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta*²⁴⁰ identified that complete reliance could be placed on technology tools to resolve disputes. The court observed that **some cases could partly or entirely be concluded 'online'** and recommended the resolution of simple cases like those concerning traffic challans and cheque bouncing through online mechanisms.

g. Integration of Digital Mediation in Digital NI Courts

Recently Delhi High Court has undertaken a project to establish the Digital NI Act Court at the district level for online filing, hearing and disposal of cheque dishonour cases.²⁴¹ The procedure for resolution of these cases involves a digital mediation process, which allows parties to utilise the mediation forum and settle the case.²⁴² The guidelines also provide for e-signature to assist the digital mediation process. Upon receiving the terms of settlement and statement of the parties, the Magistrate in Digital NI Act Court dispose of the case.²⁴³ This digital process ensures accessible and efficient dispute redressal for cheque dishonour cases.

3. Explicit Recognition of ODR's Potential

a. Recognition by judicial members

In a stakeholders' meeting titled "Catalyzing Online Dispute Resolution in India"²⁴⁴ organised by NITI Aayog on June 6 2020, Justice (Retd.) Indu Malhotra spoke about the advantages of ODR as an expeditious and cost-effective mechanism

for dispute resolution. She observed its potential for commercial disputes, particularly concerning **Micro, Small and Medium Enterprises** and **disputes under the Insolvency and Bankruptcy Code, 2016**. At the same meeting, Justice D.Y. Chandrachud observed the utility of ODR as a service to avail justice and thereby use technology to promote a sense of inclusive justice. He noted that **ODR can also provide dispute containment and dispute avoidance services**, in addition to dispute resolution. Further, while discussing the nationwide implementation of ODR, Justice Sanjay Kishan Kaul acknowledged the potential of ODR to **address disputes arising due to the COVID-19 pandemic** as well as other personal and commercial disputes. Similarly, Justice (Retd.) A K Sikri, while underlining the benefits of ODR, urged that incentives need to be provided for parties to opt for pre-litigation ODR.

In another stakeholder meeting organised by NITI Aayog, titled ‘Unlocking Online Dispute Resolution to Enhance the Ease of Doing Business’ Justice (Retd.) B.N. Srikrishna noted that ODR systems will prevent the cluttering of courts by resolving a large number of disputes.²⁴⁵

b. Conducting e-Lok Adalats

The COVID-19 pandemic has provided an impetus to the authorities to use online mechanisms in their daily functioning. As a consequence, India saw the organisation of various e-Lok Adalats across States. The first **e-Lok Adalat** organised by the Chhattisgarh High Court and State Legal Services Authority, on 13th July 2020, settled 2,270 cases in a single day through video conferencing.²⁴⁶ Following this success, e-Lok Adalats have been organised in Karnataka which saw even higher numbers i.e. resolution of 1.15 lakh cases on a single day with a total of Rs. 330.3 crore awarded as compensation or settlement amount.²⁴⁷ E-Lok Adalats were also consulted in Chhattisgarh,²⁴⁸ Delhi,²⁴⁹ Jharkhand,²⁵⁰ Jammu and Kashmir²⁵¹ and Rajasthan²⁵² and will soon be replicated across different states.²⁵³ Some State Legal Service Authorities have taken technical assistance from ODR service providers to organise e-Lok Adalats.²⁵⁴

D. ECOSYSTEM'S EAGERNESS

While ODR has seen potential and success within the legislature, executive and the judiciary, a significant potential for growth in ODR is seen in early innovation and adoption by the private sector. The private sector ODR ecosystem constitutes a variety of actors including start-ups that provide ODR services, dispute resolution centres (DRCs) that have expanded their traditional modes of service to include ODR, dispute resolution professionals (DRPs) who are now adopting technology tools to provide their services, and most importantly, businesses which are adopting ODR processes for resolving disputes arising out of their course of business. This section identifies some of the key developments across different actors in the private sector in India, especially in the last couple of years.

1. Growth of start-ups providing ODR platforms and services

For a few years now, legal technology start-ups have been attempting to make a difference to the justice delivery systems in India. An important impetus came in 2019 when an 'E-ADR Challenge' was organised by a non-profit organisation Agami in collaboration with ICICI Bank.²⁵⁵ The goal of the challenge was to identify the most promising start-ups that could solve millions of disputes online. As a part of this, ICICI Bank pledged to send 10,000 of its disputes below the value of INR 20 lakhs, for resolution through an ODR start-up 'Sama', the winner of the challenge.²⁵⁶ Today, there are multiple start-ups in the country following a variety of models that continue to innovate on a daily basis with an aim to provide accessible and affordable ODR services to individuals, businesses, State Governments and the judiciary. **Collaboration between the private sector and the judiciary**, as seen in the case of e-Lok Adalats, has been very successful in resolving disputes.²⁵⁷ In a welcome move to provide recognition and legitimacy to such start-ups, the Department of Legal Affairs has recently invited applications from institutes providing ADR/ ODR services in the country to host such a list of service providers on its website.²⁵⁸

2. Dispute Resolution Centres adopting ODR

Even dispute resolution centres that have traditionally been providing ADR services, have **expanded their modes to include ODR processes**. For example,

- a. the Indian Institute for Arbitration and Mediation has developed an ODR Platform called Peacegate, which hopes to integrate all facets of ADR ranging from filing to back-office support.²⁵⁹
- b. Bangalore International Mediation, Arbitration and Conciliation Centre offers online arbitration, conciliation, mediation services since 2013.
- c. Mumbai Centre for International Arbitration offers a video conferencing facility to enable online arbitration proceedings.
- d. In 2020, the Delhi Dispute Resolution Society has introduced an initiative called SEHMATI, which is dedicated solely to ODR.²⁶⁰

3. Businesses adopting ODR

ODR has seen success not only in the realm of private service providers but also at the end of businesses which have established **in-house ODR Platforms** to resolve disputes.²⁶¹ Even the Confederation of Indian Industries (CII), while addressing concerns regarding Ease of Doing Business, recommended strengthening of ADR along with digitisation of judiciary to facilitate a business-friendly environment in India.²⁶²

The above instances are evidence that **private innovation and eagerness amongst businesses** to adopt ODR are going hand in hand. This momentum towards ODR is driven as much by necessity stemming from the stalemate in the judiciary, as well as an opportunity to create a dispute resolution ecosystem that works for

the benefit of all. Moving forward, an important question that will need to be addressed is how the growth and innovation in the private sector can be facilitated while balancing the need for adherence to principles of natural justice, and basic standards in data protection, privacy and confidentiality. Chapter VI focuses on this issue in greater detail.

V

CHALLENGES FACED IN ADOPTION OF ODR

Though ODR holds immense potential to provide for efficient and effective dispute resolution, its integration in the mainstream dispute resolution ecosystem holds several challenges. A successful implementation of ODR depends on several factors such as availability of a reliable and secure technology tools, digital infrastructure to enable usage, willingness of parties to adopt to a new way of resolution, co-operation and support from lawyers, judiciary, Government to ensure enforcement of awards and agreements etc.²⁶³ The interests and incentives for each of the different stakeholders involved in the process need to be considered and addressed to enable widespread adoption of ODR.

Based on extensive literature review and consultations with key stakeholders in India, the Committee has identified the following challenges that need to be addressed in a phased manner for successful implementation of ODR.

A. STRUCTURAL CHALLENGES

1. Digital infrastructure

A pre-condition to ODR integration is robust technology infrastructure across the country. This includes **access to computers, smartphones 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.²⁶⁴

Currently, efforts to expand digital infrastructure have been taken under the **National Digital Communication Policy, 2018** which aims to provide **universal broadband connectivity** and facilitate effective participation in the global digital economy.²⁶⁵ Working towards this goal, in December 2019, the Central Government launched **National Broadband Mission** with an objective to provide broadband access to all villages by 2022.²⁶⁶ Further details on the initiatives taken by the Government and the mechanism through which it can be achieved can be found in the Chapter VI of this report.²⁶⁷

2. 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. For instance, out of the 743.19 million internet subscribers in India, the internet rural penetration rate is only 32.24% (with 285.97 million subscribers) which is less than one third of the urban penetration rate of 99.12% (with 457.23 million subscribers).²⁶⁸ Further, it is estimated that out of 5,97,618 inhabited villages, including Gram Panchayats in the country (as per the Census 2011), only about 5,69,897 are covered by mobile services, leaving around 27,721 villages that are not covered by mobile services.²⁶⁹ To enable the large scale adoption of ODR it is necessary that such a digital divide be addressed.²⁷⁰

To achieve this, 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. Initiatives such as the Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA) will go long way to ensure access to justice in even the remotest and the most marginalised sections of the society.²⁷¹

3. Divide in access to technology

In India, there exists a **divide** with respect to 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**.²⁷² The situation is even worse in **rural India where women constitute only 28 per cent of the internet users**. Due to the uneven distribution of access to technology, **only 27 percent of the rural population has access to the internet** whereas in urban India, the internet has percolated to 51 percent of the population.²⁷³ Further, **individuals above 40 years constitute only 15 percent** of internet users in India.²⁷⁴

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. It is essential that **targeted attempts are made to bridge this divide** to truly be able to deliver the benefits of ODR to all citizens.

B. BEHAVIOURAL CHALLENGES

1. Lack of awareness regarding ODR

ODR, in its early phase, mirrors off-line ADR mechanisms, albeit through a technology interface. Even then, such usage of technology to connect disputing parties with Neutrals and resolve disputes is at a very nascent stage in India. Therefore, it is essential that apart from strengthening ADR processes that people are already familiar with, initiatives should be taken to build 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.

As with any technology services, comfort and trust are built over time with continuous usage. Our consultations revealed that individuals become **accustomed to ODR with its increased usage**. Therefore, apart from increasing awareness through systematic campaigns, there is an equal need to **provide more avenues for continuous usage** of ODR.

2. Lack of trust in ODR services

Linked to the above point is the issue of lack of trust in ODR. This mistrust stems at several levels – from **scepticism regarding technology** to questions regarding the **enforceability** of ODR outcomes. The endeavour towards mainstreaming ODR needs to address the issue of trust at every level.²⁷⁵ Like other emerging technologies, ODR is bound to be met with scepticism from potential users, especially regarding its effectiveness given the lack of in-person interactions, as well as regarding data security and confidentiality.²⁷⁶

In the following chapters, this report lays down a governance framework aimed at addressing these concerns to ensure that ODR service providers are functioning ethically and meeting certain standards required of any system functioning in the ‘justice space’.²⁷⁷

3. 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.²⁷⁸ **Lack of reliance on ADR despite the costs and delays associated with the judiciary** is due to multiple reasons which have already been elaborated elsewhere.²⁷⁹ However, going forward, it is necessary to create **capacity to provide quality ADR services** through mediation and arbitration. This will help in **transitioning faster towards ODR**. Specific measures to strengthen ADR are provided in the following chapters.²⁸⁰

4. 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. For this, the officials in Government Departments and PSUs need to be trained and empowered to effectively participate in ODR processes. This is essential to unlock the potential of ODR to significantly reduce the burden on courts.

C. OPERATIONAL CHALLENGES

1. 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.²⁸¹

These challenges include online impersonation, breach of confidentiality by the circulation of documents and data shared during ODR processes, tampering of digital evidence or digitally delivered awards/ agreements. ODR service providers should be extremely mindful of **building robust data storage and management frameworks** to address these concerns. Digital signatures,²⁸² encryption of documents to ensure confidentiality²⁸³ etc. are some of the measures that need to be taken to sustainably integrate ODR for large scale of disputes. The principles framework detailed in the next chapter²⁸⁴ seeks to guide ODR service providers in this aspect while being mindful of the need to not view these challenges as barriers to integrating ODR itself.

2. Availability of Neutrals

The adoption of ODR will likely generate a **huge demand for Neutrals** who are comfortable with technology and trained to effectively guide the parties through the ODR process.²⁸⁵ A **robust training ecosystem** for ADR/ODR professionals that caters to this demand is necessary while pushing towards the integration of ODR as a preferred dispute resolution mechanism. The next chapter identifies certain standards for training and certification of Neutrals, to help foster this ecosystem.²⁸⁶

3. Archaic Legal Processes

The Supreme Court in *Garware Walls Ropes Ltd. v Coastal Marine Constructions & Engineering Ltd.*²⁸⁷ held that arbitration agreement cannot be given effect unless the stamp duty is paid. Although the Central Government has simplified the process for payment of stamp duty through e-Stamps and online payment²⁸⁸ the rules framed by the State Governments still **require parties to attach a copy of the eStamp certificate** to the agreement as a proof of payment of stamp duty.²⁸⁹ The archaic process does not work well with the end-to-end online process of dispute resolution and creates barriers for ODR.

Further, in India there are **no provisions for online notarisation of documents**. As per the Notaries Rules 1956, notarisation of documents can only be done in person²⁹⁰ and hence, require physical action on the part of parties. Such processes should be digitised to ensure an end-to-end ODR process.

4. Enforcement of the outcome of ODR process

A key challenge towards meeting the objectives of this report itself is the existing **uncertainty regarding the enforcement of ODR outcomes**. There has been uncertainty regarding the enforcement of mediation settlements for a long time now. The Supreme Court in *Afcons Infrastructure Ltd v Cherian Varkey Construction* held that the court-initiated mediation proceedings will be deemed as Lok Adalat and hence settlements reached through such proceedings are enforceable under S. 21 of Legal Services Authorities Act, 1987.²⁹¹ However, there seems to be a legal vacuum when we consider mediation processes that are not initiated by the courts. For these proceedings, settlements can **only be enforced**

as an agreement between the parties and any breach of such agreement will result in further judicial processes.

Further, the process for **enforcement of arbitral award in India is complex and burdensome**. Firstly, arbitration awards require stamp duties in most of the States.²⁹² As mentioned above, the archaic requirement to attach the eStamp certificate to the document creates barriers in an otherwise end-to-end online process.

Secondly, the Arbitration and Conciliation Act, 1996 provides for enforcement of the arbitral award in the same manner as if it were a decree of the court.²⁹³ While deciding upon the jurisdiction of the court to execute arbitral award, the Supreme Court in *Sundaram Finance Limited v Abdul Samad*²⁹⁴ allowed the execution proceedings to be filed anywhere in the country, where such decree can be executed. However, the **process of execution of awards through courts can be cumbersome** for the parties and may result in delays. Such a complex process acts contrary to the objectives of ODR to provide convenient and efficient dispute redressal.

VI

RECOMMENDATIONS

While a myriad of challenges has been identified in the previous chapter, the future of ODR in India is bright. Making ODR a reality will require co-ordinated efforts from all stakeholders and for this reason, the list of recommendations that have been identified are addressed not just towards the Government but a various list of stakeholders that have the capacity and influence to usher in change and provide impetus to broad base ODR in India.

To enable a speedy integration, some of the recommendations that have been identified build on existing capabilities and policies that have already been introduced by the Government such as the SAMADHAAN initiative and the National Broadband Mission. Others are novel introductions in the Indian context, such as introducing an opt-out model for mandatory pre-litigation mediation in India.

The following section provides a step-by-step narrative of how access to infrastructure can be increased, capacity can be built and trust can be increased in ODR. It also recommends a soft touch regulatory model which identifies the ways to strengthen the current legislative framework and introduces principles that should voluntarily be adopted by stakeholders such as ODR Platforms, ODR Centres and Neutrals. The phased manner in which ODR should be executed and implemented has also been identified.

A. INCREASE ACCESS TO DIGITAL INFRASTRUCTURE

A pre-condition for all technology related innovations, including ODR, is widespread access to digital infrastructure. 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**. While the task is a mammoth one, there is hope that this can be realised as the Government has already introduced some initiatives that can bridge these gaps. This section identifies ways in which they can be capitalised upon and strengthened; ways to increase digital literacy and initiatives that can reduce the digital divide that might continue to persist.

1. Increase physical access to 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. Fortunately, key initiatives by both these stakeholders are already underway and can be further leveraged to increase access to ODR.

All of the **Governments' initiatives** come in light of its flagship '**Digital India**' project, which hopes to transform the entire ecosystem of public services through the use of information technology.²⁹⁵ To extend digital infrastructure to rural India and provide internet connectivity to every citizen, the Government launched the **BharatNet Project**, in 2011. Formerly known as the National Optic Fibre Network (NOFN), this aimed to provide optic fibre connectivity to 2.5 lakh Gram Panchayats by 2019.²⁹⁶ However, the project was delayed due to a lack of funds and slow implementation.²⁹⁷ To remedy this delay, in 2019 the Government launched the **National Broadband Mission**.²⁹⁸ The Prime Minister in his Independence Day speech announced that the Government would extend Internet connectivity to all 6 lakh villages in India within 1000 days.²⁹⁹ Similarly, the PM WANI (Prime Minister Wi-Fi Access Network Interface) scheme has been introduced to provide public access to wi-fi through a pay as you go public data offices (PDOs) model.³⁰⁰ The successful implementation of these initiatives will augur well for ODR usage.

While these initiatives will increase the overall reach of technology across the country, the Government can also consider setting up kiosks in selected locations in rural areas and train paralegal volunteers to help in assisting their usage. The Government can also leverage the Common Service Centers (CSCs) established under Digital India Programme to connect the local population to ODR services.³⁰¹ Also, the capabilities developed under the Tele-Law programme launched by the Department of Justice can also be used to encourage resolution of disputes through ODR and by offering paralegal services.³⁰²

The Government can consider collaborating with the private sector service providers to develop pilot programs and customised solutions.

The **judiciary's efforts** have been initiated through the **eCourts Mission Mode Project**, project which has been discussed in detail in chapter IV of the report.³⁰³ **Phase III** of the project can be leveraged to build ODR infrastructure. **Court-annexed** ADR centres can be equipped with digital technology and **Legal Services Authorities** and ADR centres can be used as nodal agencies to spread awareness regarding ODR. All further development of ODR in the nation will be contingent on the foundation laid out by these combined efforts of the Government and judiciary.

2. 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. Fortunately, the Government has already taken steps towards increasing digital literacy through its initiative—the **Pradhan Mantri Gramin**

Digital Saksharta Abhiyan (PMGDISHA). Launched in March 2019, the initiative has successfully trained more than **2 crore individuals** and certified them as digitally literate. Through this initiative, the Government has also established more than **3 lakh training centres** and completed over **3 crore trainings** to promote digital literacy in rural India.³⁰⁴ This initiative can be leveraged to inform individuals about basic tools that are used in ODR – such as audio, video and text communication. A dedicated section in this chapter identifies other ways in which awareness can be generated about ODR in India.³⁰⁵

3. Reduce digital divide through targeted policies

Very often the benefits of policies and initiatives, such as the ones above, fail to reach classes and communities that exist on the **margins of society**.³⁰⁶ This stands true even in the use of the internet and access to technology, which differs according to geographies, age groups, genders, etc. The following numbers from a survey conducted by the Internet and Mobile Association of India point out these **disparities**.³⁰⁷

- i. **Women** constitute only **one-third** of the internet users in the country.
- ii. The majority of Internet users in India are younger individuals and those above 40 years constitute only 15 percent of the internet users.
- iii. **99 percent** of the Internet users in India access it through **mobile phones**.
- iv. Percolation of desktop and laptop computers is 10 percent in cities and 3 percent in rural parts of the country.

In light of these numbers, it is important that the success of the above-mentioned initiatives be measured by their successful reach to these classes of individuals and not just in whole numbers that include one and all.³⁰⁸ Some ways in which this can be achieved are:

- a. **Design platforms that maximise access:** It is recommended that ODR Platforms be **mobile friendly** to enable their wide adoption. Further, it is also desirable that the private sector develops solutions, which are based on voice prompts technology given the limitations in digital literacy. The Government can also incentivise platforms to develop interfaces that cater to **differently abled persons**.
- b. **Encourage the use of technology among women and elders:** It is recommended that the Legal Service Authorities, with the support of the judiciary, civil society the organisations and self-help groups, design special campaigns to encourage the use of **technology among women and elders**. Such campaigns should run in parallel to the digital literacy programmes to make individuals comfortable with the use of technology and in turn increase ease of use of ODR tools.

4. Encourage innovation of accessible technology solutions

As identified above, very often the answer to the lack of technology infrastructure

is increased access to it. However, along with increasing access, it is equally important that innovations on the side of the private sector also respond to the needs of the marginalised. It is thus important; that the Government specifically encourages the growth of technology solutions that increases access amongst the marginalised. The Government through its initiatives such as Atal Innovation Mission³⁰⁹, should encourage the innovations to increase access amongst differently abled persons, that understand and respond to the regional and multi-lingual diversity of the country.

B. INCREASE CAPACITY

While access to digital infrastructure is necessary for the inclusion of the end user, an 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. To achieve this, there is a need to introduce training programmes, strengthen the paralegal services within communities, encourage growth within the private sector, increase the capacity of court-annexed ADR centres and co-opt ODR into specific government sectors. Through focused recommendations, this section explains how capacity can be increased both in the short and the long term.

1. Introduce training at all levels

Well trained professionals are prerequisite for a well-developed ODR framework. It is their existence that can raise the confidence in the end users-individuals, businesses and Governments. Data from NALSA suggests that there already **does exist sufficient capacity** in trained mediators to scale up mediation in the country.³¹⁰ However, the data is not very helpful when it comes to assessing the quality of this capacity or of other types of ADR professionals. That said, given the growth that the private sector has seen over the past few years, there has been an increase in the number of trained ODR professionals in India. Therefore, while the Government should attempt to increase ODR capacity in the long term, users of ODR such as individuals, businesses and the Government at all levels, can utilise the pre-existing trained professionals in the interim. In fact, an increase in the number of cases being resolved through ADR and ODR will create an impetus necessary to attract qualified individuals towards becoming dispute resolution professionals.

To ensure that the quality of professionals is maintained in the country, it is recommended that a body to regulate these training standards be present at a national level. To this end, in the field of arbitration, the Arbitration and Conciliation Act (Amendment) Act, 2019 has mandated the setting up Arbitration Council for India. A similar institution can be set up for mediation in India. As the mediation legislation drafted by the MCPC suggests there is a need to set up a Mediation Council of India. Alternatively, the powers to regulate mediation can continue to be proactively exercised by the Arbitration and the Mediation Council of India as envisioned by Section 43D of the Amendment Act. Further, the following are some of the other measures that can be taken to ensure that the quality of

professionals is maintained.

a. Introduce uniform training standards

It is recommended that a uniform set of training standards, to upskill ADR professionals to become ODR professionals be introduced. Therefore, the requirement to meet these standards should be **in addition to the pre-existing** requirements set out by the legislations or rules for that type of professional. For instance, an arbitrator seeking to provide e-arbitration services should be required to meet the standards set out by the Arbitration Council of India, the requirements under the respective rules of the various High Court annexed centres or private dispute resolution centres and the below mentioned ODR training standards. These standards should be **uniform across all ODR professionals**. It is recommended that the following components form a part of the training standards for ODR professionals³¹¹:

i. Basic training:

- Basic knowledge of all types of ODR: eADR and algorithmic resolutions
- Basic knowledge of communication through ODR: both synchronous and asynchronous
- Adapting offline ADR techniques to online environment

ii. Training on ethics:

- Familiarise neutrals on the ethical standards³¹²
- Party psychology and common online behaviours
- Diversity and cross-cultural communication
- Methods to increase accessibility and accommodate disability

iii. Training on best practices:

- Prepare and conduct online mediation and arbitration
- Overview of various platforms, processes and tools
- Address pitfalls when communicating online
- Privacy, security, data protection and legal issues in ODR
- Methods to ensure quality in ODR

iv. Training on practical skills through demonstrations and simulations on:

- Techniques for audio, video and text-based communication
- How to manage party expectations and encourage participation
- Time management in asynchronous online conversations

Uniform implementation of these standards will ensure that even though the training is being provided by a variety of stakeholders and institutes, the quality

of ODR professionals across the nation is ensured.

b. Expand the scope of ODR professionals through training

ODR presents an opportunity to create a cadre of a host of new ODR professionals across the country. These individuals can range from traditional ADR professionals such as arbitrators and mediators and extend to case managers and tribunal secretaries, which might go on to play a more integral role in ODR proceedings. Thus, the training that should be offered must be directed to a **wide set of future professionals**. Fortunately, the Government seems to have already started the processes of taking an expansive approach to professionals in the context of arbitrators, having omitted the Eighth Schedule of the Arbitration and Conciliation Act, 1996 via an ordinance in November 2020.³¹³

In the context of mediation, the need to expand the scope of mediators to **include other domain professionals** has been recognised on multiple occasions. For instance, in *Daramic Battery Separator India Pvt. Ltd.*,³¹⁴ NALSA was unable to find a suitable commercial mediator within its pool of mediators. Similarly, some commercial disputes before the Legal Service Authorities have seen a **lack of domain specific experts**.³¹⁵ This problem can be addressed by including professionals such as retired bankers, chartered accountants, company secretaries, social workers and psychologists etc. into the fold of mediators by providing them suitable training on the requirements of the process of mediation and arbitration.

Further, in the context of mediation, in addition to basic subject matter knowledge, it is key that mediators have process expertise, adequate communication skills for effective problem solving and skills to diffuse tension during impasses. Thus, training for such soft skills should therefore be a part of the training curriculum.

c. Collaborate to expand training capacities

The onus to ensure the growth of the ODR sector and undertake the training of professionals does not have to be fulfilled by the Government alone. Instead, it is important that various actors undertake collaborative efforts to introduce **training and certification programmes**. To this end, some actors such as state institutions³¹⁶ and universities³¹⁷ have already introduced training programmes. Moving forward, **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. To ensure that the standards across these institutes are maintained, the Government can introduce uniform training standards like the ones mentioned in **Section (a)**.

d. Introduce remote teaching courses

Like training, which is being provided by various institutes, the method of imparting this training can also be diverse. They can thus take the form of **remote courses**.

Due to the COVID-19 induced crises; universities across the country now provide courses through video conferencing.³¹⁸ Given the unique nature of ODR, **Judicial Academies, Bar Councils, and universities** can be encouraged to provide training through such remote courses.

e. Use SWAYAM to introduce multilingual courses

To ensure that training is not limited to just English or some regional languages, the Government initiative Study Webs of Active-Learning for Young Aspiring Minds (SWAYAM) can be harnessed. SWAYAM is an **open online course** (MOOC) platform launched by the Government of India under the Digital India initiative.³¹⁹ Courses available on the platform are free of cost and available in multiple languages.³²⁰ **ODR courses and ODR training** can be provided by this platform.

f. Introduce ODR in legal education and continuing legal education

Training does not have to start after individuals become professionals. Instead, it can be initiated right at the level of law students. Even though the Bar Council mandates alternative dispute resolution to be a compulsory subject for legal education, the requirements provided under the rules to conduct it through simulations and case studies are often not followed across universities. The **University Grants Commission** and the **Department of Legal Affairs** can issue circulars to universities to encourage them to have multiple elective subjects on ADR including ODR. **State Bar Councils** and **Judicial Academies** can also be encouraged to introduce continuing legal education through curated curriculums and certificate courses that emphasise first-hand experience with technology and up-skilling advocates before they take up the roles of Neutrals.

g. Train judicial officers and court staff

In anticipation of the increased use of ODR, the support staff across court-annexed centres should also be provided sufficient training. Additionally, training of court staff and members of the Registry will ensure that these stakeholders are familiar with ODR processes and can standardise processes relating to the enforcement of ODR settlement agreements and awards. It is also recommended that judicial officers be provided training to effectively refer cases to ADR. Such training can take the form of management of rosters and identification of cases that are suitable to be resolved through ODR.

2. Strengthen paralegal services within communities

The concept of Para-Legal Volunteers (PLVs) can be traced back to 2009, when the National Legal Services Authority (NALSA) recognising the need to bridge the gap between the common people and the Legal Services Institutions (LSIs)³²¹ introduced the Para-Legal Volunteers Scheme.³²² The objective of the scheme was to impart legal training to PLVs who in turn provide people, in their locality, **information about the free legal facilities** available at the LSIs. In addition to

bridging this gap, the PLVs also play the critical role of generating awareness about the benefits of settlement of disputes at the **pre-litigation stage** through Lok Adalats, conciliation, mediation and arbitration. Therefore, they are a major resource that can increase the reach of ODR in rural areas and remote locations.

However, the current status of PLVs in India is sub-par. Under the scheme, every DLSA was to ideally have 50 active PLVs.³²³ To this end, most states complied with the numbers, with about 27 states/UTs seeing more than twice the number of PLVs and nine states/UTs having less than the required numbers.³²⁴ However, further research shows a less promising picture. States with high populations (such as Maharashtra, Uttar Pradesh and Bihar among others) show a figure of **less than 5 PLVs per lakh** of the population.³²⁵ These numbers are inadequate to cater to the needs of the population, especially during the introduction of an unfamiliar initiative such as ODR. Apart from just the numbers, various other issues such as the **lack of clarity on the criteria for qualifications**, inadequate training and monitoring mechanisms have limited the success of the scheme.

Investment in PLVs should be thought of as an investment in building a community asset whose impact will not just be an increase in the **possible reach of ODR to rural areas**, but also **address larger access to justice issues**. NLSA can take some of the following measures to address the problems in a phased manner.

- i. Ensure that the numbers of PLVs are **assigned proportionate to the population** of the District as opposed to a designated quota per DLSA.
- ii. Use PLVs services to assess the legal needs of the community in a planned and structured manner.
- iii. Provide targeted and **curated curriculums with simulations** in contrast to the current four days induction course and three days advance training course, which cover a very wide range of legislations in a short period of time.
- iv. Ensure **continuous training** to respond to the contemporary issues faced by the community.
- v. Providing step-by-step, **script-based solutions** to recurring problems such as filing FIRs, motor vehicle claims and cheque bouncing cases.
- vi. Introduce a continuous and streamlined **monitoring system**.
- vii. Provide adequate and fair compensation.
- viii. Reassess the qualification of minimum education.
- ix. Provide clarity on the criteria for selection.
- x. Provide community members information on the available ADR and ODR mechanisms through literary camps.

3. Encourage growth in the private sector

The Government does not have to build capacity for ODR in India all by itself. Instead, it can collaborate with the private sector, to innovate and develop long-term ODR solutions. Since the private sector has already seen some growth in the past few years, the Government can **co-opt the existing** platforms and utilise their capacity in the immediate future. To truly harness the private sector's potential, the Government has to encourage growth through **targeted initiatives** that encourage innovations and new entrants. Some of the ways in which growth can be enabled in the private sector have been identified below.

a. Set up Legal-Tech Hubs

Another method of encouraging growth is through setting up Legal Tech Hubs across the nation. Inspiration can be drawn from countries like Singapore, which have set up legal tech hubs and actively worked towards increasing their **Ease of Doing Business parameters**.³²⁶ For example, the Future Law Innovation Programme (FLIP) set up by the **Singapore Academy of Law (SAL)** is an industry-wide initiative to drive innovation and encourage the adoption of new technology across the legal sector.³²⁷ Through **collaboration** between the Government, the judiciary and the legal-tech community, a similar framework for India can be created.

b. Encourage the development of different variants of ODR

Given that ODR is still in its nascent stages of development, there is a lot of scope to originate and design desirable tools and technologies.³²⁸ Such a freehand can be used to develop **customisable solutions** based on the **classes of disputes** or categories of parties. For instance, technologies used to resolve e-Lok Adalats disputes will differ from that used in small value e-commerce disputes. The latter for example, can potentially be contained through a comprehensive customer service system. To encourage the development of diverse solutions, it is essential that ODR should not be circumscribed by what currently exists. Instead, it should be **loosely defined** such that it fosters innovation to truly deliver on the promise of access to just, speedy and effective resolution of disputes.

c. Collaborate with the private sector to resolve an upsurge of cases arising during the COVID-19 related pandemic

Owing to the COVID-19 induced pandemic, the number of disputes across India are likely to **see a rise in numbers**. They can be across various sectors and include disputes such as non-payment of wages, termination of employment, the surge in tenancy and consumer disputes and a host of commercial disputes. The following identifies an indicative list of disputes that are likely to see an upsurge owing to the COVID-19 pandemic.³²⁹ These disputes can benefit from resolution through ODR as they allow for parties to arrive at the resolution by bargaining for their interest and in many situations contain limited questions of law.

1. Commercial Disputes involving a breach of contract, non-performance of contract, delays in payments or delivery of goods or services.

2. Labour disputes involving payment of wages, taking leaves, layoffs, retrenchment, or working conditions.
3. Family disputes involving payment of maintenance, custody, divorce or domestic violence.
4. Consumer disputes involving industries such as e-commerce, aviation, healthcare, insurance, hospitality and travel.
5. Tenancy disputes involving possession of property, payment of rent or eviction.

To address this rise and resolve some of the above disputes, the Government can introduce a **COVID-19 related scheme** that recommends resolution of these disputes through ODR, subject to limits of arbitrability.³³⁰ Under the scheme the Government can:

- i. Introduce a **tiered dispute resolution** framework for cases, which can be resolved through negotiation, mediation and arbitration in a time-bound manner, for all disputes below a certain monetary limit. The model used in Hong Kong can be used as a reference point.³³¹
- ii. Introduce a **24*7 legal help desk** for commercial and employment disputes. The help desk or curated online platform can educate the public regarding their rights and obligations under the law. The model used in China can be used as a reference point.³³²
- iii. Introduce **temporary schemes with a reduced legal service fee** or free legal aid for workers to cater to a large number of displaced workers from the lower economic strata.
- iv. Collaborate and **co-opt existing** expertise and resources from **grass-root organisations and private sector ODR** service providers. The Department of Legal Affairs has already taken a step towards identifying all existing ADR and ODR institutions.³³³ From this list, the Department of Justice and the Department of Legal Affairs can identify service providers who satisfy the **minimum standards** and adhere to the principles laid down in Section D of this Chapter.³³⁴
- v. Incentivise service providers to provide **services in rural areas**. Some of such incentives are identified in Section C of this Chapter.³³⁵

4. Increase the capacity of court-annexed ADR centres

The concept of court annexed ADR centres is synonymous with the **amendment to Section 89** of the Code of Civil Procedure, 1908 and can be traced back to the year 1999. However, it was only in April 2005, that they were piloted at the Tis Hazari District Courts, under the supervision of the Supreme Court's Mediation and Conciliation Project Committee (MCPC).³³⁶ Since then, courts across the country

have set up their own court annexed mediation centres, such as Samadhan by the Delhi High Court and the Bangalore Mediation Centre by the Karnataka High Court. These centres are governed by their **own set of rules** that vary across High Courts.

During the COVID-19 induced pandemic, some court annexed centres such as Samadhan have led the way in adopting ODR, through programs like '**On-Line Mediation Project**'.³³⁷ This project has also seen keen interest from disputants, having received more than 90 applications between June and September 2020.³³⁸ Similar initiatives along with some of the recommendations mentioned below will enable these centres to **cater to larger volumes**, thereby fulfilling their objective to reduce the burden on the public court system.

Presently, most of the developments in these court annexed centres tend to be limited to metros and other commercial centres which have sufficient infrastructure, interest from litigants and existence of trained professionals. For these centres to be one of the focal points of growth of ODR, their reach needs to be expanded to include more cities and towns. Efforts have to be consciously undertaken to reduce the digital divide existent in India.

a. Equip court annexed centres with ODR facilities

At present, **funding** of court annexed mediation centres comes from **State Governments** with High Courts exercising some control over drawing up of budgets and utilisation of funds.³³⁹ With support from the Supreme Court through the **eCourts Project**, which currently does not fund court annexed mediation centres, **primary ICT facilities** such as video conferencing tools, WAN connectivity and hardware equipment can be provided. The existence of these facilities will form the foundation for future ODR enablement.

b. Relax criteria for empanelment of mediators and recognition of institutions for court-annexed mediation

At present, the mediation rules of the various High Courts list out the criteria for qualifications, which by design are **oriented towards judicial officers and advocates** with considerable experience.³⁴⁰ While these rules provide for empanelment of 'other professionals', they often have requirements such as 15 years' experience or requirements to be experts in mediation. This acts as a **barrier to entry** for onboarding of Neutrals and also challenges the autonomy of parties that may prefer the appointment of non-experts but mutually trusted individuals as Neutrals.

Similarly, qualification criteria vary across fora, as regards recognition of mediation institutions. For instance, while some rules recognise mediation institutions³⁴¹ other **rules only recognise persons** and professionals and not institutions as qualified for empanelment.³⁴² Akin to professionals, they act as barriers to entry and overlook a key stakeholder in the dispute resolution process.

It is therefore recommended that the rules lay down only certain **basic standards** regarding conflict disclosure and due process and **expand the scope**

of who the professionals can be to resolve a dispute. This will lead to the recognition and appointment of diverse professionals as Neutrals. It is also necessary to standardise the criteria for recognition of institutions, since the partnership with existing ADR centres with well-equipped ODR facilities is a critical way to ensure ODR scales up faster.

c. Set up specialized court-annexed centres for certain classes of disputes

As noted in Chapter III³⁴³, globally, several jurisdictions have co-opted ODR into their own public court systems by setting up court annexed ODR Centres for a **certain class of cases** such as motor vehicle accident cases, loan defaults, and consumer cases that have limited questions of law and fact.³⁴⁴ The judiciary and the Government can, in collaboration, identify classes of disputes that are fit for ODR and set up specialized court annexed centres for a streamlined and targeted resolution of disputes. Given that the tools of ODR are still emerging and its efficacy in complex cases has not been tested, at the preliminary stages, ODR can be utilised for disputes of low pecuniary value and high volume, on a pilot basis in some sectors. **Section D** of this Chapter, identifies some of the disputes that can benefit from ODR.³⁴⁵

d. Harness the potential of technology

As mentioned in Chapter III, there are numerous ways in which AI/ML can be embraced in the resolution of disputes. Some examples of this include the legal consultation by intelligent tools incorporated in Zhejiang Province's Online Dispute Diversification Resolution Platform, China³⁴⁶ and the algorithm driven dispute resolution process adopted by Smartsettle.³⁴⁷

In the stakeholder meeting organised by NITI Aayog, while discussing the future of ODR in India, Justice D.Y. Chandrachud noted that this is an opportunity for the Government to employ AI tools to aid Government disputes.³⁴⁸ AI and other technology tools hold immense potential to reimagine the dispute resolution system. These technologies can **organise complex problems, identify the trade-offs and help parties arrive at an ideal solution in an efficient manner**. Further, such technologies can be **scaled up to address multiple disputes simultaneously** and hence reducing the delay in disposal of disputes.

However, the development of AI and other advanced technology for efficient dispute resolution **requires a comprehensive data corpus for the identification of patterns and rules in dispute resolution**.³⁴⁹ The Government should take measures to encourage analysis and review of dispute resolution framework to identify rules and patterns and help in developing AI based dispute resolution tools.

One of the ways to enable this can be allowing AI systems to analyse and observe dispute resolution process in court-annexed ADR centres. This can help in developing data sets for specific dispute categories which will then empower AI/ML tools to offer advanced dispute resolution services.³⁵⁰ Such data sets can then be provided to researchers, institutions and organisations to develop targeted

technology solutions for efficient resolution of disputes. The Government should notify appropriate privacy measures and responsibilities on researchers while processing and analysing such data.

5. Adopt ODR for specific Government sectors

As mentioned in Chapter III, ODR has been co-opted not just by judiciaries across the globe but also by various Government institutions seeking to contain disputes even before they can reach courts. While the initiatives that have been co-opted by the Government departments in India are mentioned in Chapter IV,³⁵¹ this section explains how they can be further **scaled up** moving forward. Given that the private sector is witnessing growth in India, it is recommended that the services of the private sector be utilised wherever possible during these early stages of innovation.

a. *Strengthen MSME SAMADHAAN for all kinds of money due cases*

As mentioned in Chapter IV,³⁵² at present, MSME SAMADHAAN covers only **issues related to delay of payments**. However, this portal can be scaled up to incorporate settlement of all MSME related disputes, and thereby provide a **single window dispute resolution facility for MSMEs**. However, before it is scaled up the Department can conduct an audit to determine the causes for its limited use in the past. This portal can then be linked to other fora/ platforms for effective end-to-end dispute resolution. To execute this expansion, inspiration can be drawn from the **Asia-Pacific Eastern Co-operation**, which has devised a collaborative framework to resolve low value disputes involving cross-border business-to-business (B2B) disputes, to help MSMEs.³⁵³ For disputes of an international nature, this framework can be adopted. For disputes of a domestic nature, the portal can develop a **comprehensive set of model procedural rules** and maintain a list of service providers that can resolve disputes through ODR within the procedural guidelines laid down by the Ministry.

b. *Enable ODR for INGRAM and Consumer Mediation Cell*

As mentioned in Chapter IV,³⁵⁴ the Department of Consumer Affairs has spearheaded ODR integration into government run ODR programs with the introduction of the **National Consumer Helpline (NCH)**. Further, it has laid the foundation for future ODR integration with the **Integrated Consumer Grievance Redressal Mechanism (INGRAM)** and soon to be introduced **Consumer Mediation Cells (CMCs)**. The following paragraphs explain how the latter two initiatives can be scaled up.

For Consumer Mediation Cells: Given that these cells were introduced only via the 2019 Amendment Act³⁵⁵, they are still in their nascent stages of development thereby providing a perfect opportunity to integrate them with ODR services. The Department can equip these cells with **relevant technology infrastructure** such as audio-visual equipment, good Internet connectivity and impart training to all **in-house mediators**. A dedicated platform for communication and document

submission during the mediation process can be developed which guarantees confidentiality and privacy. **Rules can be framed** to allow for asynchronous communication as well.

For INGRAM: At present, the INGRAM portal under the National Consumer Helpline project provides a three-tier approach to dispute resolution – resolution through the platform, followed by sector specific regulatory authority and finally through the Consumer Commission. National Consumer Helpline also offers **pre-litigation mediation services** to address consumer disputes concerning companies under its convergence programme. The Department can consider the **integration of ODR processes** to strengthen such pre-litigation dispute containment initiatives. To this end, the Department can use the pre-existing facilities of the Consumer Mediation Cells.

c. Use ODR to resolve Insolvency and Bankruptcy Disputes

Internationally, there have been a lot of successes in using mediation to resolve insolvency disputes like in the case of the Lehman Brothers Holdings case in the United States.³⁵⁶ Recognising such a potential, the Report of the Bankruptcy Law Reforms Committee recommended a process for **the negotiated settlement between creditors and debtors** without the active involvement of the court.³⁵⁷ Today, even though the Insolvency and Bankruptcy Code (IBC) prescribes a time limit to resolve disputes, they are seldom met due to the **delays at the National Company Law Tribunal**.³⁵⁸ To overcome such delays the Government can consider introducing a **mediation mechanism**, which has been successful in other jurisdictions.³⁵⁹ To further expedite the process, resolution can take place through ODR. To this end, the services of the private sector can be utilised and a roster of mediators and institutions can be identified by the NCLT. A framework that can enable this already pre-exists within the Code. For instance, presently the Code already allows for settlement of disputes at various stages of the insolvency processes including during the pre-admission, post-admission and before the formation of the committee of creditors. Suitable amendments to the Code will allow for these settlement proceedings to be conducted online.

C. BUILD TRUST IN ODR

While building infrastructure and ensuring adequate capacity can form the foundation for ODR, its mainstreaming will require increased trust in ODR processes from its end users- individual disputants, businesses and governments. This trust can be built only through **collaborative and coordinated efforts** from all concerned stakeholders-Neutrals, lawyers, ODR/ ADR institutions, ODR Platforms along with the Government and the judiciary.

The Government through the Department of Legal Affairs has already initiated the process by inviting submissions to **recognise ADR and ODR** services providers.³⁶⁰ Through such as list, the Government can provide users with a clear description of the services provided by the institutions e.g. e-arbitration, e-mediation etc.

and the sectors that they are currently servicing. Such a list can then be shared between Government Departments and PSUs to enable them to choose service providers that satisfy their requirement criteria.

Even the judiciary has taken an initiative to mainstream mediation in the country through the establishment of the **Mediation and Conciliation Planning Committee (MCPC)**.³⁶¹ The coming section identifies some of the other measures that can be taken to generate trust in ODR.

1. Adopt ODR for Government litigation

As discussed in Chapter IV³⁶², the Government is the biggest contributor to litigation in the country.³⁶³ As a result, the Government incurs heavy expenditures of public money as litigation costs.³⁶⁴ While there have been several attempts to encourage Government Departments, Ministries and PSUs to adopt ADR initiatives, they have not achieved the desired results and have in fact added to the delay.³⁶⁵ Overtime, the Government can **mandate certain categories of disputes** to be resolved through ODR before approaching courts. Such a strategy can be implemented in an incremental manner by using it in the beginning for smaller value, simpler Government disputes and expanding its use for disputes between Government Departments and Ministries and subsequently as a mandatory step for a wide variety of commercial cases.

In fact, the 'Action Plan to reduce Government Litigation' released by the Department of Justice in 2017 also advocates for the use of ODR to resolve disputes **between the Government and private entities**.³⁶⁶ Similarly, the Government can also consider making suitable amendments to the National Litigation Strategy to include a reference to ODR.

2. Introduce an awareness campaign for ODR

Introduction of new technologies, in this case ODR, often face scepticism from society. While these technologies show a lot of promise, acceptance is often an organic process that takes a lot of time. It has to go through gradual evolution with acceptance increasing in a progressive manner. One of the ways to remedy this scepticism is to increase awareness about ODR processes, platforms and their benefits. To this end, the Government, through its various Departments and the judiciary can run a **comprehensive campaign** that utilises **multimedia platforms**, such as television, radio shows, publication on Government and Supreme Court and High Court websites to guide the public on the ways to use ODR processes. The Government can also leverage its **social media** presence to highlight ODR success stories to encourage people to adopt ODR. Taking a cue from the Government's initiatives, private platforms can also **publish success stories** and hold free **awareness sessions on weekends** to increase the reach of ODR.

The Government should also endeavour to increase the reach of ODR in rural areas by increasing awareness through the National Digital Literacy Mission and introducing campaigns at the panchayat level with the help of paralegal volunteers. To help produce content for such campaigns the Government can collaborate with

the growing private sector and start-up community. However, awareness in this regard should not just be exposure to all good that ODR can do, but instead be a transparent showcase of both the benefits and challenges. This will help individuals make thoughtful decisions on how ODR can help them. This will also help limit and prevent abuse from dubious providers.

3. Introduce targeted incentives for stakeholders

The lack of targeted incentives for stakeholders is one of the reasons behind the limited adoption of ODR in India. Identified below are some of the initiatives that the Government and the judiciary can introduce to encourage these stakeholders.

a. Incentives for businesses

Due to an increase in use of technology, businesses across the digital economy (like e-commerce and hospitality) as well as traditional industries (like banking and housing) have **shown an interest** in integrating technology into their dispute resolution.³⁶⁷ To make ODR clauses easy to draft, ODR centres and start-ups can identify ideal ODR clauses that businesses can integrate during their contract drafting processes. The community can also consider collaborating to identify an ideal clause that can be used throughout the business community. Further, the implementation of Consumer Protection (E-Commerce) Rules, 2020 by businesses is also likely to encourage the creation of consumer grievance redressal mechanisms.

The Government can encourage this interest by introducing dedicated schemes. In March 2020, the Government launched the 'Vivad se Vishwas' and offered incentives like **waiver of penalty and interest to the parties** who volunteer to resolve their tax disputes under the scheme.³⁶⁸ As on September 8, this scheme has resulted in the resolution of 35,074 disputes.³⁶⁹ Similar schemes can be introduced for other sectors to resolve disputes between Government and private entities. The Government can also introduce **sector specific schemes** to resolve disputes arising due to the COVID-19 pandemic through ODR.³⁷⁰

b. Incentives for lawyers

As the letter from the Bar Council to the Chief Justice mentioned, the inclusion of technology tools in dispute resolution can create **hardships for lawyers** and can disproportionately benefit lawyers from privileged backgrounds.³⁷¹ Further, given the nature of ODR, there can be a **perceived sense of threat** among lawyers, that ODR might impact their traditional sources of revenue. As a result, it might disincentivise them from recommending ODR to their clients. To address this, the Government and the Judiciary can provide lawyers easier access to technology by building digital infrastructure³⁷² and developing necessary skills³⁷³ for their effective inclusion in ODR processes as both **representatives for parties and as Neutrals**. Further, referring cases to ODR by the Courts will also increase the legitimacy of the processes and help build trust within the lawyer community. To generate awareness about the manner in which lawyers can be integral to the ODR process,

modules on ODR can be circulated within Bar Councils and Bar Associations at both the taluka and state levels.

c. Incentives for start-ups

To encourage growth, the Government can introduce tax incentives directed at start-ups that newly enter the ecosystem. It can take a cue from the past, where the Government has provided incentives to start-ups in its **Annual Budgets**.³⁷⁴ Additionally, various Government Departments such as the Department of Promotion and Industry and Internal Trade have also recommended extension of tax incentives to incubators supported under **Atal Innovation Mission** or reduced Goods and Services Tax rates on alternate investment funds management fees and tax benefits on employee stock ownership plans (ESOPs).³⁷⁵ Similar incentives directed at private ODR related platforms and services can be introduced. Further ADR service providers should be encouraged to adopt ODR mechanisms in their processes.

To provide greater legitimacy to such start-ups and institutions providing ODR services, the Courts can maintain a roster of institutions to which cases can be referred to under existing legislations such as Section 11 of the Arbitration and Conciliation Act, 1996.

While implementing all the above-mentioned initiatives will go a long way, building trust and generating awareness is a **continuous process**. Given the fast-paced nature of innovation associated with ODR, it will be essential that the growth and the success that the industry sees over time be communicated with the public at large. A platform to showcase success **stories and the latest developments in ODR** can be considered as a **permanent feature** on the Department of Justice website.

D. SUITABLY REGULATE ODR

Today, ODR in India is at a pivotal cusp. The past few years have seen rapid developments in innovations and the emergence of a variety of ODR solutions.³⁷⁶ As identified in the previous chapters, these innovations have garnered a lot of interest from various stakeholders, especially during the COVID-19 pandemic.³⁷⁷ Given sufficient time and room for growth, India has the potential to be the **epicentre for innovation and the dynamic development** of ODR. With new players entering the field and the ecosystem seeing increased activity, there will be a corresponding need to ensure that the rights of the end users are protected. On the other hand, even though ODR has seen new innovation, these technology solutions are still in their early stages of development. Therefore, 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**.³⁷⁸ 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.³⁷⁹

The Government can adopt this light touch regulatory model³⁸⁰ through a two-pronged approach that uses legislative and non-legislative tools. First, it can **amend the existing legislations** to incorporate ODR and introduce **mandatory pre-litigation** online mediation for certain classes of cases.³⁸¹ To increase the likelihood of success, an opt-out model can be adopted.³⁸² Second, it can introduce a set of **voluntary principles** that act as the ideal set of standards that stakeholders can follow.³⁸³ These principles can govern the technology and design of ODR platforms and ethical obligations for ODR Centres and Neutrals. The following two sections—**strengthen the existing framework** and **regulate through principles** provide a detailed explanation of how this can be achieved.

However, this **light touch regulatory model** does not need to indefinitely be adopted.³⁸⁴ 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.³⁸⁵ In the past, a similar **progressive model of regulation** has been adopted by the European Commission, which over the course of a decade transitioned from non-binding principles³⁸⁶ to directives³⁸⁷. If adopted, the timeline for such progression is likely to be determined by the extent of innovation in the country and the observance of voluntary principles by the stakeholders. As is frequently the case, technology related laws often last for a short duration and require regular amendments.³⁸⁸ Even though these are considerations for the future, it is important that a cautious but **responsive attitude is adopted by the Government**, as opposed to one that is steeped in worry and apprehension of breach.³⁸⁹ The goal of introducing such a regulatory framework is to help design ideal systems. Systems to detect non-compliant actors are integral, but mechanisms to identify such actors can be developed as the ecosystem grows and progresses.

1. Strengthen existing legislative framework

As mentioned at the start, primary ODR services tend to often mirror ADR processes and reflect the same through an online interface. Hence, regulation of ODR should start from strengthening the existing framework for ADR in India. The Arbitration and Conciliation Act, 1996 regulates the appointment of neutrals, enforcement of the outcome and the other procedures for arbitration and conciliation proceedings. This act can be **modified to include ODR** and therefore provide an efficient regulatory structure for e-ADR and especially the online arbitration as it involves precise legal procedure.³⁹⁰ This will also facilitate the integration of ODR in the dispute resolution framework. The requirement for the appointment of the same arbitration institution to resolve disputes involving a single party can also be **relaxed**, given that ODR is likely to see a high volume of disputes arising from the same players. To ensure that this does not lead to a repeat player bias, the principles identified in the next section should be strictly enforced.

Such amendments will also be in line with the UNCITRAL Working Group on Arbitration and Conciliation, which in 2006 at their forty-fourth session recommended **revision of the UNCITRAL Model Law and Arbitration Rules** to

incorporate ODR.³⁹¹ Such recommended amendments can be made to incorporate ODR in existing legislations. Amendments to existing legislations can also be made to incorporate provisions of the **UNCITRAL Technical Rules on ODR**.³⁹² Further, **supplementary rules** can be introduced to accommodate the concerns that may arise during online arbitration and mediation processes. To this end, the **Seoul Protocol on Video Conferencing** in International Arbitration, 2020 can be considered.³⁹³

a. Introduce a regulatory framework for mediation and e-mediation

As discussed in detail, previously, there is a need for **legislation** to govern mediation in the country.³⁹⁴ Currently, mediation is inadequately regulated in a piecemeal fashion with references across various legislations and judicial precedents. Fortunately, the **Supreme Court has already established a committee** to prepare a draft legislation for mediation.³⁹⁵ The Committee has now put forth a draft legislation that provides legal recognition to mediated settlement agreements, irons out issues concerning enforcement, addresses issues that may arise in online mediation and also explicitly recognises ODR and e-mediation. Once promulgated into a law with a strong enforcement framework, parties are likely to be encouraged to participate in mediation and **eventually reduce the burden on traditional courts**.

A separate and dedicated legislation on mediation will help reduce problems in interpretation that might arise while reading distinct but similar provisions of law across different legislations. However, in the event the Parliament is unable to pass a dedicated legislation on mediation, mediation provisions can be introduced as a part of the larger ADR Code through amendments to the Arbitration and Conciliation Act, 1996 with a dedicated part for mediation, akin to conciliation. This will allow for all ADR related law to be consolidated in one legislation and make for easy regulation of the ecosystem including hybrid models of ADR. The final decision on such matter can be taken after consulting with stakeholders that are most impacted by this introduction.

b. Introduce ODR related amendments or an umbrella legislation

While it is certain that ODR requires a robust legislative framework, there are multiple ways in how it can be introduced and integrated. First, ODR can be read within the ambit of ADR across various legislations. This will allow for the inclusion of ODR without changing the current legal framework. Second, ODR can be explicitly introduced in these legislations to provide it greater validity and recognition. To this end, **Annexure A** of the report identifies various legislations and the amendments that can be made to them. Such a method provides greater flexibility and allows legislations to be responsive to the growth of ODR in their respective sectors. For instance, the mediation related legislation, mentioned above, can explicitly recognise and identify the procedures to be followed during e-mediation.

Third, ODR can be introduced in the form of an umbrella legislation which addresses all ODR related issues. For instance, such a legislation can detail out

minimal threshold for legitimacy in processes across all ODR proceedings. The decision of the appropriate method that can be adopted can be determined as ODR grows in India.

c. Strengthen existing regulation of online interactions

As mentioned in Chapter IV, there have been some legislations which recognise and regulate the use of technology namely the Information Technology Act, 2000 and the recognition of electronic evidence under the Indian Evidence Act, 1872.³⁹⁶ However, the Government can **introduce amendments into these legislations** to accommodate ODR processes and protect the data privacy, confidentiality, security and protection of rights of all parties. Additionally, the Government should also implement the personal and non-personal data protection framework through the establishment of a regulatory authority and a comprehensive legislation on **personal data protection**, after going through the necessary rigorous legislative drafting process.

d. Digitise and innovate legal processes

At present, the legal compliances such as affixture of stamp paper to the agreement and notarisation of documents require parties to **maintain physical copies** of the documents and be physically present for verification. This impedes ODR service providers from providing seamless end-to-end online dispute resolution at a large scale. The following suggestions identify how some of these processes can be digitised.

- i. **Mainstream e-stamping:** In 2014, the Central Government introduced e-stamping to address counterfeiting and enable online payment of stamp duty.³⁹⁷ Though this measure made obtaining stamps convenient, State rules still require parties to attach a copy of the e-stamp certificate to the document as a proof of payment of stamp duty.³⁹⁸ As payment of stamp duty is essential for arbitration agreement³⁹⁹ and arbitral awards in most of the States, such an archaic process of physically attaching e-stamp certificate defeats the purpose of digitisation and creates barriers for ODR. Further, even though e-stamps are available, the lack of accessibility of e-stamps results in black marketing and artificial shortage. Such artificial shortage may delay in the entire ODR process.⁴⁰⁰

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. Also, the e-stamp should be made more accessible and the process of attaching e-stamp certificate should be digitised to enable digital contracts and support ODR processes. Since, the issue of stamp duty is a state subject, the respective state governments need to play a proactive role harmonising such duties. To address these complexities, the Government may also consider **carving an exemption from payment of stamp duty** for the outcome of ODR processes up to a certain monetary value.

- ii. **Allow online notarisation:** In India, the process of getting documents notarised requires the physical presence of the parties. Online notarisation through secure e-signature and electronic notary seal can address this challenge and provide an online mode for authentication and validation of the documents.⁴⁰¹ Following measures can be considered to enable online notarisation in India.
 - a. **Integration of eSign for electronic signature and electronic seal:** Aadhaar eSign service offers electronic signature to all through e-KYC service to identify the signer.⁴⁰² The process has made the electronic signature accessible for all by exempting the use of the physical cryptographic key. This service can be leveraged to provide electronic seal and enable electronic signature during the notarisation process.
 - b. **Maintaining secure electronic records:** Digital lockers can be provided to the notaries to store and maintain all the necessary records for the documents notarised through online notarisation.
 - c. **Automated notarisation tools:** Moving forward, the Government should consider developing automated systems for authentication of the documents and maintenance of records. This will reduce human intervention and make the process more efficient.

In the long run, the Government can consider completely doing away with notarisation through the deployment of advanced authentication tools that will completely digitise the process. The benefits of process re-engineering these procedures will also aid in achieving the goals of the eCourts Project.

e. *Mandate pre-litigation mediation*

At present, there has been a lot of interest in using pre-litigation mediation to reduce the burden on traditional courts.⁴⁰³ In February 2020, the former Chief Justice of India, Justice S.A. Bobde called for devising comprehensive legislation with **compulsory pre-litigation mediation** to address pendency and slow disposal rates in courts.⁴⁰⁴ As an initial start in legislation, pre-litigation mediation has been introduced through Section 12A of the **Commercial Courts Act, 2015** and Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018. Even the Mediation Bill submitted by the MPCP to this Committee recommends the introduction of pre-litigation mediation. However, if pre-litigation mediation is to be scaled up, a well-developed system will have to be devised.

Internationally, the key to such a system has come in the form of an **opt-out model** of compulsory or mandatory pre-litigation mediation. Successfully implemented in **Italy and other jurisdictions**, this process mandates parties to attend initial mediation sessions to understand the benefits of the mediation process and explore possible settlement. After this mandatory initial session, the party may decide to opt-out of the mediation process or continue with the process to resolve their disputes. Mandatory pre-litigation mediation, therefore, becomes a **necessary**

step before approaching courts. Along with the opt-out option, the Italian model also prescribes **minimal mediation fees and sanctions** for the parties who fail to attend the initial mediation session.⁴⁰⁵ This balance between incentives and sanctions has resulted in upscaling the mediation process in Italy and reducing the burden on the judiciary.⁴⁰⁶

Many countries, like Turkey⁴⁰⁷ and Brazil⁴⁰⁸ have successfully replicated this model to reduce the case burden on the courts. In Brazil, the Code of Civil Procedure, 2015 also allows for pre-litigation mediation and conciliation proceedings to be held electronically.⁴⁰⁹ However, the incorporation of compulsory pre-litigation mediation in some countries, like Romania has resulted in barriers to the access to courts. In Romania, the mandatory nature of the provision and lack of incentives has reduced the mediation process into mere compliance before the incorporation of cases before the court.⁴¹⁰ Therefore, a framework for India needs to be carefully thought out based on the **realities of India's litigation culture**, and more importantly, the ecosystem's ability to provide a large number of mediators.

As seen in the case of Italy, the success of the opt-out model has rested in the parties' abilities to opt-out of the process at any stage without the fear of sanctions.⁴¹¹ Thus, for mandatory pre-litigation mediation to be a success, it is important that even though parties are encouraged to use ODR, they always have the voluntary option to undertake in-person resolution, if they so desire.

If successfully introduced, the Government can **gradually roll out** mandatory pre-litigation mediation for the dispute categories including but not limited to:

- a. Banking disputes,
- b. Consumer disputes,
- c. Disputes arising from business or commercial leases
- d. Disputes involving negotiable instruments,
- e. Disputes regarding bailments,
- f. Disputes regarding division of assets,
- g. Family disputes,
- h. Inheritance disputes,
- i. Insurance disputes,
- j. Labour and employment disputes,
- k. Real Estate disputes and
- l. Tenancy disputes.

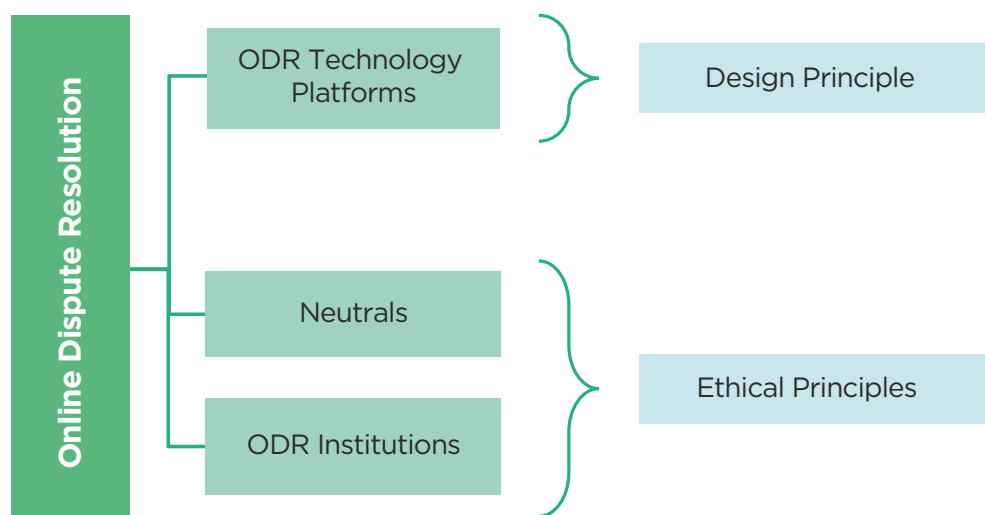
The roll out can be done in a phased manner for a select class of disputes and then eventually expanded to a wide array of disputes. The Government can arrive at a final list of disputes that are most suitable for mandatory pre-litigation mediation after consultation with the public, experts and the judiciary. During these consultations, the cases that are suitable to be resolved through ODR can also be identified.

It is important that the expansion in classes of disputes see a **reciprocal increase in capacity** and quality of dispute resolution centres and neutrals. Only then can it be ensured that pre-litigation mediation does not fall prey to the pitfalls it faced internationally. In this context, given ODR's many benefits that lead to an increase in access to justice, it can be relied on as the **preferred method of dispute resolution**.

2. Guidance through principles

While the previous section identifies a more permanent method to consolidate ODR into the legal framework, this section identifies how, moving forward, the ODR ecosystem should be shaped. It is recommended that this modelling be done through a **voluntary set of principles**.⁴¹² They are intentionally general and will act as **guidelines** that can lead the future development of standards and best practices. They are not intended to supplant any existing or future laws.⁴¹³ Even though these principles, in their current form, are voluntary and not mandatory it is strongly recommended that the stakeholders comply with them in letter and spirit. To encourage the compliance with these principles, it is recommended that these stakeholders publicly articulate self-certification or declaration on their respective websites. The Government Departments, Ministries and Judiciary can also consider the self-certification of the compliance with these principles as a pre-condition to engagement. To provide validity to these principles, the Department of Justice can consider its publication through a circular.

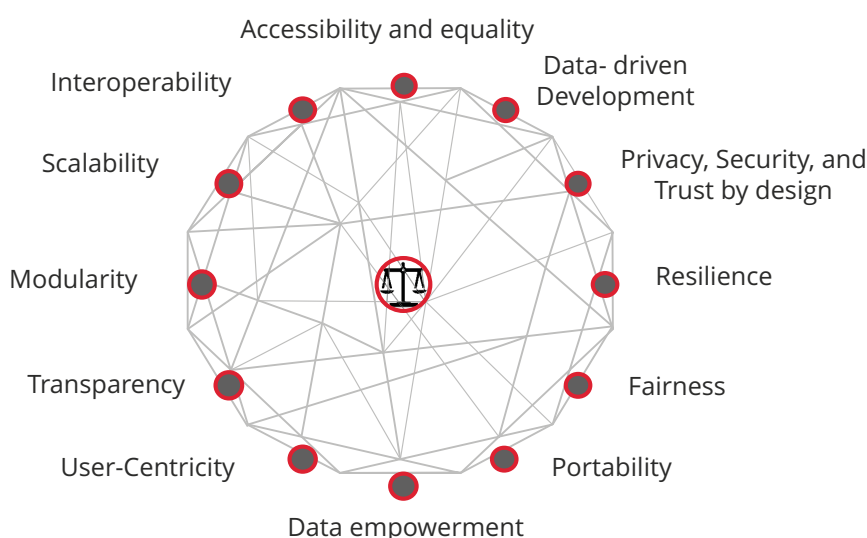
These principles are designed to guide and regulate various aspects of ODR processes – the technology platform used in ODR processes, the institutions providing ODR services and the Neutrals that facilitate or adjudicate the dispute resolution process. The intention of creating these three categories is to cover the universe of service providers within them. The terms should hence be read with a wide import to cover even those actors, which though momentarily, perform the role of or interface with these three actors. These principles are overarching and intend to cover the ecosystem as a whole. In the future, these principles can be customised and modified, as required, to make them applicable at an operational level.



While some of these **principles overlap** between the three components, especially between Neutrals and ODR Centres, they have been included in both categories for they place separate obligations on them. These principles are intended to be **forward thinking** and address not just e-arbitration and e-mediation but also leave room for the development of future ODR tools. The Committee believes that the principles should **not pre-empt and stifle innovation** but respond and adapt to it. Therefore, even though there are references to algorithmic dispute resolution, no separate sets of principles to regulate them have been identified for now. That said, all forms of ODR, including those introduced through AI/ML would continue to be guided by the following principles that have been identified. Further, to ensure adaptability, these principles should see timely revisions, respond to new innovations and pave the way for the future development of AI specific guidelines that speak to the intricacies of AI usage. Sources that have aided the creation of these principles have been identified in the endnotes. The whole principle or some components of the principle have been derived from these sources.

a. Design Principles for ODR Platforms

These principles apply to the technology layer in any ODR process and would be applicable irrespective of how this service is offered or used. The principles can guide **ODR start-ups and institutions** that provide ODR services and also **in-house ODR Platforms** that have been integrated by specific businesses to cater to their disputes. Though these principles rely on distinct elements, they need to be **read with each other** to realise their true intent and purpose. Given the novel nature of their creation, these principles are followed with a short commentary that hopes to provide insights into their intent and expected practical application.



i. Interoperability

It is strongly recommended that 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.⁴¹⁴

Commentary: Designing software, tools and platforms to be interoperable will potentially allow them to be plugged into the other platforms as well as operate with ancillary judicial systems under the eCourts Project. For example, the development of platforms for e-commerce disputes that are **cognisant of the record keeping practices** and applications developed by the Consumer Commissions will allow for data to be easily gathered and shared. This will in turn facilitate a **systematic approach towards future changes** in laws and policy.

ii. Portability

It is strongly recommended that ODR Platforms should be designed in such a manner that **data can be transported from one platform to another** without incurring any additional costs.

Commentary: The ODR Platforms should be designed to enable easy transfer of disputes and dispute related data to another platform without any cost or the risk of leaving the data behind. Absence of data portability can create entry barriers for software developers and hence distort competition. It could also unnecessarily **inconvenience the parties** who may be dissatisfied with the services provided by one ODR Platform and would prefer to shift to others. The ODR ecosystem should come up with the **necessary standards to ensure portability** between different platforms and APIs to assist the ODR process.

iii. 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**.

Commentary: While simple problems such as addressing refunds for ticketing can be addressed through simple solutions, automated and algorithmic resolution of disputes that involve the submission of documentation require **complex software and solutions**. To ensure that these solutions can be used for different purposes in the future, platforms can be designed to be modular.

iv. Privacy, Security and Trust by design

Platforms should take adequate safeguards to protect the privacy of their users and the security and integrity of the data exchanged during the dispute resolution process. These platforms should **induce trust in every interaction**. Platforms should also be designed to **capture minimal personal** identity related data or other sensitive data, which should be stored in an anonymised way with only relevant attributes being displayed on the user interface.⁴¹⁵ For information that is stored, platforms should **develop policies** for access, retention and destruction of data and publish such policies on their websites and applications.⁴¹⁶

Commentary: Platforms that are designed should be intrinsically secure and protect the security of the data and privacy of the individuals. They should also be supported by adequate and robust policy measures. Privacy can be ensured through **data minimalism**, informed consent, security through **encryption**, trust via registries, signatures, digital attestation, frequent internal system audits, measures for the **management of assets** such as trade secrets and confidential information disclosed during proceedings and limiting access of information to authorised personnel.⁴¹⁷

v. Transparency

Platforms should be designed to be **transparent and accountable** to all their 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.⁴¹⁸ They should be transparent in their use of **artificial intelligence** and provide the manner of its use in a non-technical language.⁴¹⁹ They should clearly disclose their funding structure, affiliations, privacy and security measures that have been adopted while designing the platforms.

Commentary: The goal of introducing a principle on transparency is to ensure that the platform is accountable to its users and any deviance in adherence with the other design principles are made explicitly available to the users.

vi. User centricity

Platforms must be designed to keep the **primary users at the centre** and ensure choice of access, ensure accountability among actors on the platform, and be

transparent about rules, pricing, participation, processes etc. Platforms should be designed to be **affordable** and users should have the ability to interact without **needing a middleman** is critical.

Commentary: Read along with the principle of accessibility, platforms should be designed keeping the user in mind. In the context of India, they should especially be affordable to cater to all classes of individuals.

vii. Accessibility and equality

ODR Platforms should be designed in such a manner that they can effectively be used by individuals who are differently abled or from different communities, classes and backgrounds. They should be designed to cater to **diversity across language, context, device, connectivity, capacity** etc. and ensure that the system addresses users with **special needs** with tools and content.⁴²⁰ The platforms should also ensure that offline privileges and disadvantages are not replicated in the ODR process.

Commentary: The potential benefits of ODR do not have to be limited to the economically advantaged individuals from urban areas, with easy access to technology, but also to the marginalised and less privileged. It is also necessary that ODR platforms account for the **cultural diversity** of its users both within India and during cross-border ODR. The principle of accessibility encourages platforms to develop tools that can cut across and also be **responsive to the heterogeneous identities** of all its potential end users. In terms of ensuring equality, the technology should not be allowed to become a barrier for one or both the parties to present their case before the Neutrals. This would also require the entities that use the platforms to ensure that the parties are given **sufficient notice and training** to effectively participate in online processes.

viii. Fairness

ODR platforms should be designed to uphold due process and rectify **bias** that might arise, either implicitly or otherwise, for or against individuals or groups, **including those based on algorithms**. They should be designed so that they can easily be amended and made responsive to and reflective of the concerns of the communities and stakeholders they serve.⁴²¹

Commentary: Platforms should be designed to pre-emptively rectify the **biases** arising from the integration of **AI/ML** based solutions.⁴²² They should also be designed to ensure that they do not disadvantage those individuals that might be first time users of such technology such as document sharing or video conferencing.

ix. Resilience

Platforms should have the ability to address challenges and have the capacity to adapt and incorporate new features. The services and systems that the ODR platforms provide should be **replaceable** and have the ability to respond to the **variability of ODR processes** and future changes and innovations.

Commentary: Platforms should be designed keeping the possibilities of future innovations in mind. This can be achieved by producing modular solutions and creating tools that can be easily modified.

x. Scalability

Platforms should be scalable to keep pace with the new innovations and incorporate new technologies in their functioning. They should be designed to **handle an unexpected surge of disputes**.

Commentary: While current ODR tools might have limited users, the mainstreaming of ODR is likely to increase both awareness and access to ODR leading to a large influx of cases. To address this future likelihood, platforms, solutions and tools should be designed to be scalable.

xi. 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. Such an incremental approach to changes will ensure that the ODR Platforms are **responsive to the needs** of the community. To adequately address and prevent the possibility of repeat player bias, arising from such data-driven development, platforms must develop strict internal policies and introduce safeguards. These policies must centre on the other design principles that have been identified.

Commentary: Data driven development encourages platforms to use artificial intelligence to come up with solutions for long standing problems. To enable the development of such solutions it will be necessary for the **Governments and the judiciary** to ascribe to principles of **open data** and publish past, present and future information.⁴²³ Even though the current tools adopted by the Judiciary in the form of the National Judicial Data Grid, increase access to data, they do not make it available in formats that can be used for the further development of AI/ML tools. It is also important for platforms to pre-emptively address all issues that might arise on account of repeat player bias without intention and introduce safeguards to ensure that situations do not arise where it can be misused with intention. Finally, the term community is to be understood in line with the principles of user-centricity, accessibility and equality.

xii. Data Empowerment

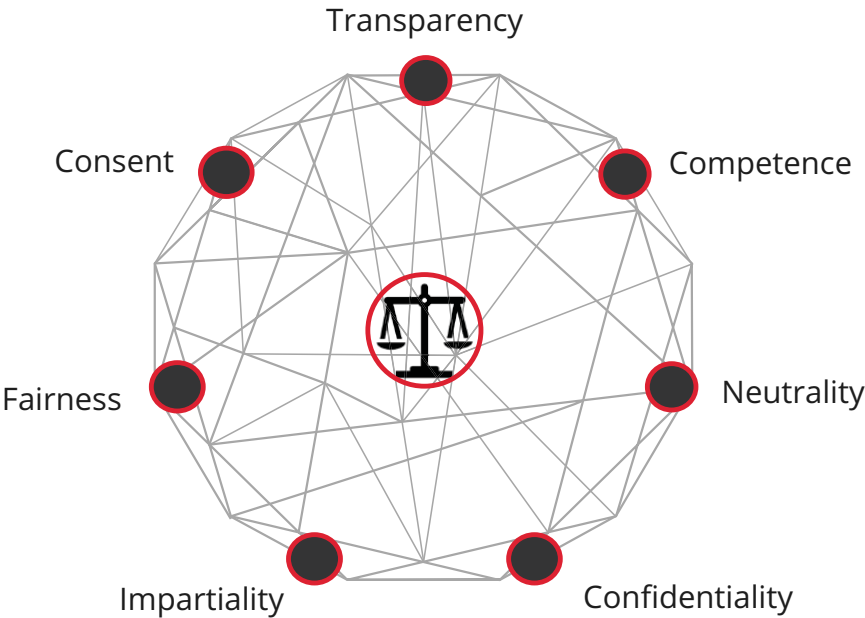
Data pertaining to individuals and entities must be made **accessible to them** in a standardised, machine readable, and digitally signed way. Data protection and empowerment implemented across these platforms must be fully aligned with **data protection laws**.

Commentary: Read along with the principle of portability, the data regarding the users should be available to the user at all times in an accessible format.

Since the ecosystem primarily consists of private ODR Platforms, the above principles are intended to regulate them. To facilitate justice for all while also creating new avenues for innovation to help ensure ease of access to justice, the Government will likely need to be a key service provider of ODR. To enable accessible ODR services to all, countries such as China⁴²⁴ and Brazil⁴²⁵ have built ODR Platforms to offer trusted online negotiation and mediation facilities to the disputing parties. It is thus recommended that in addition to the above design principles, the **Government** contemplate a **scalable platform using technology** that is designed on the principle of **free and open source software** (FOSS). Inspiration for such a precedent can be taken from the judiciary that, through the **eCourts Project**, has only relied on open source software for all its innovations.⁴²⁶ Also, in complementary sectors such as banking, through **UPI and the India Stack**, the Government has developed the largest open API in the world.⁴²⁷

Adoption of the open source principle will foster faster growth and long-term development not just for the Government, but for the whole ecosystem. This will allow the **stratification of services**, where justice for all goals can be targeted through the proposed Government led FOSS. At the same time, private sector participants/start-ups can continue to differentiate products that **entail proprietary** components. They can then benefit from the intellectual property rights they create and ensure a competitive market ecosystem that allows for profitable ventures. Therefore, a **bifurcated structure** is recommended wherein FOSS standards are not recommended for the private sector.

b. Principles for ODR Centres



i. Transparency

Parties should be aware of the risks and advantages of resolving disputes through ODR. The ODR Centre's **conflict disclosure policies**, funding structure, affiliations, **privacy and security measures** and potential impacts of incidents, should be disclosed in an easily understandable manner. In situations involving repeat players, the non-repeat player should be informed of the prior relationship between the ODR Centre, Neutral and the parties. If artificial intelligence is used at any stage of the process, the details of such use should be made available to the user. Wherever possible, ODR Centres should **publish the statistics and anonymised data** of the outcome of ODR processes to illustrate the lack of bias while being consistent with the principles of confidentiality.

Commentary: The principle on transparency seeks to ensure that the end user is made aware of **all aspects of the ODR process** ranging from the use of the platform to the relationships with Neutrals, so that they can take **informed decisions** after assessing the risks involved.⁴²⁸ For instance, the user should have the opportunity to **accept or decline** situations involving conflict of interests or those involving repeat players through the disclosure of information and availability of statistics. The principle also encourages platforms to **disclose security and privacy policies** adopted by them.⁴²⁹ To generate trust of the users it is recommended that all ODR Centres **publicly disclose details** of their investors, ultimate beneficiaries and directors on their websites. Such information should be updated to reflect any changes.

Compliance with this principle of transparency is particularly important in cases involving repeat players i.e. the same business or an entity seeking to resolve multiple disputes by the same ODR Centre. Such a situation can increase the likelihood of bias or perceived bias. Therefore, read along with the principle of neutrality, the onus to introduce mechanisms that prevent such an occurrence rest on the ODR Centre. ODR Centres must be transparent about their dealing in such situations so that users can take informed decisions. Such disclosures can also help generate trust in ODR and therefore in the self-interest of the ODR service providers in the long run.

ii. Competence

Confidence in the ability of Neutrals to manage the disputes on ODR Platforms is essential for disputing parties. The ODR Platforms should provide a **comprehensive policy** for the **selection and training of Neutrals**. The platform should also introduce an internal oversight, quality assurance and **grievance redressal process** which may help the platform ensure that both the Neutral and the platform conform with the standards it has set for itself. Assignment of competent Neutrals with sufficient training and/ or experience in dealing with disputes assigned to them is necessary for parties to repose trust in ODR platforms.⁴³⁰

Commentary: To balance the minimalist approach to regulation adopted by the Government, the principle of competence urges platforms to develop a **robust internal self-regulatory mechanism** that can ensure quality and address grievances. It encourages platforms to have comprehensive and stringent standards for training and selection of Neutrals and an **internal redressal mechanism** that the users can turn to in case of violations and breaches of these principles.⁴³¹

iii. Consent

The ODR process should be based on **explicit, informed and continuous** consent of the parties.

Commentary: In consonance with and the culmination of the principle of transparency, the platform should ensure that active and continuous consent is obtained from parties.⁴³² Such consent will also ensure reduced challenge to the outcome of ODR processes, on the ground of lack of consent by the parties to such process.

iv. Neutrality

Absence of **perceived or real conflict of interests** between the platforms and Neutrals on the one hand and one or more disputing parties on the other, is important to ensure fairness in ODR proceedings. Platforms should develop a **code of ethics** to check for conflict of interests and ensure the independence of Neutrals.⁴³³

Commentary: Platforms should ensure that they adopt a code of ethics to avoid any issues involving conflicts of interest. Read along with the principles of transparency, platforms should inform users on the **alternatives**, if available, in situations involving conflict. Consistent with the principle of consent, the final autonomy to decide on issues involving conflict **should rest on the end user**.

v. Fairness by due process

ODR Platforms should facilitate and uphold due process, **without bias** for or against individuals or groups, **including in processes based on algorithms**. They should be responsive to and reflective of the concerns of the communities and stakeholders they serve.⁴³⁴ The procedure adopted by the centres should also be well laid out and predictable to ensure that all users have the same user experience.

Commentary: The principle of fairness is to ensure that due process is followed and fair opportunity to be heard is provided to all involved users including situations where fair hearing is made difficult on account of **technical glitches**. The principle also hopes to address future concerns of **biases** arising from the integration of **artificial intelligence** and machine learning based solutions.⁴³⁵ The end goal of the platforms being responsive to communities is to ensure that any biases arising from pre-existing relationships, either in community run programs or otherwise do not replicate themselves during the ODR process. Centres should

also clearly lay out a threshold procedure that will be followed by the users such as sharing a screen to show documents or switching on the video while conducting video conferencing. Such predictability in the procedure will allow parties to prepare themselves for proceedings and know the avenues through which they can express themselves and therefore ensure a fair hearing.

vi. Impartiality

Platforms should introduce mechanisms to ensure that the platforms themselves and the Neutrals act impartially by accounting for conditions that could **structure patterns of privilege** in processes and outcomes for **repeat players**.

Commentary: The principle on impartiality places obligations on Centres to ensure that **both the platforms and the Neutrals** appointed by the Centre maintain high standards of impartiality. Mechanisms that ensure that disputes involving the same user or repeat users are addressed by different neutrals can be adopted by platforms. Additionally, following **due processes** as identified in the principle for fairness can also ensure impartiality.

vii. Confidentiality

The ODR service providers should maintain high standards of confidentiality and data protection to protect all the personal information of the parties.⁴³⁶

Commentary: Confidentiality forms the **cornerstone** of ADR and ODR processes. Therefore, platforms should ensure that they maintain the highest standards of both confidentiality and data protection to ensure that users have **trust and faith** in the system. In consonance with the principles of transparency and consent, platforms are to ensure that any **possibilities of disclosure** are clearly communicated to parties so that **continuous consent** can be obtained.

c. Principles for Neutrals

Akin to the **wide import** attached to the term ODR Platforms, the term ODR Neutrals is also to be understood to mean all possible Neutrals or dispute resolution professionals involved in conducting ODR proceedings. This also includes Neutrals that choose to take upon this role on a volunteer or pro-bono basis at the request of the parties.

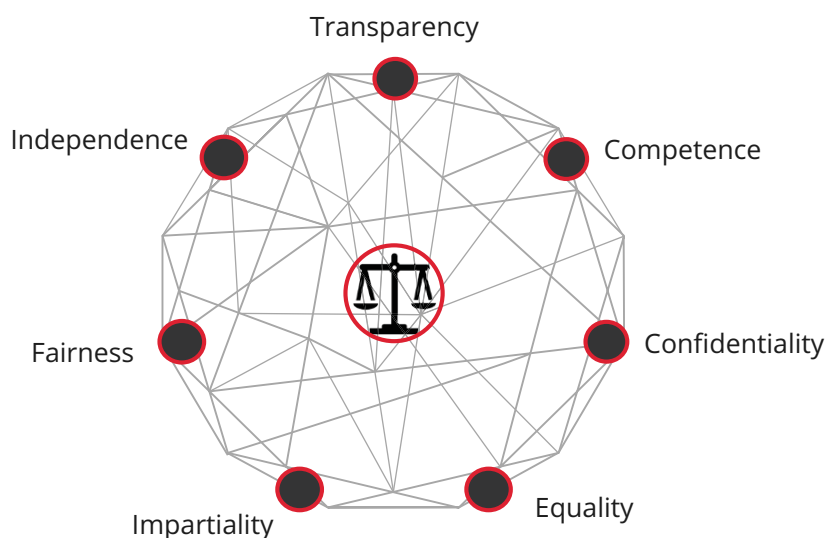
Ethical principles involving neutrals have **existed for decades** in the context of arbitrators and mediators. Therefore, they are for the most part self-explanatory. It is for this reason that no need was felt to include a commentary for this section. It is important that these ethical principles be **read along** with other ethical obligations placed on Neutrals through law or via regulations, rules, guidelines created by the affiliated institutions for different categories of Neutrals.

Given the peculiar nature of ODR, there might be multiple cases where a neutral sees repeat clients. These situations are likely to occur in cases such as consumer related contracts, where the consumer has to either agree with the terms or not avail the service at all. In such cases, neutrals might asymmetrically be appointed

by the party with a better bargaining power. Neutrals appointed in such cases should particularly adopt **heightened standards** of the principles mentioned below. The failure of adopting heightened standards might lead to abuse of the processes and in the long term eventually reduce the faith of individuals in ODR.

It is also essential to stress the need for ODR Centres to create frameworks, which are conducive for Neutrals to adhere to the following principles. In a sense, the ODR Centres and Neutrals have a **shared responsibility** towards the disputing parties.

It is also recommended that these principles see timely revision, especially to incorporate the **future possibility** of artificial intelligence and algorithms taking on the role of Neutrals.



i. Transparency

The Neutral should ensure that the parties are **aware of the role** that the Neutral shall undertake during the process.⁴³⁷ The Neutral should also be transparent in their conduct and inform parties about their **affiliations, privacy policy**, obligations of parties, possible **conflict of interest** and details of the systems involved in the ODR process.⁴³⁸ While dealing with repeated clients, the neutral should adopt greater transparency by compulsorily following disclosure protocols.⁴³⁹

ii. Independence

The Neutral should act independently, **without any influence** of other actors, throughout the dispute resolution process and **accrue no benefits from the outcome** of the case for themselves or the ODR Centres they are empanelled by, which may, though not exclusively, be in the form of a successful case settlement, recommendation or decision in favour of a party.⁴⁴⁰ Benefit accruing from the outcome of the case shall also be understood to include possible re-assignment or continued selection of the Neutral or the ODR Centre, to resolve future disputes involving one of the parties.

iii. Competence

The Neutral should have **technical, legal, cultural and domain** specific knowledge along with **language** skills to provide efficient dispute resolution.⁴⁴¹ The Neutral should also satisfy the **qualifications criteria** set out by the relevant authority, which consists of both affiliated institutions and Government or legislative bodies.

iv. Confidentiality

The Neutral should maintain high standards of confidentiality and not disclose confidential information **without the permission of all parties** or unless required by law, court rule or other legal authority.⁴⁴² The Neutral should also ensure that there are **sufficient safeguards** in place to protect the confidentiality of proceedings and their associated recordings, if any.

v. Fairness

The Neutral should uphold the **due process of law** and provide a fair hearing to all participating parties. The Neutral should also ensure that processes of the dispute resolution are **not implicitly biased** towards either of the participating parties.

vi. Impartiality

The Neutral should act impartially and be **free from favouritism** either by words or actions throughout the course of the dispute resolution process.⁴⁴³ The Neutral should also **avoid bias** based on parties' backgrounds, personal attributes, conduct or pre-existing knowledge of the dispute or disputants.⁴⁴⁴

vii. Equality

Neutrals should treat **all parties with respect and dignity**. The neutral should ensure that the **marginalised voices** are heard during the dispute resolution process and that the privilege is not replicated during the dispute resolution process.⁴⁴⁵

The future of light touch regulation

While ODR involves private actors facilitating the dispute resolution process, it is at **its core a method of justice delivery**. It is therefore important that these principles, though voluntary, be adopted by Platforms, Centres and Neutrals in form and spirit. The intent of these principles is to **divest the role** that is traditionally played by the Government **back to the ecosystem**. It would therefore only follow that the mechanisms to check compliances should also be developed by the ecosystem itself. One way in which platforms can self-regulate themselves is by self-prescribing regulations based on these principles to guide their ODR processes. For example, in the e-commerce marketplace, Alibaba has introduced and published a series of rules to govern its ODR Platform.⁴⁴⁶ Similarly, the COVID-19 scheme release in Hong Kong is governed by the rules framed by eBRAM.⁴⁴⁷

Another, more consolidated, self-regulatory model that has seen some early success comes in the form of a **self-regulatory organisation (SRO)** in the realm of **account aggregators**.⁴⁴⁸ The SRO, **Sahamati** is a collective of the account aggregator ecosystem and has been set up as a not for profit private limited company.⁴⁴⁹ The organisation co-creates strategic goals and executes them through working groups. It is governed by a charter and regulates those organisations, which have been **recognised by the RBI**.⁴⁵⁰ Several sunrise sectors are also seeing the evolution of an SRO concept that fosters compliance, innovation and a broad-based ecosystem growth and expansion framework. Such a self-regulatory mechanism, that sets out **defacto standards**, as opposed to the Government setting out de jure standards, can also be considered by the ODR ecosystem. To recognise those institutions that are complying with the standards, the SRO can identify ways to conduct internal audits of the ecosystem. The Government, on the other hand, can itself or through a recognised private entity consider the introduction of trust marks or recognition of these institutes on its website (akin to the invitation that has been circulated by the Department of Legal Affairs).⁴⁵¹

A somewhat **more structured form of regulation** may also be considered in the future once the sector matures. This could be in consonance with the **National Payments Corporation of India**, which introduced UPI. Although it is also a confederation of banks along the same lines as Sahamati, it has been set up under the Payment and Settlement Systems Act, 2007 and promoted by the RBI. The decision on this does not have to be taken under the current scenario however.

The success of this self-regulatory model and the extent of compliance of its actors will pave the way for future modifications of the regulatory framework and the extent of governmental intervention. There are however inherent limitations to the self-regulatory model.⁴⁵² Moving forward, based on the requirements for the future, the Government can consider introducing an **external grievance redressal mechanism** where end-users who find a breach of these standards can file a complaint to a regulatory body. It could also introduce a method of **certification and accreditation** of service providers akin to the European Union model.⁴⁵³ This can be done at a central level or through sector specific regulatory bodies.⁴⁵⁴ The Government can also consider requiring the publication of annual reports or a **permanent annual auditing mechanism** to check compliance of these standards.⁴⁵⁵ While these initiatives have been successful internationally, the question of whether and manner in which, they should be adopted in India, will be determined by how well the ecosystem is able to self-regulate.

E. IMPLEMENT ODR IN A PHASED MANNER

As mentioned in Chapter IV, the technological developments in recent years have positioned the country to stride towards **wide-scale adoption of ODR**. Implementation of the above mentioned recommendations and sustained efforts from the Government and the judiciary is likely to unlock the true potential of ODR in India. However, keeping in mind that the capacity of the ecosystem is still largely untested and technological innovations are still developing, it is recommended that ODR be **progressively implemented in a phased manner**. That said, since

some of the measures that have been identified require long term efforts such as building infrastructure or providing training, completion of all the measures in a phase are not a pre-requisite to move onto the next phase. For a detailed identification of the goals and measures that they constitute, please look at the recommendations section of the report.

The phases that have been identified move from building infrastructure and testing the market for its ODR capabilities, to expanding ODR to a greater class of disputes and finally utilising ODR to address the long-standing problems of pendency and delay that currently impair the judicial system.

Phase 1: Set up infrastructure and utilise existing capacity and capabilities

As mentioned in an earlier section of this chapter,⁴⁵⁶ due to the COVID-19 induced pandemic, there is likely to be an upsurge in certain classes of disputes. Fortunately, most of these classes of disputes **can be adequately addressed through ODR** without requiring the physical presence of parties. The lists of disputes that are likely to see a rise in numbers are mentioned in the previous section of this chapter.⁴⁵⁷ To execute and implement Phase I, the Government should aim to position ODR as a legitimate dispute resolution process by co-opting the services of the private sector, building capacity and encouraging its use both within the Government and the private sector. This phase should concentrate on introducing initiatives that can create long-term capacity and also test the capabilities of the current ecosystem. The respective implementing bodies can take the following measures:

	S. No.	Measures	Implementing Body
Build infrastructure and increase capacity	1.	Collaborate with institutions to introduce training programs for Neutrals	Judicial Academies and Legal Service Authorities Ministry of Law and Justice
	2.	Encourage the private sector to innovate cost-effective digital infrastructure	Government of India and private sector
	3.	Equip Consumer Mediation Cells with ODR capabilities	Ministry of Consumer Affairs
	4.	Implement large scale policies to increase digital infrastructure and digital literacy across the country and introduce targeted initiatives to cater to individuals on the margins	Government of India
	5.	Set up legal tech hubs	Government of India
	6.	Solicit the names and details and host a list of ODR service providers	Department of Legal Affairs

Promote the use of ODR and generate interest in ODR	7.	Amend the rules of the court-annexed ODR centres to include other professionals and institutions	Court-annexed ODR centres
	8.	Encourage institutions providing ODR services to publish ODR clauses on their websites	Ministry of Law and Justice and private ODR service providers
	9.	Encourage universities and institutions to introduce courses on ODR	Department of Legal Affairs, University Grants Commission, Bar Council of India
	10.	Finalise a list of training standards for Neutrals after receiving inputs from domain experts	Ministry of Law and Justice and consultation to be coordinated by NITI Aayog
	11.	Introduce a large-scale awareness campaign through the use of multi-media and collaborate with the private sector to develop literature and collaterals that can be disseminated	Ministry of Law and Justice in collaboration with the private sector
	12.	Identify and publish a principle framework for ODR	Ministry of Law and Justice and principles to be finalised in coordination with the NITI Aayog
	13.	Release an indicative list of categories of disputes suitable for mandatory pre-litigation mediation to solicit public comments	Ministry of Law and Justice and consultation to be coordinated by NITI Aayog
Use ODR to resolve disputes	14.	Adopt ODR to resolve low value and small claims disputes in Government Litigation by utilising the services of the private sector	Public Sector Enterprises and the Department of Legal Affairs
	15.	Introduce a scheme to resolve COVID-19 related disputes and utilise the services of the private sector	Ministry of Law and Justice in collaboration with other Departments and Ministries
	16.	Promote the use of ODR by enterprises and organisations that are technologically advanced to cater to digitally literate citizens that wish to adopt ODR voluntarily	Ministry of Law and Justice and private and Government businesses

Phase II: Mainstream ODR

Mainstreaming ODR will require a favourable ecosystem of law and policy to support its growth in India. It will also require initiatives from the **Government to support ODR** by deploying digital infrastructure, building trust in ODR, modifying legislations to enable ODR and training individuals to act as neutrals for ODR proceedings. Given that capacity of the private sector and the Government would have been tested through some pilot initiatives, the scope of disputes that can be resolved through ODR can be expanded. Therefore, the Government can work towards enriching the legal culture in the society by **incentivising out-of-court resolution of disputes**, especially through ODR processes.

Considering this, for Phase II of incorporating ODR in India, it is recommended that Government should aim to:

	S. No.	Measures	Implementing Body
Build further infrastructure and capacity	1.	Deploy digital infrastructure in courts and Legal Service Authorities	Ministry of Law and Justice
	2.	Encourage private parties to adopt ODR by publishing success stories on the website and social media handles	Ministry of Law and Justice and sector-specific Departments
	3.	Equip Consumer Mediation Cells with ODR capabilities	Ministry of Consumer Affairs
	4.	Equip court-annexed ODR centres	Ministry of Law and Justice, Supreme Court of India and High Courts
	5.	Introduce tax incentives to set up start-ups	Department for Promotion of Industry and Internal Trade
	6.	Train lawyers and other professionals to perform the role of Neutrals	Bar Council of India, State Bar Councils and Ministry of Law and Justice and the NITI Aayog can help in coordination
	7.	Train paralegal volunteers so that they can disseminate information about ODR	National Legal Services Authority in collaboration with Judicial Academies and the private sector

Introduce legislative amendments	8.	Consider the introduction of an umbrella ODR legislation	Department of Legal Affairs
	9.	Amend legislations to include ODR for specific dispute categories like insolvency related disputes	Sector-specific Ministry/ Department and the NITI Aayog to conduct consultations on proposed amendments
	10.	Amend rules of court-annexed centres to include other kinds of professionals beyond judicial officers	Supreme Court and Ministry of Law and Justice and NITI Aayog to help in coordination
	11.	Based on compliance of the ecosystem with the principle framework, identify and publish a set of best practices	Ministry of Law and Justice
	12.	Modify the Arbitration and Conciliation Act, 1996 and procedural laws to incorporate ODR	Ministry of Law and Justice, Parliament and public consultation to be coordinated by the NITI Aayog
	13.	Provide legislative framework for mediation either through a standalone legislation or through suitable amendments to the Arbitration and Conciliation Act.	Mediation and Conciliation Planning Committee, Ministry of Law and Justice and Parliament
Use ODR to resolve disputes	14.	Encourage businesses to adopt ODR through a reduction in court fee	Department of Legal Affairs
	15.	Ensure compliance of the e-commerce industry which is to set up internal grievance redressal mechanisms as mandated by the Consumer Protection (E-Commerce) Rules, 2020	Ministry of Law and Justice
	16.	Introduce mandatory pre-litigation mediation for a specific category of disputes on a pilot basis	Sector-specific Ministries / Departments
	17.	Using ODR for inter-governmental disputes and those involving PSUs	Public Sector Undertakings and Department of Legal Affairs

Phase III: ODR as a primary mode of dispute resolution

ODR has immense potential to provide a **new dimension to the dispute resolution ecosystem** in India. As mentioned in the introduction, ODR can help in the promotion of **legal health** in the country, the **avoidance** of disputes, the **containment** of disputes and the **resolution** of those disputes that knock on the doors of the judiciary. To extract all of the benefits that ODR has to offer, there is a need for a deeper percolation of technology in society and expanding the use of internet and digital tools.

Therefore, in Phase III, the Government and judiciary should focus on **fostering the ODR ecosystem** and encouraging innovations. By encouraging innovations, the judiciary and the Government will have at their disposal an enormous set of **tools** that can be **integrated and adopted** to resolve disputes. The increase in capacity and tools to resolve disputes would also allow for the **diversion of cases** that are pending before the judiciary to be resolved through ODR. ODR can therefore be leveraged by the judiciary to not just contain disputes from coming before it but also to **reduce its past pendency**.

Given the nascency of ODR, this Report has largely left it to the ecosystem to test and develop capabilities for different classes of disputes and different categories of disputing parties. However, there are obvious **limitations in the private sector** since they are at the end of the day largely driven by profit motives. Therefore, unless incentivised by the Government, innovations and services from private ODR service providers will be limited to avenues which make business sense. Therefore, in the third phase, it is desirable that the **Government builds a National ODR Platform** which will serve the needs of the most marginalised across the remotest parts of the country. The lessons from the first two phases of ODR should feed into the design and development of the National ODR Platform.

For this ambitious project to take off, it is necessary that the Government takes the necessary steps to put together a team of technology experts, technocrats and other experts who have experience in building large scale systems, to get started on building a blue print of the ODR Platform. It is essential that sufficient **budgetary allocation** is made towards building, maintaining and evaluating the National ODR Platform. It needs to be backed by a suitable **governance framework** which provides for participation by the wider ODR community. This is essential to ensure that this ODR Platform remains relevant and continues to evolve to meet the growing needs of its end-users.

The following can be considered as objectives for Phase III.

- a. Take steps towards developing a National ODR Platform
- b. **Encourage dispute avoidance** to reduce the influx of cases into the judiciary
- c. **Legal health promotion** with the use of technology and ODR
- d. Encourage **innovations** and entrepreneurship in ODR
- e. Divert cases to ODR to **reduce judicial pendency**.

S. No.	Measures	Implementing Body
1.	Based on compliance of the industry with best practices identify and publish a set of mandatory standards that should be adopted by all institutions providing ODR services	Ministry of Law and Justice and compliance with the ecosystem
2.	Develop a national ODR Platform that can be managed by the Government	Ministry of Law and Justice
3.	Encourage the use of ODR to resolve certain classes of disputes that have been pending before courts	Judiciary
4.	Expand the use of INGRAM and SAMADHAAN to cater to all consumer and MSME related disputes	Ministry of Consumer Affairs and Ministry of Micro, Small and Medium Enterprises
5.	Expand the use of ODR for a variety of disputes for Government litigation	Department of Legal Affairs
6.	Extend mandatory pre-litigation mediation for all the specified classes of cases	Ministry of Law and Justice
7.	Introduce a multilingual course on ODR on SWAYAM with the collaboration of the private sector	Ministry of Human Resource and Development

As will hopefully be conveyed by this report, ODR holds a lot of promise in addressing long-standing problems of justice delivery. Fortunately, the realisation of this promise is **not a far-fetched** one. People are very **willing and accepting** of technology to ease their daily lives. In turn, technology has shown to be **responsive and adaptive** to the needs of its users. The synergy of these occurrences, in the dispute resolution ecosystem, takes the form of ODR. It would therefore only follow that there has never been a better time to harness ODR's potential than **now**. It will now depend on the various actors and stakeholders to determine the extent to which they are willing for their lives to be **truly altered**.

CONCLUSION

Currently, the dispute resolution framework in India is facing many long-standing challenges including the lack of efficiency and access. Due to delay in the disposal and high pendency in the traditional courts and tribunals, dispute resolution in India involves a high expenditure of time and resources. This has an adverse effect on the ease of doing business in India. Though India has made recent advancements in the ease of doing business ranking released by the World Bank, the inefficiency of the dispute resolution framework prevents the country from providing an ideal environment for businesses and entrepreneurs.

The future of dispute resolution revolves around the ICT innovations and new ideas to make dispute resolution efficient and accessible for every section of society. ODR can play an important role in this aspect. Through easily accessible and user-centric processes, ODR can offer curated dispute resolution solutions for businesses, thereby enabling entrepreneurs to enforce contracts efficiently. Further, it can also provide an accessible mode of dispute resolution to masses which will eventually reduce the burden on the traditional court system.

ODR has the potential to decentralise dispute resolution in India and empower innovators across communities to create targeted ODR processes to resolve disputes efficiently. Such targeted innovations will help address the unique challenges faced by communities while resolving their disputes and attending to the dispute resolution requirement of our diverse society. The need for an efficient dispute resolution system and advancement in information technology has uniquely positioned India to emerge as the epicentre for these developments in ODR.

Though recent years have witnessed an exponential growth in ODR, the current developments are just the tip of the iceberg. Continuous encouragement and support from the Government will enable the ODR ecosystem to develop and this report outlines the initial measures that can be taken by the Government in this direction.

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. Further, effective use of AI and ML can widen the possibilities for ODR by improving the efficiency of the system, assisting disputing parties and introducing new models for dispute resolution. Hence, the Government should adopt a forward-looking approach to leverage these technologies to maximise the benefit while at the same time, adopting a cautious approach to minimise the risk associated with the integration of technology in dispute resolution.

Towards this balanced approach, the Government may on one hand consider a more proactive approach to guide the development and use of these advanced technologies in dispute resolution. This may include the development of a nation-wide platform to offer ODR services. Such a platform/s and affordable services will increase access to dispute resolution, through the use of ODR. On the other hand, the Government may also consider a more proactive role in regulating ODR by introducing permanent auditing and accreditation mechanism. The question of how and whether such initiatives will be required will be determined by how the ecosystem responds to the current guidance framework in the coming years. What is, however, certain is that our conceptions of normal are vastly changing. In the dispute resolution ecosystem, ODR is that change. ODR is the future and that future is now.

ANNEXURE A

The following is an indicative list of the amendments that can be introduced to legislatively enable ODR in India.

Sr. No.	Legislation/ Rules/ Regulations	Implementing Authority	Proposed Amendments
Amendments Recognising and Incorporating ODR within the Legislative Framework			
1.	Arbitration and Conciliation Act, 1996	Ministry of Law and Justice	<ul style="list-style-type: none"> Amend the definition of 'Arbitration' under Section 2 (1) (a) to include arbitration that is wholly or partly conducted online by using ICT §1 Insert Section 61(1A) to provide recognition to conciliation conducted electronically, whether wholly or partly, using ICT. Introduce provisions and supplementary rules enabling online arbitration, and conciliation processes such as electronic exchange of documents, communication between parties, examination of witnesses and passing of electronic awards.
2.	Code of Civil Procedure, 1908 and ADR rules of High Courts	Ministry of Law and Justice and High Courts	<ul style="list-style-type: none"> Amend Section 89(1) of the CPC to recognise ODR for each category of ADR including Lok Adalats. Amend Section 89 (2) (d) to provide that the procedure for mediation shall be as per the mediation law as and when the legislation is passed. High Court rules to be consequently amended to recognise ODR.

3.	Commercial Courts Act, 2015 and Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018	Ministry of Law and Justice	<ul style="list-style-type: none"> Allow for the voluntary adoption of ODR for pre-litigation mediation on a pilot basis. Amend Section 12A to recognise the use of ODR for pre-institution mediation and settlement. Amend Rule 4 to include the electronic portals provided by identified ODR service providers as a 'venue'. Introduce provisions in the Act and the Rules allowing ODR service providers to conduct mediation and settlement.
4.	Companies Act, 2013 and Companies (Mediation and Conciliation) Rules, 2016	Ministry of Corporate Affairs	<ul style="list-style-type: none"> Amend Rule 11 to include electronic mode as a 'place' for conducting mediation and conciliation. Amend Rule 25 to introduce provision for electronic signature/ Aadhar based authentication on the settlement agreement by the parties. Introduce rules allowing ODR service providers to conduct mediation and conciliation.
5.	Consumer Protection Act, 2019 and Consumer Protection (Mediation) Rules, 2020	Department of Consumer Affairs	<ul style="list-style-type: none"> Amend the definition of 'mediation' under Section 2 (25) to include e-mediation and amend section 79 to include mediation conducted through electronic means using ICT. Introduce provisions in the Rules recognising institutions offering ODR services as mediators, mediation through electronic means and electronically signed settlement agreements.
6.	Family Courts Act, 1984	Ministry of Law and Justice	<ul style="list-style-type: none"> Amend Section 9 to recognise ODR as a means for the settlement of disputes. Introduce supplementary rules charting out the procedure for ODR.

7.	Industrial Relations Code, 2020 and (Draft Rules) The Industrial Relation (Central) Rules, 2020	Ministry of Labour and Employment	<ul style="list-style-type: none"> Amend Section 4 and Draft Rule 5 to provide recognition to conduct the proceedings of the Grievance Redressal Committee to conduct the process using ICT, either wholly or partly. Amend Section 42 and Draft Rule 17 to include arbitration that is wholly or partly conducted online by using ICT. Amend Section 53 to include conciliation that is wholly or partly conducted online by using ICT. Amend Draft Rule 22 completely integrating the conciliation procedure on the proposed Samadhan Portal which may facilitate filing of application, video conferencing between parties, submission of statements and the uploading of the conciliator's report. Similarly, amend the rule to completely integrate the procedure before the Industrial Tribunal and the National industrial Tribunal with the Samadhan Portal from filing of application to disposal. Amend Section 49 and Draft Rule 22 to clarify that the powers of civil court granted to the conciliator, Industrial tribunal and National Industrial Tribunal can be exercised using ICT.
8.	Insolvency and Bankruptcy Code, 2016	Ministry of Corporate Affairs	<ul style="list-style-type: none"> Introduce provisions empowering the NCLT to refer a matter for mediation between parties before admission of an application to initiate corporate insolvency resolution process. while explicitly recognising e-mediation by using ICT through ODR service providers. For individual insolvency matters, amendment to Section 100 (2) to incorporate a similar mechanism. Introduce supplementary rules charting out a procedure and the process for e-mediation using ICT.
9.	Insurance Ombudsman Rules, 2017	Ministry of Finance	<ul style="list-style-type: none"> Introduce rules recognising the use of ICT for resolving insurance disputes through an Ombudsman for the entire process, right from filing of the complaint, to conducting mediation and on failure of such mediation, passing of an award.

10.	The Legal Services Authorities Act, 1987 and The National Legal Services Authority (Lok Adalat) Regulations, 2009	Ministry of Law and Justice and National Legal Services Authority	<ul style="list-style-type: none"> Amend the definition of 'Lok Adalat' under Section 2 (1) (d) and 'Permanent Lok Adalat' under Section 22A to include Lok Adalats held through electronic means. Amend Section 22 clarifying that the power granted to Lok Adalats therein can be exercised through electronic means using ICT and introduce regulations for the procedure to be followed. Amend Regulation 8 to recognise electronic platforms as a 'place' for holding Lok Adalats
11.	Micro, Small and Medium Enterprises Development Act, 2006	Ministry of Micro, Small and Medium Enterprises	<ul style="list-style-type: none"> Amend Section 18 to include ODR service providers as ADR centres which the MSE Facilitation Council may appoint for conducting conciliation and arbitration. Introduce provisions and supplementary rules to integrate the procedure for conciliation and arbitration with the existing SAMADHAAN portal making the entire process seamlessly online. Introduce provisions to expand the scope of disputes within the ambit of Section 18.
12.	Motor Vehicles Act, 1988	Ministry of Road Transport and Highways	<ul style="list-style-type: none"> Introduce provision and supplementary rules empowering the Motor Accidents Claims Tribunal to refer a matter to mediation including mediation conducted, either wholly or partly, electronically through ICT.
13.	Negotiable Instruments Act, 1881	Ministry of Finance	<ul style="list-style-type: none"> Amend Section 143 empowering the Magistrate to refer a matter to mediation (including e-mediation conducted by electronic means through ICT) at any stage of the trial either on its own motion or at the request of the parties. Introduce supplementary rules laying down the procedure for mediation and recording of terms of settlement.

14.	Real Estate (Regulation and Development) Act, 2016 and Rules made thereunder by the Central Government and State Governments	Ministry of Housing and Urban Affairs and State Governments	<ul style="list-style-type: none"> Introduce provisions for mediation and settlement of disputes between developers and allottees through ICT.
15	Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002	Ministry of Finance	<ul style="list-style-type: none"> Introduce a provision in Section 13 enabling the parties to voluntarily enter into mediation/negotiation by using ICT through private ODR service providers.
16.	Umbrella mediation legislation	Ministry of Law and Justice and Mediation and Conciliation Project Committee	<ul style="list-style-type: none"> The new law should provide a comprehensive framework for mediation and should at least include provisions for: Explicit recognition of e-mediation Recognition of opt-in and opt-out models Standards for accreditation Basic principles to be followed Recognition of institutions including ODR service providers as mediators Confidentiality of proceedings Party autonomy Simplified enforceability of settlement agreements for all mediations conducted under any law
Amendments to Facilitate, Aid And Simplify the ODR Process			
17.	The Indian Evidence Act, 1872	Ministry of Law and Justice	<ul style="list-style-type: none"> Amend Section 65B clarifying that the production of certificate is not mandatory and that the person producing the document may prove it during the examination.

18.	Indian Oaths Act, 1969 And procedural rules of High Courts	Ministry of Law and Justice and High Courts	<ul style="list-style-type: none"> Introduce provisions permitting online oath taking and affirmation of pleadings.
19.	Indian Stamp Act, 1899; State Stamp Acts and Rules notified under them	Department of Revenue, Ministry of Finance and State Legislatures	<ul style="list-style-type: none"> Amend the legislations to explicitly recognise electronic agreements. Introduce provisions to pay stamp duty electronically without any requirement of attaching physical copies to the agreements when the agreements are electronic in nature. Attempt to harmonise the legislations and bring uniformity. Exempt Arbitration Agreements and Awards from Stamp Duty.
20.	The Information Technology Act, 2000	Ministry of Electronics and Information technology	<ul style="list-style-type: none"> Introduce provisions regulating the safe exchange of documents, communication between parties, examination of witnesses and passing of awards/executing settlement agreements in ODR.
21.	The Notaries Act, 1952 and The Notaries Rules, 1956	Department of Legal Affairs	<ul style="list-style-type: none"> Introduce provisions in the Act and the Rules permitting online notarisation of documents and provide the procedure to be followed.

ANNEXURE B

The following is the list of the members of the judiciary consulted during the process of drafting this report.

S. No.	Name
1.	Hon'ble Justice (Retd.) B.N. Srikrishna
2.	Hon'ble Justice D.Y. Chandrachud
3.	Hon'ble Justice (Retd.) Indu Malhotra
4.	Hon'ble Justice Sanjay Kishan Kaul

The Ld. Attorney General Shri KK Venugopal was also consulted during the process of the report being drafted.

The following is the list of individuals and organisations consulted by the Administrative Secretariat during the process of drafting this report. The list includes those who submitted written responses to questionnaires circulated by the Secretariat as well as those who were a part of targeted stakeholder consultations.

S. No.	Name	Organisation
ODR Start-ups		
1.	Aditya Shivkumar	Resolve Disputes Online
2.	Akshetha Maithri Ashok	Sama
3.	Badarivishal Kinhal	CORD
4.	Bhargavi TM	AdresNow
5.	Bhaves Shah	Presolv 360
6.	Kanchan Gupta	CADRE
7.	Namita Shah	Presolv 360

8.	Prashant Soni	JustAct
9.	Raman Aggarwal	Jupitice
10.	Rishabh Goel	Credgenics
11.	Vikas Mahendra	CORD
12.	Vishwam Jindal	WebNyay
Dispute Resolution Professionals		
13.	Arif Mohammed Madani	Independent Arbitrator
14.	Chitra Narayanan	Foundation for Comprehensive Dispute Resolution
15.	Jonathan Rodrigues	CAMP Arbitration and Mediation Practice Private Limited
16.	Laila Ollapally	CAMP Arbitration and Mediation Practice Private Limited
17.	Poornima Hatti	Samvad Partners
18.	Prathamesh D Popat	Prachi Mediation Chambers
19.	Rukmani Menon	CAMP Arbitration and Mediation Practice Private Limited
20.	Sangeeta Mehrotra	Independent Practitioner
21.	Shreyas Jayasimha	Aarna Law
22.	Tanu Mehta	Honorary Director, Centre for Mediation and Research, MNLU
Dispute Resolution Centres		
23.	Anil Xavier	Indian Institute of Arbitration & Mediation (IIAM), Cochin
24.	B C Thiruvengadam	Bangalore International Mediation, Arbitration, and Conciliation Centre
25.	Justice (Retd.) ML Mehta	Delhi Dispute Resolution Society
26.	Madhukeshwar Desai	Mumbai Centre for International Arbitration
27.	Nanjunda Swamy	Arbitration and Conciliation Centre- Bangalore
28.	PK Malhotra	Former Secretary General, International Centre for Alternate Dispute Resolution
29.	Tara Ollapally	CAMP Arbitration and Mediation Practice Private Limited
Lawyers		
30.	Ajay Bahl	AZB & Partners
31.	Ajay Bhargava	Khaitan & Co
32.	Ajay Thomas	Independent Practitioner
33.	Amit Kapur	J. Sagar Associates
34.	Anand Desai	DSK Legal

35.	Arjun Krishnan	Samvad Partners
36.	Badri Narayanan	Lakshmikumaran and Sridharan
37.	Dheeraj Nair	J. Sagar Associates
38.	Harish B Narasappa	Samvad Partners
39.	Hemant Krishna	Lakshmikumaran and Sridharan
40.	Hemant Sahai	HSA Advocates
41.	Jyoti Sagar	J. Sagar Associates
42.	Nandan Kamath	LawNK
43.	Niti Dixit	S&R Associates
44.	Nooreen Sarna	Chambers of Mr. Nakul Dewan
45.	Payal Chawla	Juscontractus
46.	Rahul Matthan	Trilegal
47.	Sameer Jain	PSL - Advocates & Solicitors
48.	Shivam Singh	Chamber 20A
49.	Shivank Diddi	Khaitan & Co
50.	Somasekhar Sundaresan	Senior Advocate
51.	Vismay P. Shroff	Parimal K. Shroff & Co.
Businesses		
52.	Ajay Singh	Bharti Airtel Limited
53.	Amit Bhasin	Hindustan Unilever Limited
54.	Avinash Kumar	ICICI Bank
55.	B. Murli	Nestle India Limited
56.	Deep Kalra	MakeMyTrip.in
57.	Hemant Kumar	Larsen & Toubro Limited
58.	Jatin Jalundhwala	Adani Enterprises Limited
59.	Khozem Mirza	Aditya Birla Group
60.	Lekha Bapna	Aditya Birla Group
61.	Poornima Sampath	Tata Sons
62.	Pramod Rao	ICICI Bank
63.	Rahul Kumar	InterGlobe Aviation Limited
64.	Rajneesh Jaswal	Nestaway Technologies Private Limited
65.	Sanjay Mohan	MakeMyTrip.com
66.	Venkatesh Bharadwaj	MakeMyTrip.com
ADR Service Providers in Rural Areas		
67.	Amol Kulkarni	CUTS International
68.	Nupur Sinha	Centre for Social Justice

69.	Renu Mishra	Association for Advocacy and Legal Initiatives (AALI)
70.	Santosh Poonia	Aajeevika Bureau
71.	Satyapal Singh	CUTS International
72.	Sheetal Jain	Microfinance Institutions Network (MFIN)
73.	Shubhangi Singh	Association for Advocacy and Legal Initiatives (AALI)
Other Experts		
74.	Aditi Singh	Dalberg Advisors
75.	Chittu Nagarajan	The International Council for Online Dispute Resolution
76.	Colin Rule	The International Council for Online Dispute Resolution
77.	Ethan Katsh	The International Council for Online Dispute Resolution
78.	Indraneel Gunjal	The International Council for Online Dispute Resolution
79.	Janet Martinez	The International Council for Online Dispute Resolution
80.	Leah Wing	The International Council for Online Dispute Resolution
81.	Namita Wahi	Centre for Policy Research
82.	Pablo Cortes	University of Leicester, United Kingdom
83.	Pramod Varma	EkStep
84.	Sachin Malhan	Agami
85.	Shilpa Kumar	Omidyar Network India

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- 453 Pablo Cortes, 'Developing Online Dispute Resolution for Consumers in The EU: A Proposal for the Regulation of Accredited Providers' (2010) 19(1) *International Journal of Law and Information Technology* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1819086> accessed 13 October 2020
- 454 Alexandre Biard, 'Impact of Directive 2013/11/EU on Consumer ADR Quality: Evidence from France and the UK' (2018) 42(1) *Journal of Consumer Policy* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6743740/>> accessed 13 October 2020
- 455 An example is Belgium where the national competent authority conducts once a year 'full audits' of two certified ADR entities and 'mini audits' of all other certified ADR entities; See Alexandre Biard, 'Towards high-quality Consumer ADR: the Belgian experience' (2018) <https://www.researchgate.net/publication/329482685_Towards_high-quality_Consumer_ADR_the_Belgian_experience_author_copy> accessed 13 October 2020
- 456 Text in ch VI p 73
- 457 *ibid*

