

Lessons from India's ODR Movement

Insights from Co-leading a Movement While Surviving a Pandemic between 2018 and 2021

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Abstract

India's vast case pendency and inefficiency of formal mechanisms greatly hinder the resolution of disputes. Aimed at moving India beyond these traditional limitations, the online dispute resolution (ODR) movement in India developed and gained tremendous momentum with the onset of the COVID-19 pandemic. Stakeholders otherwise resistant to change, both in government and in industry, were compelled to embrace technology and resort to an online mode of resolving disputes. This article traces the steady and promising growth of ODR in India and examines the contributions of innovators, entrepreneurs and enterprises who recognized the need for an alternative model of dispute resolution and participated in championing the expansion of ODR in the country. The article identifies insights from the Indian experience that could be portable to other missions for law and justice innovation in the world.

Keywords: Online Dispute Resolution, startups, entrepreneurs, ICICI Bank, E-ADR challenge, NITI Aayog, Supreme Court of India, ODR Handbook 2021, ODR national policy report.

Between 2018 and 2021 the number of online dispute resolution (ODR) start-ups grew from 3 to 20, the number of enterprises piloting ODR grew from 1 to 68, 8 Indian states conducted their small causes courts (called Lok Adalats) using ODR platforms, the Reserve Bank of India (RBI)¹ and the pioneering National Payments

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1 RBI Circular on ODR System for Digital Payments, https://m.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11946.

Corporation of India (NPCI) adopted ODR,² and India's central government body for new initiatives formulated a national policy for ODR. By the time the dust had settled it was clear that ODR had taken off in India – not as a side hustle but as a mainstream complement to the formal justice system.

The development of the ODR movement was the result of the convergence of many powerful forces – the well-documented pain in the formal justice system, India's rapid digitization, and, most importantly, the COVID-induced collapse of in-person justice systems – but it was also made possible by *an act of collective leadership*. In that act of collective leadership lie insights into how complex change in stuck areas such as justice can be realized in relatively short periods of time.

1 Here Come the Innovators

Behind the evolution of every new field, or the advancement of an existing one, are the ones that Steve Jobs called 'the hungry and the foolish'. These are the people who have a new idea for how things should be done. The world may not be quite ready for it, and they themselves may not have all the details sorted out. But they are willing to stand there and chip away until there is a moment of clarity for them and a breakthrough *around* them. Sometimes that moment is too far away and they have no option but to give up. But sometimes they reach that moment within their start-up lifetime. In 2018, before ODR really took off, there were already a handful of start-ups chipping away at Indian ODR;³ their founders being in their early 20s meant that they had the energy to play the long game without the baggage of adverse experience. Furthermore, India boasted of a well-recognized entrepreneur who had co-founded arguably the leading *global* ODR platform in the US.⁴ These start-ups and entrepreneurs, most of whom have stayed the course and gone on to establish themselves, played an instrumental role in walking the talk and demonstrating that ODR could actually work, *and at scale*.⁵ Without the innovators and entrepreneurs we cannot know whether the future we are selling can be a real possibility.

The voice for ODR in India a few years back was sincere but faint. Cut to today, ODR has a loud choir of supporters and it's a magical time for innovation in India's dispute resolution space. ODR in India is ready to roar! – Akshetha Ashok⁶

- 2 NPCI Intent Letter, www.npci.org.in/PDF/npci/upi/circular/2020/Circular-98-UDIR-Enhancing-Complaint-handling-and-resolution.pdf.
- 3 ODRWays (now SAMA) and Presolv360 are two start-ups of eminence. RDO, another ODR start-up with a predominant focus on the global market, has also had a co-founder and team based in India since 2015.
- 4 Chittu Nagarajan co-led Pay Pal's pioneering community court initiative and then co-founded Modria in 2011, which was acquired by Tyler Technologies in 2017.
- 5 Indian start-ups have now onboarded over 6 million disputes onto ODR platforms. For a detailed list of these start-ups please visit www.disputeresolution.online.
- 6 Akshetha Ashok is the Co-founder of SAMA, one of the leading ODR start-ups in the country.

2 Will the Real Champions Please Stand up

The first phase of ODR has greatly depended on the buy-in of enterprises and the government. These ‘super users’ needed to bring their trust to ODR so that individual users could also take to it. In such a situation it was inconceivable that ODR would take off without buy-in from big business and government users. It is here that the role of ICICI Bank bears special mention. It is India’s largest bank by capitalization and has had a hand in creating many new institutions in India – CRISIL, India’s first credit rating agency, being a notable example. Their Group General Counsel saw an opportunity for the bank to play a pioneering role once again by catalysing ODR in the country and committed 10,000 disputes to the most deserving start-ups through the ‘E-ADR Challenge’ it co-hosted with Agami in 2019.⁷ Since then he has personally championed ODR at every high-profile business or government forum that he has had access to as the legal head of one of India’s most respected enterprises.⁸ Other legal heads now ask the simple question: *if ICICI Bank can do it, then why can’t we?* In 2020, the NITI Aayog, India’s equivalent of a central planning body, became convinced of the idea and has served as a national champion for ODR ever since.⁹

The future will be a hybrid model that combines the best of both worlds—offline courts, online courts and ODR. – Nandan Nilekani¹⁰

3 Remember the Name

Narratives are important. Far from being passive stories, they shape our assumptions and behaviours. The truth is that at least until 2019 ADR had not progressed sufficiently in India. It had struggled to pass the vital ‘sniff test’ of innovation – its practitioners (mostly litigating lawyers) and their practices (chambers, documents, hotel conference rooms) smelt like and looked like the old ways, so people, particularly new business people, assumed that they must be! The community that got together to champion ODR, find connections, open doors and nurture innovation knew that they must speak about ODR as *a distinct and powerful new user-centric approach* to solve problems. It seemed cultish at times, but it had the effect of creating a distinct recall that ultimately contributed to greater acceptance. Explicit mention of ODR by the future Chief Justice of India on

7 The E-ADR Challenge was hosted by ICICI Bank and justice innovation catalyst Agami and benefited from the support of CAMP, a leading ADR centre in the country that also co-led its resurgent mediation movement.

8 Pramod Rao, the Group General Counsel of ICICI Bank, still remains a critical leader within the ODR community that helped build the ODR ecosystem in India.

9 The NITI Aayog is a central government body of great influence whose mission is to conceive and implement new programmes and initiatives for the advancement of the country.

10 Nandan Nilekani is the non-executive chairman of Infosys and chairman of UIDAI, which created India’s first unique citizen identity. Statements like the one quoted, at key fora, have reinforced the need for ODR.

multiple occasions,¹¹ eminent Supreme Court judges,¹² the NITI Aayog,¹³ and eminent business leaders;¹⁴ the publication of the *ODR Handbook 2021*,¹⁵ the release of the ODR national policy report¹⁶ and several high-quality events¹⁷ led to an *irreversible* new narrative for ODR – as an *adaptive, technology-driven solution* for a wide variety of dispute categories, old and new.

4 Let It Be

One of the biggest misnomers in the evolution of ODR was its legal sanctity. Many people, including some lawyers, assumed that ODR could not happen because of some legal obstacle. A couple of the most common barriers that were frequently cited were the fact that mediated agreements were not equal to court decrees¹⁸ and that resolution through online providers may seem suspect to courts. Although these are entirely valid concerns, there is nothing in them that is inherently fatal to advancing innovation. It is like asking Elon Musk to stop thinking about sending rockets to space or hyperloop capsules between New York and LA on the premise that the law about them is not entirely clear. That is just not how innovators work and represents one more reason why we must build cultures of innovation in the justice space. This is also why the most successful start-ups emerged from groups of people who were not completely conditioned by the structures of the law. Over 80% of the founders of the top five ODR start-ups in the country are either non-lawyers or law graduates with no legal practice experience. With this understanding, the evolution of law to support ODR was *only one priority*, albeit an important one, of the community effort to build the ecosystem and not a dependency.

There is nothing in the law that prohibits ODR... if it can happen face to face it can certainly happen remotely on a digital platform. – Justice BN Srikrishna, Former Judge, Supreme Court of India

5 Come Together

The richest insights are, unsurprisingly, in the 'coming together'. From early 2019, spurred by the inaugural E-ADR Challenge that year, a community of ODR

11 Justice DY Chandrachud.

12 Justices Indu Malhotra and Sanjay Kaul.

13 NITI Aayog CEO Amitabh Kant and Officer-on-Special-Duty Desh Gaurav Sekhri have spoken and written extensively on the subject. The latter played an instrumental role in NITI Aayog's adoption of ODR as a priority area.

14 Detailed in a subsequent section.

15 Ibid.

16 Ibid.

17 December 6 and September 2020 NITI Aayog Meetings, and ODR Week 2020 and 2021.

18 India's adoption of the Singapore Convention on Mediation in 2018 changed that to some extent, and it is now considering going a step further with a central law on mediation.

champions from business, civil society and even government, began forming. Bringing their diverse networks and circles of influence, these leaders provided the collective leadership that helped to unlock incredible opportunities that led to the defining milestones for the development of ODR in India. Those with previous international ODR experience repeatedly evangelized the ODR opportunity and reassured everyone of our direction;¹⁹ those from the investment world and with access to government opened doors with NITI Aayog, India's central planning body²⁰ and other regulators; those in business spoke up about their need for ODR and their comfort with piloting such an approach;²¹ those with ADR expertise provided critical inputs on how ODR could be more effective and what was needed to train ODR neutrals;²² those with policy capabilities helped guide the formulation of what would become the national policy on ODR,²³ and the innovators in the community did what they do best – demonstrate through their models that ODR actually works.

Between 2019 and 2021, members of this now 100-strong community called 'Autonomy', coordinated through the medium of a WhatsApp group and met no fewer than 15 times with several in-person gatherings before COVID happened and forced us online. Agami, an organization aimed at catalysing justice innovation in India, played the role of a sector entrepreneur and systems convenor through this journey, weaving actors and opportunities, plugging gaps in the leadership and generally holding the space for collective leadership.²⁴

Systems convenors focus attention on the relationships among the parties in contrast to the parts themselves. They span and broker and bridge-build and weave across boundaries, inclusively shaping solutions in the space between. It is leadership requiring a long view of the future, while unleashing action in the present. – Keith McCandless²⁵

Three choice indicators of the tremendous cooperation of the ODR community in advancing a coherent idea for ODR are as follows:

- the participation of more than 50% of community members in the creation of *the ODR Handbook*²⁶ – a tool to enable any business and government leader to understand the possibilities of ODR, examples of application, the current ecosystem and how they can implement it internally;

19 Global ODR entrepreneurs Colin Rule and Chittu Nagarajan participated in multiple open- and closed-door meetings.

20 Omidyar Network India and Agami worked together to enable this.

21 Legal heads of ICICI Bank, Nestaway, Tata Sons, Unilever, Ola and Makemytrip, among others; Vahura, a leading player in the legal talent industry, played an influential role.

22 Leading ADR centres such as CAMP, CMC and Prachi Mediation, the mediation department of MNLU Mumbai and several individual ADR practitioners.

23 Vidhi Centre for Legal Policy.

24 Systems Convening – Leadership for the 21st Century, www.centreforpublicimpact.org/insights/systems-convening-leadership-for-the-21st-century.

25 Ibid.

26 The ODR Handbook 2021, www.disputeresolution.online, was a collaboration between NITI Aayog, Agami, Omidyar Network India, Dalberg, Trilegal, ICICI Bank, Vahura, Dvara and NIPFF.

- the participation of over 50% of community members in the first series of *multi-stakeholder meetings on ODR organized by the NITI Aayog*²⁷ where judges, government officials, business leaders, civil society representatives and academics convened to collectively bless ODR; and
- the widespread consultation of the entire community in the creation of the *first national ODR policy*²⁸ led by NITI Aayog with the expert support of Vidhi Centre for Legal Policy. The framework aims to develop ODR capacity, mandate ODR for some government litigation and require an ODR-first approach for many case categories.

While the movement in India has certainly catalysed the ODR market and field, we still have a very long way to go towards making ODR an innovation that works *for every Indian*, particularly those most lacking access to justice. The last six months have been incredibly encouraging with the new Account Aggregator ecosystem embracing ODR,²⁹ the medium and small enterprises ministry (MSME) expressing interest, and a steady stream of investments in private ODR.³⁰ However, in order to expand from these early adopter sectors, ODR needs to combine with areas such as language translation and, most importantly, with proven local grass-roots solutions, to solve problems for those in the small towns and villages.

27 Press Release of June 6 NITI Aayog Meeting, <https://pib.gov.in/PressReleasePage.aspx?PRID=1630080>.

28 Release of ODR report, www.hindustantimes.com/india-news/niti-aayog-releases-report-on-online-dispute-resolution-101638244051571.html; public consultation enabled by CIVIS.

29 Sahamati, a nodal organization in the AA ecosystem; iSpirit, a volunteer network of technologists; the previously mentioned GC of ICICI Bank; and some young lawyer-volunteers played an instrumental role in this.

30 Credgenics, Jupitice, Presolv360 and SAMA have all closed substantial funding rounds.