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EXPLORING THE FEASIBILITY OF ODR FOR FAMILY DISPUTES IN INDIA

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ABSTRACT

Technology has expanded its scope and reach to meet emerging societal needs. It is remolding several aspects of business, government, and social interaction from education to health care to commerce. The overall user dependency has also risen with the growth of the IT field in various avenues. The legal field is no exception in terms of adapting to the use of technology, especially during the exceptional times of the COVID-19 pandemic.

Globally, there has been a significant rise in marital conflicts since the onset of the pandemic which could be attributed to a variety of reasons as has been pointed out by family law experts and psychologists. The dispute resolution mechanism for family disputes has also portrayed an exponential level of pendency in matters before the family courts in India in the year 2021. This necessitated the use of technology to resolve family disputes, especially during the pandemic. The integration of technology while using ADR methods for settling such disputes seemed to be a more viable option.

Against this background, this paper sets to explore the use of ADR methods while resolving family disputes. The paper begins with an understanding of the use of ADR in family disputes and the ongoing problems in the same. Thereafter, the paper examines the emerging concept of the Online Dispute

Resolution (ODR) method and its relevance in resolving family disputes. It also throws light on steps taken by India so far to adopt ODR in resolving various types of disputes at governmental and private levels. A part of the paper studies the developments taken in various foreign countries in adopting ODR to settle family disputes. Lastly, the paper has looked at the measures taken by India with regard to the use of ODR in settling family disputes. The paper concludes with steps to be taken by India to accelerate ODR in the field of family disputes.

Keywords: Alternative dispute resolution, Online dispute resolution

I. INTRODUCTION

The Covid-19 pandemic situation has thrown challenges at the ways and means of operating and conducting activities worldwide. The most evident of all is the use of technology to operate and carry out tasks. This ranges from toddlers attending online schools, domestic shopping for groceries and vegetables, doctor's consultation, and work meetings carried out on electronic platforms to online justice delivery systems all of which have embraced the use of technology.

Albeit the courts in India had started operating virtually, this situation has aggravated the status of pending matters in the courts. Data from National Judicial Data Grid (NJDG), a government platform monitoring judicial data has revealed that the pendency reached an all-time high during one year of virtual functioning of the courts. In the case of district courts, the report said the pendency rose sharply by 18.2% between December 31, 2019, and December 31, 2020. Before that, it was 7.79% in 2018-2019 and 11.6% in 2017-2018.¹⁷²⁶ The 25 high courts witnessed the sharpest increase in the

¹⁷²⁶ THE WIRE, *COVID-19 Increased Pendency of Cases at All Levels of Judiciary* available at <https://thewire.in/law/covid-19-increased-pendency-of-cases-at-all-levels-of-judiciary> (Last Visited on Jan.15,2022).

pendency of cases it rose by 20.4% in 2019-2020 as against 5.29% in 2018-2019.¹⁷²⁷

Expanding the list of the impact of the current pandemic situation also includes its repercussions on matrimonial relations. The unexpected changes and new challenges like pressures of work from home, new sex roles in the absence of domestic help, and its adaptation can induce stress in already strained marital relationships. This may be more challenging for couples who are living in troubled marriages because of such new changes and staying together within four walls of the house with the absence of socialisation. Thus, this situation will only exacerbate or reveal the realities of marital distress.¹⁷²⁸

Globally, there has been a significant rise in marital conflicts since the onset of the pandemic which could be attributed to a variety of reasons as has been pointed out by family law experts and psychologists.¹⁷²⁹ Psychologists have remarked that apart from divorces, "fractures, difficulties, high-level conflicts and relational stress which they have seen in couples is phenomenally high."¹⁷³⁰

India also reported a very high incidence of domestic violence against women during the nationwide lockdown as indicated by data of National Commission for Women.¹⁷³¹ The complaints have been at an all-time 10 year high during the lockdown.¹⁷³² Divorce rates have also gone up in India during this time.¹⁷³³

¹⁷²⁷ Id

¹⁷²⁸Tanay Maiti et al, *Marital distress during COVID-19 pandemic and lockdown: a brief narrative*,8,THE INTL J IND PSY, ISSN 2348-5396,429, Issue 2, (2020).

¹⁷²⁹Holly Ellyatt, *Arguing with your partner over Covid? You're not alone, with the pandemic straining many relationships*, CNBC, (Fri, Jan 21, 2022, 10:30 AM), <https://www.cnbc.com/2022/01/21/covid-has-put-priorities-and-strains-on-relationships.html> (Last visited on Jan 31,2022)

¹⁷³⁰ Id

¹⁷³¹ Vora M et al, *COVID-19 and domestic violence against women*, ASIAN J PSYCHIATRY, 53, (2020).

¹⁷³² Vignesh Radhakrishnan, Sumant Sen Naresh Singaravelu, *Domestic violence complaints at a 10-year high during COVID-19 lockdown*, THE HINDU, (Jan 25,2022, 9:45 PM) <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>. (Last visited on Jan 31,2022)

¹⁷³³Sulogna Mehta, *As pandemic strains marital ties, divorce rate shoots up*, THE TIMES OF INDIA, (Jan 20,2022, 6:30 PM) <https://timesofindia.indiatimes.com/city/visakhapatnam/as-pandemic->

The dispute resolution mechanism for family disputes have also portrayed an exponential level of pendency in matters before the family courts in India in the year 2021. Over 11.79 lakh cases of family disputes are pending in 732 family courts operational in the country.¹⁷³⁴

With the rise in family disputes and high level of pendency of matters in family courts, an effective mechanism to resolve them is of utmost necessity. Parties in family dispute must have the opportunity to settle their disputes in a consensual manner. Owing to the private nature of family disputes, alternative dispute redressal methods over traditional court can be more effective method to settle these matters. Alternative dispute resolution model requires face to face (F2F) communication between parties. However, with a pandemic like situation such communication may not be feasible. In this context, integration of technology in the field of ADR can be of immense help to the parties involved in matrimonial or family dispute.

II. ALTERNATIVE DISPUTE REDRESSAL AS A MEANS FOR SETTLING FAMILY DISPUTES

Family dispute can be defined as a conflict arising between family members. It can be categorised as following¹⁷³⁵:

- Disputes between husband and wife
- Child/teenager's behaviour
- Children's education, health and welfare
- Contact with children (separated couples or extended families)
- Financial support for children (separated couples)

strains-marital-ties-divorce-rate-shoots-up/articleshow/80140111.cms. (Last visited on Jan 31,2022)

¹⁷³⁴Dhirendra Kumar, MILLENIUM POST, (Jan 25,2022,3:15 PM) <http://www.millenniumpost.in/nation/over-1179-lakh-cases-pending-in-732-functional-family-courts-462257>. (Last visited on Jan 29,2022)

¹⁷³⁵Vini Singh, *Compulsory Mediation for Family Disputes?*, 2, THE IND.ARB, 2,2 https://www.arbitrationindia.com/pdf/tia_2_9.pdf (2010). (Last visited on Jan 25,2022)

- Inability to communicate
- Lack of trust
- Lifestyle/environmental differences
- Money/debt
- Parenting differences
- Previous agreements broken down
- Property settlement (separated couples or older parents & adult children)
- Relationship breakdown
- Verbal abuse/swearing or bullying
- Property disputes

The Family Courts Act explains family disputes as¹⁷³⁶:

1. a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage.
2. a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person.
3. a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.
4. a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship.
5. a suit or proceeding for a declaration as to the legitimacy of any person.
6. a suit or proceeding for maintenance.

7. a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

Alternative dispute resolution method includes arbitration, mediation, conciliation, and negotiation are cost and time effective. They aim to restore the relationship between disputing parties by means of communication.

Family disputes are of such nature that are more than just a legal issue. They are multifaceted and is sensitive in nature. While resolving them, there should be sufficient prominence be given to preserving peace and harmony in relationship of parties. Conciliation and mediation are best methods to achieve it. Their evolution can be traced to old cultural values wherein disputes were effectively handled by elders of the family or village.

Mediation and conciliation have its references in statues like Family Courts Act, 1984, Civil Procedure Code, Hindu Marriage Act and the Legal Services Authorities Act, 1987 that recognises and gives a special status to Lok Adalats that have been very effective in mediating family disputes. The Family Courts Act was enacted with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.¹⁷³⁷

The whole structure of family courts rests on the twin pillars of counselling and conciliation. The counsellors are required to not only provide counselling but to bring about reconciliation and mutual settlement whenever feasible.¹⁷³⁸ Section 9 (1) of the Family Courts Act states that "In every suit or proceeding, endeavour shall be made by Family Court in the first instance, where it is possible to do so consistently with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of

¹⁷³⁷ *Id* at 4. *Also see*, Preamble, The Family Courts Act, 1984.

¹⁷³⁸ *Id.* *Also see*, Jamwal, N., *Have Family Courts lived up to expectations*, *Mainstream*, Vol XLVII No 12, March 7, 2009.

¹⁷³⁶ *Id* at 3. *Also see*, Section 7 of The Family Courts Act, 1984

the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit." While Section 9(2) directs the family court to adjourn the proceedings if it appears that there is a reasonable possibility of settlement between the parties for such period as it thinks fit is necessary for taking the required measures for bringing about the settlement.

These provisions however do not make mediation/conciliation compulsory. Section 23 (2) of the Hindu Marriage Act, 1955 which contains similar provisions provides that before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties provided that nothing contained in this subsection shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii) clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13¹⁷³⁹. It also states that, for the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report. Here again, there is no compulsion to go for mediation before taking recourse to litigation.¹⁷⁴⁰

Similarly, Section 89 of the Civil Procedure Code (Amendment) Act, 1999, directs the courts to

identify cases where an amicable settlement is possible, formulate the terms of such a settlement and invite the observations thereon of the parties to the dispute. Where the Court concludes that mediation is the appropriate mode of settlement, it may itself act as a mediator and "shall effect a compromise between the parties".¹⁷⁴¹ This provision makes mediation compulsory.

Mediation can bring that change in the atmosphere in family courts in general when complicated proceedings in family courts possibly can be reduced through amicable solutions by the people concerned through effective mediation and the Hon'ble Supreme Court encouraged this reconciliation process as an objective and principle while dealing with the following matrimonial matters:

In *Balwinder Kaur vs. Hardeep Singh*¹⁷⁴², the Apex Court has held as follows:

"A duty is also cast on the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Under sub-section (3) of Section 23 of the Hindu Marriage Act, the court can even refer the matter to any person named by the parties for the purpose of reconciliation and to adjourn the matter for that purpose. These objectives and principles govern all courts trying matrimonial matters."

In *Jagraj Singh vs. Birpal Kaur*¹⁷⁴³, the Apex Court has held as follows: "It is clear that a court is

¹⁷⁴¹ *Id* at 6. *Also see*, "Section 89 lays down that where it appears to the Court that there exists an element of settlement, which may be acceptable to the parties; the Court shall formulate the terms of settlement and give time to the parties for their comments. On receiving the response from the parties, the Court may formulate the possible settlement and refer to either (i) arbitration (ii) conciliation (iii) Judicial Settlement including the settlement through Lok Adalat or (iv) Mediation. As per sub-section (2) of Section 89 as amended when a dispute is referred to arbitration and conciliation, the provisions of Arbitration and Conciliation Act, 1996 shall apply. When the Court refers the dispute to Lok Adalat for settlement by an Institution or person, the Legal Services Authorities Act, 1987 alone shall apply. It is only in the case of mediation that the Court itself shall effect compromise and shall follow such procedure as may be prescribed by Rules made by the High Court under Section 122 read with Section 130 of the Code of Civil Procedure."

¹⁷⁴² (1997) 11 SCC 70.

¹⁷³⁹ *Id* at 5. *Also see* Section 13 of Hindu Marriage Act, 1955.

¹⁷⁴⁰ *Id. Also see*, 59th Report of the Law Commission of India.

expected, may, bound, to make all attempts and endeavours of reconciliation. To us, sub-section (2) of Section 23 of The Hindu Marriage Act is a salutary provision exhibiting the intention of Parliament requiring the Court "in the first instance" to make every endeavour to bring about a reconciliation between the parties."

In *Gaurav Nagpal vs. Sumedha Nagpal*¹⁷⁴⁴ held that it is the duty of Court to bring about conciliation in divorce and judicial separation proceedings, Apex Court made the following observations: "It is a disturbing phenomenon that large number of cases are flooding the courts relating to divorce or judicial separation. An apprehension is gaining ground that the provisions relating to divorce in the Hindu Marriage Act have led to such a situation.

III. PROBLEM WITH ADR METHODS IN FAMILY DISPUTES

Family courts have started acknowledging ADR methods to resolve family disputes at first instance. However, such methods are often criticised by the litigants. This is majorly because of the formalistic structure adopted by the centres providing mediation. There is often lack of expertise amongst the professionals providing ADR services which frustrates the entire process causing delay. Often, the disputing parties are agitated and engage in broiling arguments when confronted face to face in mediation setting. In a mediation setting which is face to face, often the parties are influenced by their lawyers and may restrict in reaching a resolution due to their vested interests.

The parties may also be frustrated to attend mediation hearings in addition to regular court hearings which is difficult to attend due to reasons of taking out time to attend and adds up to the overall cost of litigation of the dispute.

Against this background, it is the need of hour to incorporate ADR techniques through online modes which is a much easier method, provides confidentiality to parties and reduces inconvenience to parties and controls the mental harassment and unpleasant experiences caused due to face-to-face interactions during ADR setting.

IV. CONCEPT OF ODR

Online Dispute Resolution (ODR) is a conflict-resolving method using Information and Communication Technology (ICT). This procedure is conducted at two different places, generally through websites, different from the physical mode where the presence of the disputants is required. This is viewed in two different aspects firstly this is an extra-judicial dispute resolution method, which is different and outside the ordinary court system, using online dispute resolution applications by ODR providers.¹⁷⁴⁵

ODR is not just an internet-based version of Alternative Dispute Resolution (ADR) whether called online ADR, e-ADR, i-ADR, virtual ADR, cyber mediation, or cyber arbitration or online negotiation. ODR has many unique aspects from both technological and process perspectives.¹⁷⁴⁶

American Bar Association (ABA) Task Force on E-commerce and ADR defines this concept as: "Online Dispute Resolution is a broad term that encompasses many forms of Alternative Dispute Resolution (ADR) that incorporate the use of the Internet, websites, email communications, streaming media and other information technology as part of the dispute resolution process. Parties may never meet face to face when participating in ODR. Rather, they might communicate solely online."¹⁷⁴⁷

¹⁷⁴³ (2007) 2 SCC 564.

¹⁷⁴⁴ (2009) 1 SCC 42.

¹⁷⁴⁵ Esther Van Den Heuvel, *ODR as a Solution to Cross Border E-disputes*, University of Utrecht, <http://www.oecd.org/internet/consumer/1878940.pdf> (Aug,2020).

¹⁷⁴⁶ Colm Brannigan, *Online Dispute Resolution*, 45, ADR Practice Manual, 6901-53, 6902 (December 2007).

¹⁷⁴⁷ American Bar Association, "Addressing Disputes in Electronic Commerce" Final Report and Recommendations of ABA Task Force on E-Commerce and

Online Dispute Resolution can also be defined as development of applications, software, and computer networks for resolving disputes with alternative methods of dispute resolution. There are four types of online dispute resolution systems which are more popular¹⁷⁴⁸:

1. Online settlement, with the help of an expert system to settle financial disputes automatically.
2. Online arbitration, using websites to resolve disputes with the help of qualified arbitrators.
3. Online resolution of consumer complaints, with the help of e-mail etc, resolving consumer claims.
4. Online mediation, through website to resolve disputes with the help of qualified arbitrators.

But this categorisation is not exhaustive. There are other methods of ODR such as e-negotiation and e-conciliation. All the above methods are not fully developed yet. Till date, online settlement and online mediation are mostly used and advanced methods.

The term ODR refers to the use of ADR techniques facilitated by internet technology.¹⁷⁴⁹ A few Online Dispute Resolution services providers currently in existence offer online services, ranging from mediation, negotiation and a combination thereof. Many of these providers use traditional ADR models and provide additional advantages through the incorporation of online technology.¹⁷⁵⁰ While some ODR providers closely resemble traditional ADR processes by simply providing the service in a more convenient way, others have developed a dispute-resolution process

using technology.¹⁷⁵¹ Thus, an Online Dispute Resolution system can be conducted online either entirely or partially.

Secondly, it is viewed as the use of ODR applications and information technology by the courts both in court-run ODR and in the judicial system for dispute settlement. In this view, ODR is interpreted in a wider sense as an online environment to help communication and dispute resolution, and as a supplementary tool to help court proceedings and the court system.¹⁷⁵² It includes both court-run ODR and e-courts.¹⁷⁵³

Gabrielle Kaufmann-Kohler and Thomas Schultz, in their book, have followed the definition of ABA Task Force and extend it to include cyber courts by defining Online Dispute Resolution as:¹⁷⁵⁴ "Online Dispute Resolution is a broad term that encompasses many forms of ADR and court proceedings that incorporate the use of the information technology as part of the dispute resolution process. Parties may never meet face-to-face when participating in ODR. Rather, they might communicate solely online."

V. NEED FOR ODR IN FAMILY DISPUTES

The nature of family disputes is complex which involves lots of emotions, however the same is apt for use of ODR in helping the families to arrive at an amicable solution with lesser conflict and more satisfaction. Globally, several innovative platforms have been developed that particularly deals with family ODR. This includes private ventures as well. These platforms use tools as diverse as videoconferencing, brainstorming software, collaborative writing software, co-parenting e-calendars, blind-

ADR, <https://www.americanbar.org/content/dam/aba/migrated/dispute/documents/FinalReport102802.authcheckdam.pdf> (last visited Jan 20,2022).

¹⁷⁴⁸ ESTHER, *supra* note 20.

¹⁷⁴⁹ Ethan Katsh, "Cyber Law: Issues Affecting the Internet and Its Governance" 28, N. Ky. L. Rev. 810, 813 (2001).

¹⁷⁵⁰ *Id* at 817.

¹⁷⁵¹ ETHAN M. KATSH ET.AL., ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICTS IN CYBERSPACE 2-3 (Jossey-Bass, A Wiley Company,2001).

¹⁷⁵² Nicolas W. Vermeys and Karim Benyekhlef, *ODR and the Courts* in MOHAMAD S. ABDUL WAHAB, ETHAN KATSH, ET.AL., (EDS.), ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE- A TREATISE ON TECHNOLOGY AND DISPUTE RESOLUTION, 308 (Eleven International Publishing, The Hague, The Netherlands, 2012).

¹⁷⁵³ *Id*.

¹⁷⁵⁴ GABRIELLE KAUFMANN-KOHLER AND THOMAS SCHULTZ, ONLINE DISPUTE RESOLUTION: CHALLENGES FOR CONTEMPORARY JUSTICE,7 (Kluwer Law International, The Hague, The Netherlands, 2004).

bidding mechanisms, and increasingly, the application of artificial intelligence.¹⁷⁵⁵

Many family practitioners also are in support of using technology while dealing with such disputes as it provides the required level of distance between the clashing family members that eases the conflict and provides a comfortable position to parties in such a manner that they don't have to confront the disputant face to face like in case of computer-mediation-communication (CMC) that ensures safety if abuse is involved.¹⁷⁵⁶

Also, an advantage of ODR is that people would not like to meet or engage in discussions face to face with whom they have prepared mind to separate from. Practitioners have noted that face to face mediation meetings usually result in accelerating the conflict between parties who are opting for divorce which overall reduces the effectiveness of the process of mediation.¹⁷⁵⁷

The element of video conference enables an F2F consultation along with ease of physical distance which ensures safety of the party and reduces times and cost by avoiding on the requirement to be present and travelling to a same place for the mediation.¹⁷⁵⁸

In addition to this, using CMC and other technologies to resolve family conflicts can also encourage parties to think and devise solutions in a more creative manner. This is required in cases where parties are concerned about not having sufficient say in the resolution arrived like instances of a high degree of manipulation or power imbalances between the parties. Such use of technology can also be of assistance where there is a requirement of face-saving

due to cultural or personal reasons which make F2F communication very difficult.¹⁷⁵⁹

A computer-enabled communication also ensures safety during communication. Other reasons for parties not preferring F2F communication can be efficiency and conflict de-escalation. This may be because such face-to-face interaction may augment the issues between the parties which may stretch the dispute altogether.¹⁷⁶⁰

Communication through such platforms helps the parties by giving them the opportunity of asynchronicity to match well with their busy schedules and enables them to have a private space without having to face their own disputing spouse or family members. Such ODR platforms provide a mechanism to upload documents and chat with a mediator or opposite party in chat box or reply through email which can be done at any time and at any place according to the comfort of the party.¹⁷⁶¹

Integration of technology in legal practice can be of immense importance for lawyers and ADR institutions. ODR helps the practitioners, therapists or arbitrators, mediators etc to communicate effectively with parties and help in arriving at a resolution proving to be a more affordable and effective method of providing legal service. Such online communication is helpful for the professionals involved in the process of resolving family disputes by enabling them to carry out the whole process which enhances their efficiency, allows them to have personal time and reduces logistic costs. This reduction in the cost of logistics also provides affordable services for the legal practitioners to the parties engaging them.¹⁷⁶²

¹⁷⁵⁵ Amy J. Schmitz Leah Wing *Beneficial and Ethical ODR for Family Issues*, 59, FAM COURT REV, 250, 253 (April 2021), <https://onlinelibrary.wiley.com/doi/10.1111/fcre.12572>. (Last visited on Jan 28, 2022)

¹⁷⁵⁶ *Id* at 254.

¹⁷⁵⁷ *Id* at 255.. Also see, Alan R. Dennis et. al., *Invisible Whispering: Restructuring Collaborative Decision Making with Instant Messaging*, 41 DECISION SCI., 845 (2010).

¹⁷⁵⁸ *Id* at 255.

¹⁷⁵⁹ *Id* at 255. Also see, Gary L. Welton *Et. Al.*, *The Role of Caucusing in Community Mediation*, 32 J. CONFLICT RESOL. 181, 181-202 (1988).

¹⁷⁶⁰ *Id* at 255. Also see, Alan R. Dennis et. al., *Invisible Whispering: Restructuring Collaborative Decision Making with Instant Messaging*, 41 DECISION SCI., 845 (2010).

¹⁷⁶¹ *Id*.

¹⁷⁶² *Id*.

Using ODR for resolving family disputes may prove to be beneficial to arrive at a resolution with ease. Couples who are opting for separation and have children always attempt to resolve their disputes which is child-friendly and helps them to explore and manage ways of co-parenting after their separation. ODR can be of much use to such separating parents to help them navigate their plans online without much tension and dirty court scenes which can impact the psychology of the children of such couples. The methods used while operating the ODR platform can provide different levels of engagement which can be deep or less varying on the requirements of the parties and in this manner integration of technology can help to supplement the ADR process without replacing those features which enable the families to explore the stages in their changing relationship during a such family dispute.¹⁷⁶³ Litigating a family dispute can be extremely challenging in terms of emotions, psychology and financially for families, however, resolving them online can ease this process to some extent. An ODR platform can provide an opportunity to disputing parents to work with professionals like therapists, psychologists and legal practitioners at the same time and discuss the scope of their parenting plans during and after divorce. For example, a divorcing couple with three children may need to communicate and collaborate with many professionals to help them co-parent through and after divorce. A joint presence of these professionals may also allow them to probably understand their relationship, their problems and look for chances to resolve them amicably without a more formal and rule struck procedures as followed in regular family courts.¹⁷⁶⁴

VI. TRACING ODR IN INDIA

The evolution of ODR in India can be associated with the prominent role played by the Supreme Court of India in recognising the scope and applicability of ODR in the Indian legal system.¹⁷⁶⁵ The Apex Court has acknowledged many techno-legal aspects that are needed to be incorporated in the Indian legal system. In the case of *State of Maharashtra v. Praful Desai*¹⁷⁶⁶, the Court upheld the validity of videoconferencing as a mode of taking evidence and testimony from a witness. The Court also opined that virtual reality is the actual reality.

The Court has been very proactive in using IT in functioning of court and court procedures. It was opined in *Grid Corporation of Orissa Ltd. v. AES Corporation*¹⁷⁶⁷ that "When an effective consultation can be achieved by resort to electronic media and remote conferencing, it is not necessary that the two persons required to act in consultation with each other must necessarily sit together at one place unless it is the requirement of law or of the ruling contract between the parties." Online Arbitration, also known as Cyber-Arbitration, relies on the principles of the Arbitration and Conciliation Act and the Information Technology Act.

In *State of Maharashtra v. D. Praful B. Desai*¹⁷⁶⁸ the Hon'ble Supreme Court allowed and permitted video conferencing as valid mode of recording evidence for witness evidence. In this case the witness was residing in U.S.A and was willing to give evidence but he refused to come to India to give evidence. His evidence was relevant and essential to the case. Thus, Supreme Court in this case issued a commission to record the evidence of the witness by way of video conferencing.

¹⁷⁶³ *Id* at 256. Amy J. Schmitz, *There's an "App" for That: Developing Online Dispute Resolution to Empower Economic Development*, 32 NORTE DAME J. L. ETHICS & PUB. POL'Y 1 (2018).

¹⁷⁶⁴ *Id* at 256. INST. ADVANCEMENT AM. LEGAL SYS., Court Compass: Mapping the Future of User Access Through Technology (2017) at <http://iaals.du.edu/honoring-families/publications/court-compass-mapping-future-user-access-through-technology>. (Last visited on Jan 27,2022)

¹⁷⁶⁵ Ashok R. Patil Sree Krishna Bharadwaj H, *A Stakeholder's Assessment of Feasibility of Online Mediations in India*, 5, INTL J. CLAP, 1, 68, (2017), <https://clap.nls.ac.in/wp-content/uploads/2020/12/IJCLP-Vol-5-20171.pdf> (Last visited on Jan 27,2022)

¹⁷⁶⁶ (2003) 4 SCC 601.

¹⁷⁶⁷ AIR 2002 SC 3435.

¹⁷⁶⁸ *Supra* n.40.

The Supreme Court has affirmed the validity of online arbitration in *Shakti Bhog v. KolaShipping Ltd*¹⁷⁶⁹ and *Trimex International v. Vedanta Aluminum Ltd.*¹⁷⁷⁰ by holding that an online arbitration agreement is valid if it fulfils the requirements under Section 4 and 5 of the IT Act read with Section 65B of the Indian Evidence Act, 1872. Further, the agreement should be in comply to Section 7, 12-18 of the Arbitration & Conciliation Act while the parties are informed of the nature of process and governing law, they have chosen in communication with each other.

In the case of *Powertech World Wide Limited v. Delvin International General Trading LLC*¹⁷⁷¹ Apex Court has ruled that in accordance with the provisions made under Section 7 of the Arbitration and Conciliation Act, 1996, the existence of an arbitration agreement can be gathered from a document signed by the parties or exchange of emails, letters, telex, telegram or any other means of telecommunication, which also provide a valid record of the arbitration agreement between parties

This provides evidence that the Courts in India are accepting ODR as a novel method of resolving disputes and the provisions in the Arbitration and Conciliation Act, 1996 and the IT Act are sufficient to supplement the process of ODR in India in particular cyber-arbitration with few areas requiring judicial interpretation. There is a lot of scope and potential for E-mediation in India to help parties to resolve their disputes ranging in various fields.

The government of India has been proactive in initiating programmes for ODR integration in resolving disputes in areas that are under the authority of the government.¹⁷⁷² Some of these are:

1. National Internet Exchange of India's (NIXI) Domain Dispute Settlement Mechanism.¹⁷⁷³
2. Integrated Consumer Grievance Redressal Mechanism (INGRAM) initiative by the Department of Consumer Affairs¹⁷⁷⁴
3. National Consumer Helpline (NCH) by the Department of Consumer Affairs¹⁷⁷⁵
4. Online Conciliation and Mediation Centre (OCMC) was established at the National Law School of India University and recognised by the Department of Consumer affairs¹⁷⁷⁶
5. 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 Government.¹⁷⁷⁷
6. the Department for Promotion of Industry and Internal Trade (DPIIT) released the Draft National e-Commerce Policy¹⁷⁷⁸
7. 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 payments¹⁷⁷⁹

In addition to government measures, few ODR start-ups have also been established by private sector. These aim in providing affordable, quick, and effective resolution of different kinds of disputes with specialised mediators and conciliators. These are:

- i. Resolve Disputes Online¹⁷⁸⁰
- ii. Sama¹⁷⁸¹
- iii. CORD¹⁷⁸²

¹⁷⁶⁹ AIR 2009 SC 12.

¹⁷⁷⁰ 2010 (1) SCALE 574.

¹⁷⁷¹ (2012) 1 SCC 361.

¹⁷⁷² The NITI Aayog Expert Committee on ODR *Designing the Future of Dispute Resolution The ODR Policy Plan for India*, 46. (October 2021),

<https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>, (Last visited on Jan 27,2022 12:30 PM).

¹⁷⁷³ *Id.*

¹⁷⁷⁴ *Id.*

¹⁷⁷⁵ *Id.*

¹⁷⁷⁶ *Id.*

¹⁷⁷⁷ *Id* at 47.

¹⁷⁷⁸ *Id.*

¹⁷⁷⁹ *Id.*

¹⁷⁸⁰ <https://resolvedisputes.online/> (Last visited on Jan 29,2022)

¹⁷⁸¹ <https://www.sama.live/> (Last visited on Jan 29,2022)

- iv. AdresNow¹⁷⁸³
- v. Presolv 360¹⁷⁸⁴
- vi. CADRE¹⁷⁸⁵
- vii. JustAct¹⁷⁸⁶
- viii. Jupitice¹⁷⁸⁷
- ix. Credgenics¹⁷⁸⁸
- x. WebNyay¹⁷⁸⁹

Legal Services Authorities creatively adapted to the new normal and moved Lok Adalat to the virtual platform to resolve different kinds of disputes which also includes family disputes. From June 2020 to October 2020, 27 E-Lok Adalat have been organized in 15 States wherein 4.83 lakh cases were taken up and 2.51 lakh cases disposed of resulting in settlement of Rs 1409 cr. Further, during November 2020, E-Lok Adalats have been organized in the States of Uttar Pradesh, Uttarakhand and Telangana so far wherein 16,651 cases were taken up and 12,686 disposed of resulting in settlement of Rs 107.4 cr.¹⁷⁹⁰

The NITI Aayog Expert Committee on ODR published its report titled “*Designing the Future of Dispute Resolution The ODR Policy Plan for India*” in October 2021 which has defined the concept of ODR and explained its benefits. The report has drawn a multi-jurisdictional comparison with developed and developing nations on ODR practices which provides a strong inference base for India to develop its ODR framework. It has also listed out structural, behavioural, and operational challenges which are impediments in growth of ODR in India. The report concludes by proposing recommendations in the areas of enhancing accessibility, building capacity, creating trust, designing regulatory frameworks, and

ultimately the phased implementation of ODR.¹⁷⁹¹

VII. ODR IN FAMILY DISPUTES – FOREIGN COUNTRIES

The ODR provides an opportunity to interact with various parties for a longer duration than traditional ADR methods. This is beneficial for the couples and families involved in the dispute, as well as professionals such arbitrators, mediators, negotiators by helping the parties in the process and providing employment opportunities for third parties.¹⁷⁹²

There have been successful ODR platforms across the globe. coParenter, an ODR platform that provides assistance to persons who are separating, divorced, and never-married parents to initiate or manage co-parenting responsibilities, create court-ready parenting and holiday plans, resolve disputes, and make more informed, child-centric decisions that save them time and money and keep them out of court.¹⁷⁹³ It has option of access to mediators on parties choosing that option at an early, middle and late-stage (and even post-agreement) intervention tool. Such mediators will help the disputing parents to identify their dispute and are assisted by them towards binding, child-centric decisions. This helps the parents to interact, track scheduling, and manage their roles and duties. The platform also creates a database for couples to have access to their communications and activity (requests, pickups/drop offs, expenses, etc.) that can be tracked through the app. These records are accessible either by co-parent or to a third-party judge, which helps in avoiding situation like He Said/She Said that which delay the process of dispute resolution.¹⁷⁹⁴ This app can be used any iOS or Android mobile phone or can be accessed through a personal computer. coParenter, like the majority of ODR

¹⁷⁸² <https://resolveoncord.com/about-us/> (Last visited on Jan 29,2022)

¹⁷⁸³ <https://www.adresnow.com/> (Last visited on Jan 29,2022)

¹⁷⁸⁴ <https://www.presolv360.com/> (Last visited on Jan 29,2022)

¹⁷⁸⁵ <https://thecadre.com/> (Last visited on Jan 29,2022)

¹⁷⁸⁶ <https://justact.co.in/> (Last visited on Jan 29,2022)

¹⁷⁸⁷ <https://jupitice.com/> (Last visited on Jan 29,2022)

¹⁷⁸⁸ <https://www.credgenics.com/> (Last visited on Jan 29,2022)

¹⁷⁸⁹ <https://www.webnyay.in/> (Last visited on Jan 29,2022)

¹⁷⁹⁰ <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1675059> (Last visited on Jan 25,2022)

¹⁷⁹¹ The NITI Aayog Expert Committee on ODR, *Supra* n.47.

¹⁷⁹² James E. Cabral et al, *Using Technology to Enhance Access to Justice* 26(1) HU J L&T,241, 265,(2012)

¹⁷⁹³ Coparenter, <https://www.coparenter.com/what-is-coparenter/> (Last visited on Jan 23,2022)

¹⁷⁹⁴ *Id.*

apps, is a private ODR service provider and is not authorised by Court.¹⁷⁹⁵

Another example of ODR service provides in family disputes is Our Family Wizard. This platform helps the parents to schedule their meeting for child visitation, tracking visits, setting up reimbursement requests/payments, communicating on all of the above, and creating logs of communications.¹⁷⁹⁶ This platform has an additional feature which empowers the parents to add third parties who can aid the process of dispute resolution like adding therapists etc. It has been widely used in US and Canada for custody related matters. Professionals having accounts on this platform can communicate with their client and also in some cases track the use of the app by co-parents by accessing parent-to-parent communication.¹⁷⁹⁷

CREK¹⁷⁹⁸ is also a private ODR service provider in the sphere of diversity of disputes, which also includes family disputes. The platform has options to access at any point of dispute for Diagnosis, Automated Negotiation, Negotiation, Mediation & Evaluation/Adjudication/Arbitration. Its Workflow and Rules Engine, Private & Joint Caucus (Discussions/Chats including Video), Collaborative Editing of Awards and Settlement Agreements, Timeline, Scheduling, and Notes helps arriving at Fair Resolution quickly” are available in a variety of languages.¹⁷⁹⁹ It also provides a system of bringing together and engaging family members as well as third parties and other professionals working with them.

MyLaw B.C. is an online platform that offers its services in arriving for resolution in areas exclusively of divorce, abuse and family violence, missed mortgage payments, wills, and

estates.¹⁸⁰⁰ It has a narrow segment provision of services for couples separating by allowing them to develop their separation plan online and explore their options for their pathway during the dispute. The platform also guides the parties about court procedures like what should be their course of action on receipt of court documents. The platform also provides an option of dialogue tool in which couples can communicate with each other and arrive at a resolution without going through the courts.¹⁸⁰¹

ODR mechanisms such as Our Family Wizard are also used by courts in resolving the family disputes.¹⁸⁰² Courts also are using platforms like Modria of Tyler Technologies while handling family disputes. It is an ODR service provider which has dealt with over a million cases pertaining to varieties of disputes inclusive of family matters.¹⁸⁰³ It has range of tools such as customizable modules, document sharing, negotiation software, and a chat mechanism that has the can to be monitored by mediators or other professionals. It offers access to mediators or other third parties if the parties change from negotiation into facilitated collaboration or evaluative decision making.¹⁸⁰⁴

The Circuit Court in Ottawa, Michigan also use an ODR platform called as Matterhorn for resolving family disputes. It evidenced a reduction in number of show-cause hearings and resolve non-payment of child support.¹⁸⁰⁵ A comparative study of pre and post implementation of ODR in 2016 shows that, the court had dealt with 100+ show-cause hearings per week, and after the first year of the program, show-cause hearings were down by 24% and related failure to appear warrants were down by 29%.¹⁸⁰⁶ As of 2018, the number of monthly show-cause hearings had decreased to about

¹⁷⁹⁵ *Id.*

¹⁷⁹⁶ Our Family Wizard, <https://www.ourfamilywizard.com/>. (Last visited on Jan 23, 2022)

¹⁷⁹⁷ *Id.*

¹⁷⁹⁸ CREK, <https://www.crekodr.com/>. (Last visited on Jan 24, 2022)

¹⁷⁹⁹ CREK, <https://www.crekodr.com/>. (Last visited on Jan 24, 2022)

¹⁸⁰⁰ MYLAW B.C., <http://mylawbc.com/>. (Last visited on Jan 24, 2022)

¹⁸⁰¹ MYLAW B.C., <http://mylawbc.com/tools/>. (Last visited on Jan 24, 2022)

¹⁸⁰² *Id.*

¹⁸⁰³ Tyler Technologies, <https://www.tylertech.com/products/modria>. (Last visited on Jan 24, 2022)

¹⁸⁰⁴ *Id.*

¹⁸⁰⁵ Matterhorn family court results, <https://getmatterhorn.com/get-results/family-court/>. (Last visited on Jan 24, 2022)

¹⁸⁰⁶ *Id.*

300.¹⁸⁰⁷ Platform service provided by Matterhorn has an encrypted communication between court staff, case managers, and disputing parents. It enables to receive automated notifications from the court via text or email.¹⁸⁰⁸

VIII. ODR IN INDIA IN FAMILY DISPUTES

The NITI Aayog Expert Committee on ODR published its report titled "Designing the Future of Dispute Resolution The ODR Policy Plan for India" in October 2021 has recommended that the government must collaborate with private sector to innovate and establish long term solutions for strengthening ODR in India.¹⁸⁰⁹ The report suggest that private sector can help to resolve the huge pendency of cases in various forums by handling some categories of disputes to be resolved online by private ODR platform.¹⁸¹⁰ The report recognises that the family disputes involving payment of maintenance, custody, divorce or domestic violence are fit for resolution by private ODR platforms.¹⁸¹¹

The report also proposes using pre-litigation mediation for various categories of disputes which includes family disputes.¹⁸¹² It submits that such pre-litigation mediation will ease out the burden on the traditional courts and provide reliefs to parties for their disputes.

On 10th July 2021, Sama, an ODR institution partnered with Madhya Pradesh State Legal Services Authority to launch a pilot project on resolving disputes arising from complaints filed at Urja Mahila Helpdesk, through online mediation.¹⁸¹³ The project was launched in the cities of Bhopal, Jabalpur, and Gwalior.

¹⁸⁰⁷ *Id.*

¹⁸⁰⁸ Matterhorn how it works tour, <https://getmatterhorn.com/tour/how-it-works/>.

¹⁸⁰⁹ The NITI Aayog Expert Committee on ODR, *Supra* n.47 at 72.

¹⁸¹⁰ *Id.* at 73.

¹⁸¹¹ *Id.* at 74.

¹⁸¹² *Id.* at 86.

¹⁸¹³ *Final Report on Online Mediation Pilot Project* under the aegis of with Madhya Pradesh State Legal Services Authority, July- September 2021, <https://www.sama.live/media/MPSLSA-Sama-Report.pdf> (Last visited on Jan 23, 2022).

A total of 4215 cases were referred by the Helpline Desk for mediation. A settlement rate of 37.4% was achieved out of the total 4215 cases referred.¹⁸¹⁴ Through this project, 910 disputes were settled in just 60 days.¹⁸¹⁵ The project received a lot of appreciation from the complainants who got the opportunity to resolve these disputes with comfort from their homes.¹⁸¹⁶

This project was the first of its kind in the field of ODR platforms helping to resolve family disputes in India. With its remarkable success, it has also paved way for such kinds of projects to be initiated in other States and cities with the active support of the government.

IX. CONCLUSION

It is evident that India is welcoming the use of ODR technologies to resolve disputes of different kinds, especially during pandemic times and it is likely to expand its horizon in this area. With the due attention of the government in this space and the growth of private ventures in ODR and awareness amongst the masses to use this technology, it is likely that ODR will prove to be quite effective in prevention, awareness, management and resolving family disputes. The launch of e-Lok Adalat and the special pilot project by State Legal Service Authorities to effectively handle family disputes as discussed above indicate the commitment of government, stakeholders, and parties towards the use of ODR as an effective ADR mechanism in India and the potential scope of ODR in management of family disputes.

Despite the recognition received by the government along with a policy framework in place to strengthen ODR in the Indian legal space, the use of ODR in family disputes in India is very little explored. Research and developments are the need of the hour along with massive awareness amongst people to explore this field to resolve their family disputes.

¹⁸¹⁴ *Id.* at.4.

¹⁸¹⁵ *Id.* at10.

¹⁸¹⁶ *Id.* at11.

Family practitioners also must break the digital divide and embrace the change and view ODR as a better platform to enable them to connect with clients rather than the feeling of being displaced. Also, private and government collaborations are required to launch online platforms that are exclusively dealing with family disputes which are still unexplored in India.

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