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Online Dispute Resolution: A New Wave of ADR and its Relevance for Pakistan

IQRA BANO SOHAIL

About the Author

Ms. Iqra Bano Sohail completed her LLB (Hons) from the University of London in 2021 and was awarded achievement awards for being one of the highest performing student around the globe in the subjects of criminal and contract law. With her experience in the International Law think tank industry, she has worked on various projects such as developing Pakistan's First National Action Plan on Business and Human Rights and reviewing the Counter Terrorism and Anti Money Laundering Regime of Pakistan. Currently she is working as a Research Associate for International Law at IPRI with her areas of interests being International Humanitarian Law, Human Rights Law, Cyber Laws and Water Laws.

About IPRI

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Executive Summary

Issue

In today's interconnected world, Online Dispute Resolution (ODR) serves as a crucial tool for resolving disputes efficiently and cost-effectively through technology driven mechanisms. Some courts globally have successfully incorporated ODR programs across various case disciplines, mostly small straightforward claims of consumer debt, divorce proceedings, child support, custody, visitation and non-criminal traffic cases. Despite Pakistan's successful legal recognition of Alternate Dispute Resolution, formal recognition of ODR is still pending and with the substantial total of 2.26 million pending cases in the country, the adoption of this modern technology within the legal domain holds the potential to expedite the resolution of these matters.

Recommendations

Pakistan can take the following measures:

- Through a collaborative effort with the Federal and Provincial Ministries of Law and Justice, the Supreme Court of Pakistan should identify the list of cases suitable for ODR. The global trend includes small claim cases such as divorce, child support and landlord-tenant claims.
- The definition of ADR under Article 2(a) of the ADR Act 2017 must be expanded to include ODR as a category.
- The process for filing a case encapsulated in Section 25, 128, 142 and 143 of Code of Civil Procedures 1908 is silent on processes mandatory the effectuate the Electronic Courts (e-courts) system. Terminologies such as “e-filing”, “e-records”, “e-hearing” and “e-certification” must be included.
- Promoting the training capacity of lawyers to understand the process of ODR by utilizing courses such as ones developed by the Chartered Institute of Arbitrators.
- The e-courts system has already proved to be successful in the State with cases being heard online in District Courts as well as the Supreme Court of Pakistan. More such courts need to be set up to expedite justice.

I) The Difference Between ADR and ODR

Alternative Dispute Resolution or ADR comprises of various processes for resolving disputes in a “non-confrontational way”¹, varying from bilateral to multi-party negotiations through mediation, arbitration and adjudication. Online Dispute Resolution or ODR, on the other hand, initially stemmed from ADR as a by-product of the rise of cyber-space has since evolved into its own entity, distinct and independent, driven by the growing pursuit of ODR solutions in recent years. Notably, it is used for resolving disputes through “the use of electronic communications and other information and communication technology”².

Since its inception, ODR has witnessed a surge in popularity due to its ability to deliver dispute resolution services via the internet. This approach is cost-effective and tackles cross-border disputes by revolutionizing the traditional framework into an innovative technologically-driven process³. These disputes range from online disputes to claims emerging from offline issues.

II) Effectiveness in Dispute Resolution

One notable advantage of ODR is its promotion of the adoption of modern technology, including artificial intelligence (AI), within the legal domain. This adoption holds the potential to alleviate the burden of caseload in courts.

In recent years, some courts globally have incorporated ODR programs across various case disciplines, mostly small straightforward claims of consumer debt, divorce proceedings, child support, custody, visitation and non-criminal traffic cases⁴. This allowed parties to participate without any travelling and monetary losses. In the United Kingdom, an example of this is the introduction of an online small claims mediation service by the HM Courts & Tribunals Service in 2018⁵. This service utilized

¹ UNESCO, Shamir Yona and Ran Kutner, 'Alternative Dispute Resolution Approaches and Their Application' (2003 (Technical Documents in Hydrology: PC-CP series)

² Para 24, The United Nations Commission on International Trade Law (“UNCITRAL”)

³ Utama, G. S. (2017). 'Online dispute resolution: A revolution in modern law practice.' (2017) Business Law Review.

⁴ Agor, P. H., 'Impact of the Utah Online Dispute Resolution' (ODR) (2020)

⁵ Frazer, L. (2018)

<https://www.parliament.uk/globalassets/documents/commonscommittees/Justice/correspondence/Lucy-Frazer-HMCTS-online-civil-claims-pilot.pdf>

an online mediation process to resolve a disagreement between a landlord and tenant concerning a deposit, resulting in the tenant receiving a partial refund of the deposit.

III) An International Law Lens

In order to “foster the development of ODR and to assist ODR administrators, ODR platforms, neutrals, and the parties to ODR proceedings.”,⁶ The United Nations Commission on International Trade Law (UNCITRAL) adopted the Technical Notes on Online Dispute Resolution (UNCITRAL, 2017) during its 49th session in 2017. It stresses on the principles of fairness, transparency, independence, expertise and consent.

This encapsulates a three stage model for ODR platforms i.e. negotiation, settlement and the final verdict on the dispute by a neutral arbitrator. In the negotiation phase, parties engage directly with each other. If this fails, the process progresses to a facilitated settlement phase, wherein a neutral third party appointed by the ODR provider assists the parties in reaching an agreement. If this stage also fails, the ODR administrator informs or presents the parties with various process options for their selection.

Similarly, the European Union has implemented an ODR model through the adoption of Regulation (EU) 524/3013. Likewise, the Association of Southeast Asian Nations (ASEAN) has mandated its member nations to establish their own online dispute resolution platforms

IV) The Relevance of ODR in Pakistan:

The COVID-19 pandemic heightened the demand for ODR, with a significant surge in cases across sectors such as finance, banking, estate, commerce, and retail opting for this method of resolution.

The pervasive problem of pending cases across all tiers of courts, from lower to higher, has become an issue in Pakistan. This is evident from the Law and Justice

⁶ UNCITRAL Working Group III, Thirty-third session, A/CN.9/WG.III/WP.140, para. 1

Commission of Pakistan's Bi-Annual Report on Judicial Statistics⁷ (July to December, 2023) as the total number of pending cases in courts has surged by 3.9%, reaching an alarming 2.26 million during the latter half of 2023. Notably, out of these, 1.86 million were at the District Judiciary Level and the remaining 0.39 percent were in the superior courts including the Supreme Court and the Federal Shariat Court. Such a surge in pending cases violates the right to expeditious and inexpensive justice which is also guaranteed under Article 37(d) of the Constitution of Pakistan.

By utilizing ODR, Pakistan can expedite the resolution of these cases. More straightforward small claim cases would benefit the most from this platform and this can consequently reduce this number of pending court cases.

V) Domestic Laws

Currently, there are no legislations pertaining to ODR in Pakistan but ADR has gained policy traction. The Alternate Dispute Resolution Act 2017 outlines the utilization of ADR methods and procedural guidelines applicable to civil affairs. It offers various ADR mechanisms such as arbitration, mediation, conciliation, and neutral evaluation with and its scope surrounding civil, commercial, family law, freedom of association, collective bargaining, and industrial relation issues. Corresponding rules have also been encapsulated under the ADR Accreditation Rule 2023 which highlight a framework to incorporate and institutionalize mediation centers and the qualifications that are generally required to become a certified mediator. Provisional legislations have also been passed and these include the Punjab Alternate Dispute Resolution Act 2020 and KPK Alternate Dispute Resolution Act 2020.

It is worth assessing whether the concept of ODR could be incorporated within this ADR framework. As a technology driven extension of ADR, ODR is capable of being incorporate within the definition of ADR. Such a model can be observed in UK's Online Dispute Resolution for Consumer Transactions Regulation 2015 which integrates ODR mechanisms alongside traditional ADR methods. However, even if ODR is explicitly recognized alongside ADR, there is a need to develop rules

⁷ Law and Justice Commission of Pakistan, 'Judicial Statistics: Bi-Annual Report (July to December 2023)', (2023).

governing it to ensure that it prioritizes data protection, provides adequate training to mediators and lawyers and provides guidelines on the process.

VI) Challenges of Incorporating ODR in Pakistan

Even with the increasing internet usage in Pakistan, rural regions continue to face limited access to this service. While the country is progressing towards digitalization, a significant portion of the population still lacks access to modern technologies. Additionally, lawyers would demand special training to acquire expertise in the discipline. Given this distinct role, ODR arbitrators, whether acting as negotiators, mediators, conciliators, or in any other capacity, must undergo specialized training to fulfill their responsibilities effectively.

Despite these obstacles, various initiatives in Pakistan serve as hope for the integration of ODR. The launch of the "E-Court Project" by the Government of Pakistan in 2019, along with the subsequent implementation of successful online case hearings by both lower judiciary and High Courts in 2020.

VII) Recommendations:

Pakistan can take the following measures;

- Through a collaborative effort with the Federal and Provincial Ministries of Law and Justice, the Supreme Court of Pakistan should identify the list of cases suitable for ODR. The global trend includes small claim cases such as divorce, child support and landlord-tenant claims.
- The definition of ADR under Article 2(a) of the ADR Act 2017 must be expanded to include ODR as a category.
- The process for filing a case encapsulated in Section 25, 128, 142 and 143 of Code of Civil Procedures 1908 is silent on processes mandatory to effectuate the Electronic Courts (e-courts) system. Terminologies such as "e-filing", "e-records", "e-hearing" and "e-certification" must be included.
- Promoting the training capacity of lawyers to understand the process of ODR by utilizing courses such as ones developed by the Chartered Institute of Arbitrators.

- The e-courts system has already proved to be successful in the State with cases being heard online in District Courts as well as the Supreme Court of Pakistan. More such courts need to be set up to expedite justice.

Action Matrix

Options for Pakistan

Option	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
Identifying Suitable Cases for ODR	Consultation process from domestic courts and lawyers to identify the small claim cases which would benefit most from the mechanism.	The first initiative to introduce ODR is to conduct an assessment identifying the suitable cases such as divorce, landlord-tenant claims etc.	<ol style="list-style-type: none"> 1. The Supreme Court of Pakistan 2. Law and Justice Commission of Pakistan 3. Ministry of Law and Justice 	3-6 Months for developing a list of suitable cases.
Amend Article 2(a) of the ADR Act 2017 and Section 25, 128, 142 and 143 of Code of Civil Procedures 1908	A collaborative review process involving legal experts, policymakers, and stakeholders to be conducted to assess the propose amendments.	The most effective approach to formally recognize ODR within the legal framework is to incorporate it as a category of ADR under Article 2(a), which defines ADR. Terminologies such as “e-filing”, “e-records”, “e-hearing” and “e-certification” should be included in CPC.	<ol style="list-style-type: none"> 1. Ministry of Law and Justice 2. Federal and Provincial Judicial Academies 3. Law and Justice Commission of Pakistan 	<p>2-6 Months for Consultation.</p> <p>6-12 Months for Amendments.</p>
Trainings for ODR Processes	Promoting the training capacity of lawyers to understand the process of ODR by utilizing courses such as ones developed	Ministry of Law provide a clear policy paper to serve as soft law for mediators.	<ol style="list-style-type: none"> 1. Federal and Provincial Ministries of Law and Justice 2. Federal and Provincial Ministries of 	3 - 6 Months to formulate the policy and training manuals.

	by the Chartered Institute of Arbitrators.		Interior	
Establishing more Electronic Courts (E-Courts)	The e-courts system has already proved to be successful in the State with cases being heard online in District Courts as well as the Supreme Court of Pakistan.	Develop more e-courts to expedite justice	<ol style="list-style-type: none"> 1. Ministry of Law and Justice 2. Federal and Provincial Judicial Academies 3. Law and Justice Commission of Pakistan 	6-8 Months to develop more e-courts.