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PROCEDURAL FAIRNESS WITHOUT PHYSICAL PRESENCE: CAN AUDI ALTERAM PARTEM SURVIVE ODR?

Prachi Chawla¹

I. ABSTRACT

The exponential growth in the application of ODR systems offers possibilities of efficiency, cost-effectiveness, and increased accessibility, yet at the same time poses a threat to the very foundations of the audi alteram partem doctrine that is based on space and perception. The paper raises questions about whether “the right to be heard” remains conceptually intact within a digital forum and remains constitutional within an Indian context and common law tradition. The paper begins by exploring the underlying concepts of natural justice, outlining the different types of ODR from mere electronic filing of documents to fully virtual hearings, and analyzing the changing concept of “presence” in technology-enabled judicial proceedings. This is followed by a doctrinal study of Articles 14, 19(1)(a), and 21 of the Indian Constitution, along with cases like Maneka Gandhi v. Union of India, A.K. Kraipak v. Union of India, and S.L. Kapoor v. Jagmohan, to pinpoint the essential elements of “effective hearings.” In contrast to the normative benchmark, this paper provides an assessment of India’s online dispute resolution framework, encompassing the eCourts Mission Mode Project and the virtual courts during the pandemic period. Some of the major risks within the system include exclusion because of the digital divide, the erosion of the role of oral advocacy, limitations on cross-examination, potential data privacy threats, and the erosion of the open court doctrine. While rejecting technophobia on the one hand and indiscriminate digitalisation on the other, this article proposes a measured course based on purposive interpretation, proportionality, legal protection, and procedural due process requirements.

II. KEYWORDS

Digital Audi Alteram Partem, Constitutional Portability of Hearing, Virtual Presence Doctrine, Procedural Due Process in Online Dispute Resolution.

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III. INTRODUCTION

Take the case of a daily wage employee in rural Maharashtra, threatened with termination without any benefits. The employer, a large corporate entity based out of Mumbai, relies on a contractual ODR clause to commence an online arbitration. While the employee accesses the platform once from a shared phone with poor internet connectivity, subsequent notifications are sent to an email account that the employee does not even open. Evidence is submitted in English on a platform intended only for corporate users. The sole arbitrator, based out of a different city, records in his award that “both parties were heard through ODR.” From a technical standpoint, the hearing has taken place. From a substantive standpoint, the promise of *audi alteram partem* – to hear the other side – is undermined.

The COVID 19 pandemic has undoubtedly propelled the justice sector into the digital space. ODR, previously limited to e-commerce disputes, has expanded to cover the realms of consumer, commercial, family, and civil justice around the globe.² At the global level, the EU ODR Portal, ICANN’s UDRP, and eBay’s ODR collectively facilitate millions of disputes annually, with over 60 million being resolved by eBay’s automated and assisted processes annually. However, in India, where there are more than 54 million pending cases in 2025, which have increased to 55.8 million up to March 2026 (National Judicial Data Grid), and the period taken for resolving cases is close to 15 years, courts introduced virtual hearings, e-filing, and ODR-based Lok Adalats.³

For example, private dispute resolution mechanisms such as SAMA, Presolv360, and others have collectively disposed of millions of disputes; for example, SAMA has disposed of more than 35 lakh (or more than 3.5 million) disputes up until 2024, according to their communications, including in Shark Tank India Season 3 pitch.⁴ This has been facilitated by the Information Technology Act 2000, which provides validity to electronic records and digital signatures, the Consumer Protection Act

² Rossana Beretta, *Procedural Justice in Online Dispute Resolution: An Empirical Enquiry* (2024), <https://doi.org/10.63028/10067/2064580151162165141>.

³ The NJDG portal at (last visited on 1st February 2026): https://njdg.ecourts.gov.in/njdg_v3/.

⁴ SAMA official website (last visited on 1st February 2026) available at: <https://www.sama.live>.

2019, which enables online redress for consumers, and arbitration laws such as in *Trimex International v Vedanta Aluminium* (2010), which provided validity to electronic agreements in arbitration proceedings.

Yet, this search for digital efficiency poses a constitutional conundrum. India's ODR and virtual court system is being sold on its cost efficiency and its ability to solve the problem of docket explosion and geographical inaccessibility. However, the Indian Constitution's commitment to equality and due process under Articles 14 and 21 necessitates the robust application of the *audi alteram partem* principle in all adjudicatory and quasi-adjudicatory mechanisms. In comparative studies concerning online courts and trials, it has been observed that although the efficiency of online court formats has been improved, there is a risk of compromising openness, the quality of participation, the integrity of the examination and communication of witnesses, thereby compromising the fundamental principles of the procedure. India's experience, through the eCourts project, the ODR policy plan by NITI Aayog, and the proliferation of ODR, has shown that there are persistent digital divides, infrastructural gaps, and regulatory gaps, which challenge the assumption of the inherent fairness of online hearings. The question at the core of this paper is: do online hearings and ODRs simply transport *Audi Alteram Partem* to a new platform, or do they compromise it?⁵

A. Research Objectives

This inquiry is of normative and institutional significance. Constitutively, it challenges the limits to which natural justice, now an integral component of Indian constitutional law, can be "constitutionalised" in digital procedure and, possibly, private ODR design.⁶ From the point of view of Access to Justice, it asks whether ODR reduces barriers of cost, distance, and delay, or creates new exclusions based on connectivity,

⁵ Saion Pal, *Access to Justice in the Digital Era: A Comparative Study of ODR Implementation in India vis-à-vis International Best Practices*, 7 Int'l J. for Multidisciplinary Rsch., no. 4, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i04.51548>.

⁶ Ridwan Saputra, Muhammad Zaid & Selvian Emovwodo, *The Court Online Content Moderation: A Constitutional Framework*, J. Hum. Rts., Culture & Legal Sys. (2022), <https://doi.org/10.53955/jhcls.v2i3.54>.

language, literacy, and power.⁷ With regard to judicial administration, the question it poses to the future is: will courts, through case law and rule-making, establish non-negotiable baselines for digital procedural fairness, or will code and architecture redefine what it means to be “heard”?

B. Research Questions

In this context, the research is designed to answer three questions:

1. Can the principles of natural justice, particularly the audi alteram partem principle, ever be fully achieved in ODR and virtual court settings characterized by forms of remote and often asynchronous communication, and increasingly, with the support of AI tools?⁸
2. What constitutional challenges does virtual adjudication raise in relation to equality, due process, open courts, transparency, and privacy?⁹
3. How can procedural fairness be maintained and implemented in virtual adjudication through interpretation of the constitution and legislative and virtual platform-level safeguards?

C. Research Hypotheses

Nevertheless, Audi alteram partem will be sustainable and may even develop within ODR, so long as technology remains constitutionally constrained rather than normatively transformative.

The scope of the paper is deliberately narrow. In terms of substance, it is limited to audi alteram partem notice, opportunity to be heard, effective participation, and rebuttal while excluding other aspects of natural justice, such as bias. In terms of geography, India is the main focus, with comparative references to EU, US, UK, Singapore, China, and Indonesia used primarily to highlight patterns in digital justice

⁷ Gustavo Osna, *Access to Justice, Culture and Online Dispute Resolution* (2019).

⁸ Gabriel Lopes, *Bias in Adjudication and the Promise of AI: Challenges to Procedural Fairness*, L. Tech. & Humans (2025), <https://doi.org/10.5204/lthj.3812>.

⁹ Achmad Rais & Mia Hanifah, *A Comparative Analysis of Offline and Online Trials in Indonesia's Digital Legal Transformation*, Priviet Soc. Sci. J. (2025), <https://doi.org/10.55942/pssj.v5i8.468>.

and access to justice design.¹⁰ The analysis is procedural, not substantive, in that it does not evaluate the correctness of outcome in a particular ODR or virtual hearing case, but examines whether the processes used to reach that outcome meet fair hearing standards in a range of civil, commercial, consumer, and selected administrative cases.

D. Research Methodology

The methodology used for research is a combination of the doctrinal and normative methodology, that uses as sources of legal doctrine such legal instruments as the Constitution of India, IT Act 2000, Consumer Protection Act 2019, Civil Procedure Code, Section 89, Arbitration and Conciliation Act, Mediation Act, 2023, which is the first independent act related to mediation in India with its Chapter VII (Section 30) being dedicated to Online Mediation and making online mediation possible only with written agreement between the parties and requiring from a mediator to keep confidentiality and integrity during digital mediations, as well as policies, such as ODR Policy Plan, prepared by the NITI Aayog, e-Courts initiative, and relevant case law related to natural justice and digital procedure, etc.¹¹

E. Literature Review

Natural justice is the aggregate of higher standards of procedural fairness, rationality, justice, and equality as contained in the rules of audi alteram partem and nemo iudex in causa sua. The rules of natural justice have been traditionally ascribed to the rules of Roman law such as "Audi alteram partem," canon law, and the rules of English common law, where the rules of the right to a hearing and the rules of bias have been developed since the seventeenth century, the right to a hearing in public authorities and associations.¹²

The concept of natural justice has been "carved" in the Indian Constitution. Article 14 and Article 21 provide a basis for fairness and non-arbitrariness, and Article 19(1)(a)

¹⁰Saion Pal, *Access to Justice in the Digital Era: A Comparative Study of ODR Implementation in India vis-à-vis International Best Practices*, 7 Int'l J. for Multidisciplinary Rsch., no. 4, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i04.51548>.

¹¹ Divya Singh & Kiran Devi, *Online Dispute Resolution (ODR): A Paradigm Shift in Access to Justice*, 7 Int'l J. for Multidisciplinary Rsch., no. 2, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i02.40938>.

¹²Saiprasad Huchhanavar, *Introduction to Natural Justice*, SSRN Elec. J. (2018), <https://doi.org/10.2139/ssrn.3246245>.

provides a basis for communicative aspects of being heard.¹³ The emphasis of the contemporary rules is that no one should be condemned unheard, and there should be a constraint of fair procedure.¹⁴ The rules of "audi alteram partem" under the system are:

1. the right to receive adequate notice,
2. the right to be heard either orally or in writing, (iii) the right to present evidence,
3. the right to cross-examination, where the credibility of the evidence is important, and
4. the right to receive reasons showing that the arguments and evidence were considered.

These needs differ in degree and can be transferred from the judicial process through the quasi-judicial and administrative processes, the most comprehensive need being in the judicial process, flexible forms in the quasi-judicial process, and the minimum need for fair hearing and giving of reasons in the administrative process.¹⁵

It is suggested that ODR is a spectrum of process, ranging from e-filing, e-case management, e-service, via video conferenced hearings, to fully online negotiation, mediation, arbitration, and "fourth party" systems involving AI.¹⁶ The narrower definitions of ODR are synonymous with online ADR, while the wider definitions include online courts and e justice systems in which the entire life cycle of the dispute is mediated digitally.¹⁷

These mechanisms include:

¹³ A.R., *Carving Natural Justice into the Constitution of India*, J. Legal Stud. & Rsch. (2023), <https://doi.org/10.55662/jlsr.2023.9303>.

¹⁴ Shahid Iqbal, *The Principle of Natural Justice in Administrative Law*, Int'l J. L. & Pol'y (2025), <https://doi.org/10.59022/ijlp.368>.

¹⁵ Shivam Srivastava & Pragya Das, *Rules of Natural Justice with Emphasis on Nemo Judex in Causa Sua: An Insight into Administrative Law* (2020).

¹⁶ Jason Barnett & Philip Treleaven, *Algorithmic Dispute Resolution – The Automation of Professional Dispute Resolution Using AI and Blockchain Technologies*, 61 Computer J. 399 (2018), <https://doi.org/10.1093/comjnl/bxx103>.

¹⁷ Tsuvina T., *Online Courts and Online Dispute Resolution in Terms of the International Standard of Access to Justice: International Experience*, Probs. of Legality (2020), <https://doi.org/10.21564/2414-990x.149.201782>.

1. e-courts/courts online with e-filing, case management, and virtual hearings;
2. video conference hearings for the presentation of evidence and arguments; and
3. AI-assisted dispute resolution, which often incorporates blockchain technology and smart contracts.

The models are based on the availability of communication networks, authentication systems, digital signature systems, e discovery systems, and user-friendly interfaces.¹⁸

From a doctrinal point of view, ODR is a digital form of ADR, and it is distinguished from traditional forms of ADR in that it is dependent upon technological support and platforms, which can be both enabling and limiting of due process. The constitutional review of ODR is determined by the traditional distinction between formalism and functionalism, which is part of the general debate on interpretative methods. The formalistic approach values the observance of the procedures prescribed by law (open court, physical confrontation, oral hearing) as an integral component of the right to a fair trial; functionalist theories focus on the effectiveness of digital processes to produce participation, contestation, and constraint on power, even if the traditional forms are modified.¹⁹

Tom Tyler's work, under the procedural justice theory, has emphasized the importance of voice, being neutral, dignity, and trustworthiness over outcomes. Empirical research has highlighted the impact of the behavior of the officer or the decision-maker, which has a significant impact on both procedural and distributive justice, with the latter often being a mediator.²⁰ Research on online/video link hearings and virtual trials also queries whether there can be an "equivalent sense of 'being heard', respect and seriousness," or whether the "symbolism and mystique" of the physical courtroom are not being met.²¹

¹⁸ Divya Singh & Kiran Devi, *Online Dispute Resolution (ODR): A Paradigm Shift in Access to Justice*, 7 Int'l J. for Multidisciplinary Rsch., no. 2, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i02.40938>.

¹⁹ Peter Gerangelos, *Interpretational Methodology in Separation of Powers Jurisprudence: The Formalist/Functionalist Debate*, SSRN Elec. J. (2025), <https://doi.org/10.2139/ssrn.5741306>.

²⁰ Kyle McLean, *Revisiting the Role of Distributive Justice in Tyler's Legitimacy Theory*, 16 J. Experimental Criminology 335 (2020), <https://doi.org/10.1007/s11292-019-09370-5>.

²¹ Susan Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, SSRN Elec. J. (2020), <https://doi.org/10.2139/ssrn.3683408>.

The debate on presence, therefore, takes on a central role: is physical co-presence normatively necessary, or can virtual presence, through the deployment of high-quality video and interaction and process, meet the requirements of audi alteram partem? The emerging body of research on online trials offers ambiguous results but advises against assuming either that physicality is either necessary or unnecessary, with the test being participation, empathy, and perceived fairness.²²

IV. RESEARCH & ANALYSIS

A. Constitutional And Jurisprudential Analysis of Audi Alteram Partem

In the Indian constitutional framework, audi alteram partem is no longer viewed as an act of common law benevolence but rather an implied fundamental right based on Articles 14, 19(1)(a), and 21. Natural justice is viewed as an arbitrariness-checking procedural principle that concretizes the rule of law principle, with the result that no one is to be judged in one's own cause and the other side must be heard before any adverse action is taken.²³

The constitutionalization of the rule of fair procedure is achieved through Article 14's guarantee of equality before the law and non-arbitrariness, as administrative or quasi-judicial decisions taken without hearing the affected parties are considered inherently unequal and, hence, unconstitutional.²⁴ Thus, under Article 21, reinterpreted in *Maneka Gandhi*, "procedure established by law" has come to mean just, fair, and reasonable procedure; if a law or procedure inflicts some civil consequences without giving an opportunity of hearing, it violates personal liberty.²⁵ Article 19(1)(a) reinforces the participatory aspect of the hearing right. To be heard is to speak and to

²² Pauline Belloni, Eva Jaspert & Dominique De Vocht, *Presence, Proximity and Participation: Online Court Communication from a Procedural Justice Perspective*, Eur. J. Crime, Crim. L. & Crim. Just. (2025), <https://doi.org/10.1163/15718174-bja10069>.

²³ Graham Barrie, *Application of Section 3(2)(b)(ii) and (3)(a) of PAJA Act 3 of 2000: Procedural Fairness and the Right to Particular Legal Representation – Dyanti v Rhodes University 2023 (1) SA 32 (SCA)*, Obiter (2025), <https://doi.org/10.17159/q8rdp371>.

²⁴ Chiamaka Ojumu, Azubike Emeje & Princewill Nwajah, *Jurisprudential Examination of the Constituent Kernels of Fair Hearing*, ABUAD L.J. (2022), <https://doi.org/10.53982/alj.2022.1001.01-j>.

²⁵ Saptarishi Mitra, *Protecting the Rule of Natural Justice*, SSRN Elec. J. (2011), <https://doi.org/10.2139/ssrn.1743442>.

communicate, especially when the state is concerned with rights, status, or reputation in judicial or quasi-judicial settings.²⁶

Taken together, these provisions constitutionalize an implied right to a fair hearing, which includes prior notice, a real opportunity to respond, the presentation and testing of evidence, and a decision by an impartial adjudicator. In the case of *Maneka Gandhi v. Union of India*, the Supreme Court held that the impoundment of a passport without a pre-decisional hearing was a violation of Articles 14 and 21, which located the importance of procedural fairness as a constitutional imperative and acknowledged the principle of natural justice unless excluded by valid and express statutory provisions. The *State of Orissa v. Binapani Dei*²⁷ had earlier held that even administrative decisions, if they have civil consequences, must be subject to a fair hearing, and reputation and livelihood cannot be affected without informing the person of the case and giving him an opportunity to meet it.

In *A.K. Kraipak v. Union of India*, the traditional dichotomy between administrative and quasi-judicial power was erased, and it was held that whenever power is exercised that affects any right or legitimate expectation, the obligation to act fairly, including the obligation to hear and be impartial, arises. In *Mohinder Singh Gill v. Chief Election Commissioner*, natural justice was extended to the administration of electoral power, and the Court insisted that power exercised for the public and impacting democratic rights must be fair and transparent, as required by Articles 14 and 21.

In *S.L. Kapoor v. Jagmohan*, the rule was crystallised that if consequences follow, non-observance of the audi rule is per se prejudice, and failure to give hearing is normally sufficient ground for setting aside the order, unless an exception is satisfied. Comparatively, the *Ridge v. Baldwin* case in English law put natural justice back in the spotlight, setting aside the dismissal order on the ground of failure to give hearing

²⁶ Andryan, *Open Court Principle for the Public in Material Judicial Review Right in the Supreme Court*, *Jurnal Penelitian Hukum De Jure* (2022), <https://doi.org/10.30641/dejure.2022.v22.387-394>.

²⁷ *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269.

and declining to draw the distinction between “judicial/quasi-judicial” functions. The UK case law appears to have had an important bearing on the approach taken in India. Indeed, the legal history of natural justice is one that has gradually expanded through various judgments since 2020 on virtual hearings. Even before the outbreak, in the case of *Santhini v. Vijaya Venkatesh* (2017), the Supreme Court, by a 2:1 majority, was wary of video conferencing in Family Courts, highlighting that there is something intrinsic to face-to-face communication that is difficult to replicate digitally; however, Justice D.Y. Chandrachud, in his dissent, favoured the use of video conferencing and emphasised that courts should embrace technological advancements rather than read limitations into procedural statutes framed prior to such developments. However, the pandemic facilitated a unique institutional transformation.

In the case of *Re: Guidelines for Conduct of Court Proceedings through Video Conferencing in View of COVID-19 Pandemic* (Suo Motu Writ (Civil) No. 5 of 2020, dated 6 April 2020, Bench of CJI Bobde, Justices D.Y. Chandrachud and L. Nageswara Rao), the Supreme Court of India has made use of its powers under Article 142 of the Constitution of India in formulating guidelines for conducting court proceedings through video conferencing as an emergency and temporary measure rather than a constitutionally sanctioned method of dispute resolution. Another case dealing with an extension of time limits of statutes in view of the current pandemic is *Suo Motu Writ Petition © No. 3 of 2020*.²⁸ Thereafter, the Bombay, Delhi, and Madras High Courts have introduced rules on video conferencing.

Although these systems maintained the continuity of process, they were marked by differences in key aspects like service authentication, recording procedures, and conditional physical hearing rights. It is important to note that none of them addressed the primary constitutional dilemma, which is whether virtual hearings meet the standard for an “effective hearing” as defined under Articles 14 and 21 by the *Maneka Gandhi* and *S.L. Kapoor* cases. In fact, the lack of such discussion highlights a crucial doctrine deficiency. Considering the emerging context of the Digital Audi Alteram

²⁸ In *Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic* *Suo Motu Writ (Civil) No 5 of 2020* (Supreme Court of India, 6 April 2020).

Partem and Virtual Presence Jurisprudence, the pending issue of Constitutional Portability of Hearing has emerged as a significant one. The lack of clarity in judicial decision-making on this matter makes the concept of Procedural Due Process in ODR uncertain.

The jurisprudence and legal doctrine elaborate on “audi alteram partem” as comprising a number of interlocking components. Notice is adequate if it is sufficient in content, timely, and clear, to ensure that the person is able to grasp the situation and respond to it; defective notice, such as “skeletal or confusing,” defeats fair hearing. The “hearing” element includes both oral and written elements, and the focus is on the quality of the engagement rather than its form.²⁹

The right to representation, including legal representation, has increasingly been regarded as part of procedural fairness, and comparative jurisprudence has acknowledged that, in serious or complex cases, a lack of legal representation would be unfair.³⁰ Evidence and cross examination reflect confrontation rights: where credibility, disputed facts, or adverse material are determinative, opportunity to adduce evidence and to test opposing evidence is central to fairness.³¹

A reasoned order closes the loop: giving reasons demonstrates that arguments and evidence were considered, disciplines decision making, and facilitates review, thereby promoting transparency and accountability. Nonetheless, there are acknowledged exceptions and limitations, such as urgency, security, or disciplinary cases, in which pre-decisional hearing may be restricted, often with a requirement of prompt post-decisional hearing and strict proportionality.³²

The standard has shifted from ‘formal’ to ‘effective hearing.’ A hearing is said to be effective if the individual has been meaningfully informed of the case, has been offered a real opportunity to respond, with or without the assistance of counsel, has

²⁹ Chiamaka Ojumu, Azubike Emeje & Princewill Nwajah, *Jurisprudential Examination of the Constituent Kernels of Fair Hearing*, ABUAD L.J. (2022), <https://doi.org/10.53982/alj.2022.1001.01-j>.

³⁰ Ajay Singh, *Audi Alteram Partem: Right of Accused Person*, Asian J. Rsch. in Soc. Sci. & Humanities (2021), <https://doi.org/10.5958/2249-7315.2021.00114.3>.

³¹ Dwi Handayani, *Legal Principles of Evidence on Civil Cases in Public Judiciary*, Hang Tuah L.J. (2017), <https://doi.org/10.30649/htlj.v1i1.13>.

³² Saptarishi Mitra, *Protecting the Rule of Natural Justice*, SSRN Elec. J. (2011), <https://doi.org/10.2139/ssrn.1743442>.

been able to make representations in support of the evidence, has been able to challenge the evidence, and has been met with a rational and unbiased decision. Effectiveness has a procedural and a substantive side. Procedural effectiveness relates to compliance with a pattern of steps such as notice, hearing, representation, evidence, and reasons. Substantive effectiveness, on the other hand, raises questions such as whether, in all the circumstances, the procedure was capable of allowing the relevant person to influence the outcome and avoiding arbitrariness, and this, in turn, gets to the core of what *audi alteram partem* means in a rights-oriented approach to procedural justice.

B. ODR In Practice: Technological Realities and Constitutional Challenges

The Indian ODR framework has been built around the E Courts Mission Mode Project, which has been implemented in various phases to computerise Indian courts, introduce case information systems, and eventually progress towards e filing, e summons, and video conferencing. The Indian ODR system has been significantly boosted in terms of digital case handling, though there are some issues with infrastructure, training, and integration, particularly between various tiers of Indian courts.³³

Virtual courts, which range from videoconferencing technology utilized by the Supreme Court and High Courts to supporting technology like “NSTEP” for electronic service, have been pushed to practical application with the COVID-19 pandemic. In April 2020, the Supreme Court, under Article 142, issued directions giving all high courts the authority to utilize technology under its jurisdiction; model rules for videoconferencing have been framed, and district courts have been directed to follow high court rules.³⁴ The Supreme Court carried out more than 15,596 virtual hearings in around 100 days, indicating a high rate of uptake.³⁵

³³ Debasis Sundaray, *Balancing Technology and Human Rights: A Critical Examination of the E-Court Mission in India*, J. Int'l Commercial L. & Tech. (2025), <https://doi.org/10.61336/jiclt/25-01-66>.

³⁴ Meenu, *Virtual Courts: A Pathway Towards the Right to Access Justice in India*, 6 Int'l J. for Multidisciplinary Rsch., no. 2, 2024, <https://doi.org/10.36948/ijfmr.2024.v06i02.15122>.

³⁵ Live Law, *SC Heard Over 15,000 Cases Via Videoconferencing During Pandemic; Disposed Of Approx 4,300 Cases*, (Aug. 20, 2020), (last visited on 6th February 2026) available at: <https://www.livelaw.in/top-stories/sc-heard-over-15000-cases-via-videoconferencing-during-pandemic-disposed-of-approx-4300-cases-161693>.

The legislative framework is fragmented. The Information Technology Act, 2000, has given legal recognition to electronic records and digital signatures, which form the core of e filing and e service. Amendments and practice directions to the Civil Procedure Code have enabled virtual appearances and electronic processes, and COVID-19 related circulars and High Court rules have created an ad hoc system of virtual hearings that is nationwide in reach. But while the introduction of the Mediation Act of 2023, which took effect in October 2023, is indeed an important partial development, as it introduces the legislative foundation for online mediation in Section 30, along with the obligation of confidentiality in Section 22, there is currently still no law addressing virtual courts and the concept of ODR in a comprehensive manner, and therefore the legal situation in this regard is still unclear. Moreover, the creation of the Mediation Council of India by the Act is itself an interesting development that has future prospects.³⁶

However, the reliability of email and SMS notices in the speed and scope of communication would depend on the reliability of the medium, proof of service, and comprehension of the medium itself, as the experience of other countries indicates the limitations of effective communication due to the lack of consistent connectivity, stable addresses, and comprehension of the medium.³⁷ Digital divide, defined as the gap in terms of connectivity, devices, and literacy, is poised to turn formal service into constructive non-service, especially in rural and disadvantaged areas.³⁸ Language and interface are also important issues, with most platforms being English-centric and failing to factor in linguistic realities.

Technological barriers, such as low bandwidth connections, high drop-out rates, lack of hardware and software, and the urban/rural divide, are also well documented in remote hearings around the world. An empirical study on criminal court hearings in the US found that virtual court hearings are “highly disorganised and fraught with

³⁶ Saion Pal, *Access to Justice in the Digital Era: A Comparative Study of ODR Implementation in India vis-à-vis International Best Practices*, 7 Int'l J. for Multidisciplinary Rsch., no. 4, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i04.51548>.

³⁷ Russell Haigh & Brian Preston, *The Court System in a Time of Crisis: COVID-19 and Issues in Court Administration*, Osgoode Hall L.J. (2021), <https://doi.org/10.60082/2817-5069.3608>.

³⁸ Marco Fabri, *Will COVID-19 Accelerate Implementation of ICT in Courts?*, 12 Int'l J. for Court Admin. (2021), <https://doi.org/10.36745/ijca.384>.

technical malfunctions” and hinder defendants’ ability to appear, address the court, and consult with legal counsel.³⁹ The quality of hearing will be impacted by audio visual delays, restricted visibility of body language and non-verbal cues, and interruptions that compromise narrative coherence; research has noted concerns that this will impact the seriousness of the case and credibility assessments made by the court.⁴⁰ Court actors seem to have a more relaxed attitude towards virtual space, with lower levels of preparedness, increasing the risk of delay and undermining the seriousness of the situation.⁴¹

Remote hearings pose unique issues in document authenticity, chain of custody, and identification verification. The comparative analysis has shown that there are deficiencies in existing evidence rules, which were formulated keeping physical hearings in mind and do not adequately address electronic documents and virtual testimony. The examination of witnesses through video links has been shown to be problematic in terms of environmental control, avoiding coaching, and reading demeanour; European and comparative jurisdictions have shown that, in substantive matters, remote hearings are “rarely an equal substitute” for face-to-face hearings. Record keeping and transcription, if automated or technology-dependent, pose risks of error and data loss, affecting appellate considerations.⁴²

The cost of technology, data, and stable broadband connectivity may, in effect, bar indigent litigants from participating in virtual hearings, making such participation available only to those who are able to afford “privileged access to technology.” Geographical inequality may also be experienced, especially for those living in remote and rural areas, where lack of connectivity is a challenge. There are also concerns regarding demographic groups such as the elderly, disabled, and disadvantaged, and how these groups may exacerbate inequality, even to the extent that there is an

³⁹Erez Nir & Joanna Musial, *Zooming In: Courtrooms and Defendants' Rights During the COVID-19 Pandemic*, 31 Soc. & Legal Stud. 725 (2022), <https://doi.org/10.1177/096466392211076099>.

⁴⁰ Wojciech Piątek, *A Right to a Public Hearing in Times of Emergency – Online or Physical?* Int'l J. for Court Admin. (2023), <https://doi.org/10.36745/ijca.444>.

⁴¹ Meredith Rossner, *Remote Rituals in Virtual Courts*, J. L. & Soc'y (2021), <https://doi.org/10.1111/jols.12304>.

⁴² Md. Mahmudul Hasan & Billal Mia, *Initiation of Virtual Court System During COVID-19 Pandemic and E-Judiciary: Challenges and Way Forward*, Daengku: J. Humanities & Soc. Sci. Innovation (2021), <https://doi.org/10.35877/454ri.daengku385>.

obligation to use the internet, as opposed to emerging arguments that there is a right to abstain from such use.⁴³ These patterns are significant in the Article 14 analysis and suggest that where access to a constitutionally protected forum is dependent upon digital capability, ODR can exacerbate rather than reduce existing inequalities.

Virtual hearings: the intersection of open justice and privacy. Questions arise as to the timing and manner in which hearings are streamable, the prevention of unauthorised recording and viral sharing, and the security of data against cyber threats. The data-intensive nature of the eCourts mission also brings Article 21 privacy issues related to surveillance, data retention, and the opaqueness of algorithms, especially in the use of AI and or third-party platforms; these concerns must be situated within the constitutional recognition of informational privacy as a fundamental right under Article 21 in *Justice K.S. Puttaswamy v. Union of India*,⁴⁴ which emphasised the need for data protection safeguards against arbitrary state and non-state intrusion.

In this context, the Digital Personal Data Protection Act, 2023 assumes significance as the primary statutory framework governing digital personal data in India, imposing obligations on data fiduciaries, including lawful processing, purpose limitation, and data minimisation under Section 8, and recognising rights of data principals such as access, correction, and grievance redressal under Sections 11 to 13. However, the absence of notified implementing rules under the Act creates regulatory uncertainty for ODR platforms and eCourt systems, particularly in relation to compliance standards, cross-border data flows, and enforcement mechanisms through the Data Protection Board. European and international guidelines emphasize the use of encryption, clear recording policies, and strict protection for lawyer-client confidentiality online.

The experiences of Europe and North America indicate that the use of video hearings increased significantly during COVID-19 and is likely to continue. The UK and all European countries have established a system for remote hearings, but there is a clear

⁴³Elżbieta Kuźelewska, Marek Tomaszuk & Dominik Malinowski, *The Elderly Digital Divide: Digital Exclusion Versus the Right Not to Use the Internet*, Int'l J. for the Semiotics of L. (2025), <https://doi.org/10.1007/s11196-025-10334-4>.

⁴⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

understanding that video is not an adequate replacement for in-person hearings, especially for complex and high-stakes cases, citing the influence on perception, participation, and emotional engagement.⁴⁵

In light of the above thesis of the paper, the Mediation Act, 2023 deserves greater doctrinal analysis. For instance, Section 30 of the Mediation Act, 2023 explicitly allows online mediation, as defined to mean mediation carried out using electronic media upon written agreement of the parties. On the other hand, Section 22 of the Mediation Act, 2023, relating to confidentiality of proceedings in mediation proceedings, requires that the mediator ensures that confidential information and other material in the proceeding is safeguarded during the digital or electronic communication, which solves partially the audi alteram partem objection to the use of digital technology. However, it is worth noting that such an act, being based on the consent of the parties, cannot satisfactorily address the constitutional issue as to whether the online mediation proceeding in itself can satisfy the procedural hearing right of Article 14 and 21 when the parties are of unequal bargaining power to agree.

Research on virtual criminal courts in the United States indicates a lack of organization, technology failures, and a lack of effective communication between attorneys and clients, and it emphasizes the need for more effective guidelines, infrastructure, and approaches based on different cases. The community and small claims tribunals in Singapore, and other specialist ODR schemes, are commonly referred to as best practice, where there has been a focus on user-centered design, procedural rules in online procedures, and accessibility and digital support.⁴⁶

Comparative studies have indicated that India's ODR and E-Courts model is at a low level in terms of technology infrastructure, legal frameworks, and institutional frameworks when compared to other countries, and it needs to enact enabling ODR

⁴⁵ Nóra Chronowski, Boldizsár Szentgáli-Tóth & Borbála Bor, *Resilience of the Judicial System in the Post-Covid Period: The Constitutionality of Virtual Court Hearings in the Light of the COVID-19 Pandemic*, Hungarian J. Legal Stud. (2024), <https://doi.org/10.1556/2052.2023.00468>.

⁴⁶ Eglė Bilevičiūtė, *Actual Issues of Remote Court Hearings in Administrative Procedure*, 13 Acta Prosperitatis 7 (2022), <https://doi.org/10.37804/1691-6077-2022-13-7-23>.

norms, develop infrastructure, and strengthen its institutions to ensure fair online hearings and avoid further widening the digital divide.⁴⁷

C. Critical Evaluation: Can Audi Alteram Partem Survive ODR?

Well-designed ODR has the potential to improve, rather than undermine, the audi alteram partem principle. By removing geographical barriers, transaction costs, and the need to synchronize participation, ODR can provide access to those who would otherwise not be able to access any kind of adjudication process. The high-volume e-commerce and consumer schemes in the EU, British Columbia, and the large private schemes show the ability of online processes to handle large volumes efficiently while allowing the opportunity to respond in a structured manner.⁴⁸

Digital platforms also promote transparency and accountability with automated recording, logs, and traceable data trails.⁴⁹ Digital records have the potential to assist with the long-term evaluation of whether the party was notified, heard, and considered, an essential aspect of audi alteram partem. Environmental benefits and logistical convenience of reduced travel and scheduling also play an indirect role in supporting the hearing rights by supporting the administration of justice.

ODR can further facilitate this with innovations like structured negotiation tools, document upload interfaces, and even AI-assisted case management, all of which can help parties articulate their positions, exchange information, and narrow issues in ways that can help lead to more focused and meaningful hearings.⁵⁰ As comparative research has observed, with the conscious inclusion of due process provisions, online hearings can deliver 'equal or better access' to justice in a range of routine civil and consumer cases.

⁴⁷ Debasis Sundaray, *Balancing Technology and Human Rights: A Critical Examination of the E-Court Mission in India*, J. Int'l Commercial L. & Tech. (2025), <https://doi.org/10.61336/jiclt/25-01-66>.

⁴⁸ Tania Sourdin, Bin Li & Donald McNamara, *Court Innovations and Access to Justice in Times of Crisis*, 9 Health Pol'y & Tech. 447 (2020), <https://doi.org/10.1016/j.hlpt.2020.08.020>.

⁴⁹ Leah Wing, *Mapping the Parameters of Online Dispute Resolution*, Int'l J. on Online Dispute Resolution (2022), <https://doi.org/10.5553/ijodr/235250022022009001001>.

⁵⁰ Orna Rabinovich-Einy, *The Past, Present, and Future of Online Dispute Resolution*, Current Legal Probs. (2021), <https://doi.org/10.1093/clp/cuab004>.

However, the shift of hearings online reveals a profound tension between opportunity and ability to be heard. In research on US court-based ODR and virtual criminal hearings, disorganised virtual hearings, technological failures, and problems with attorney-client communication are documented, with litigants appearing on unstable connections, interrupted by technological glitches, or without a private space to communicate with legal counsel, such that one can no longer distinguish between having a “hearing” and “being heard.”

Access to the open court is filtered by the use of links, passwords, and the design of the platform; the use of livestreams and recordings raises fresh obstacles and dangers which can inhibit or selectively expose vulnerable litigants. Judicial dignity and the formal atmosphere of the courtroom, which are part of the calculus of perceptions of justice and fairness, are undermined by the casual and fractured nature of online space. The cross-examination and assessment of credibility are especially precarious online. In fact, studies from Europe and North America indicate that the use of video formats may affect the demeanour, obscure non-verbal responses, and make it difficult to manage the environment for the witness, undermining the adversarial testing of the evidence that is fundamental to a fair hearing.⁵¹

The digital divide is arguably the biggest constitutional problem facing ODR systems. Indeed, data from India and other countries point to significant gaps in technology access and digital literacy among rural, disadvantaged, elderly, disabled, and marginalized populations. If ODR participation is tied to technological capabilities, ODR systems risk perpetuating inequality in direct contravention of Article 14-style guarantees of equal protection under the law and equality of access to justice. There is another set of systemic biases if ODR systems favor repeat player parties or parties with greater technological capabilities. In this situation, ODR systems risk providing an unfair advantage in terms of notice and hearing.

“Comparative practice increasingly supports a calibrated, differentiated model.” Some models retain fully online processes for lower value, higher volume, and

⁵¹ Sara Ajam, Andrew Thompson & Marc Greenop, *The Future for Online Dispute Resolution: Lessons from Electronic Platforms, National Court Systems and Arbitral Institutions*, BCDR Int'l Arb. Rev. (2021), <https://doi.org/10.54648/bcdr2021029>.

possibly less complex cases (traffic, consumer, minor civil claims), while maintaining a requirement for in-person or hybrid hearings for more complex, higher-stakes, or credibility-dependent cases such as family, serious civil, or criminal cases. Hybrid models integrate aspects of online case management, e-filing, and preconference with physical hearings for evidence and cross-examination. These models view technology not as a replacement for core adversarial protections, but rather as an enabler.⁵²

Voluntariness has emerged as a crucial principle, especially in private ODR and arbitration: the concept of party autonomy, enshrined in various statutes and case law, has been seen as legitimising deviations from traditional physically present procedures, where consent is real and informed. In all these models, “constitutional” minimum requirements such as intelligibility and reliability, opportunities to participate and to be represented, opportunities to present and challenge evidence, neutral adjudication, and the giving of reasons for a decision, are non-negotiable. The comparative studies emphasize that ODR is to be judged, not on the basis of its “online” or “offline” form, but on the extent to which these minimum requirements are actually met.

The integration of ODR with the requirement of *audi alteram partem* demands a purposive approach to procedural rights. If the essential function of *audi alteram partem* is seen as protection against arbitrariness, participation, and reasoned and reviewable decisions, “presence” can be seen in functional terms: a party is “present” if they can interact effectively with the system, not merely physically with the judge.⁵³

A proportionality approach might also be employed, such as: “the greater the interests at stake, and the more contentious the facts, the greater the requirements in terms of bandwidth, privacy, legal representation, and scope for oral and synchronous communication.” Efficiency benefits from ODR are legitimate policy objectives, however, they do not justify processes that effectively silence or marginalise weaker

⁵² Syamsul Muarif, *Transformasi Penyelesaian Sengketa Perdata Melalui Online Dispute Resolution (ODR): Tinjauan Efektivitas Pengadilan Virtual Di Indonesia Tahun 2025*, L. Dev. & Just. Rev. (2025), <https://doi.org/10.14710/ldjr.8.2025.69-84>.

⁵³ Tsuvina T., *Online Courts and Online Dispute Resolution in Terms of the International Standard of Access to Justice: International Experience*, Probs. of Legality (2020), <https://doi.org/10.21564/2414-990x.149.201782>.

parties. Procedural rights under a living constitutional approach are constantly evolving with technological advancements. Comparative experiences in the digital courts of Canada, the UK, Singapore, Indonesia, and Turkey indicate that ODR can be integrated into public justice systems while respecting, indeed re-imagining, due process, so long as the process is supported by investment in infrastructure, digital literacy, and normative frameworks of fairness and ethics.

Finally, the legitimacy of an institution is also dependent upon whether the users of ODR have an experience that is fair, respectful, and trustworthy. Research on procedural justice in ODR has shown that voice, neutrality, and dignitary treatment are still very important to the legitimacy of an ODR process, regardless of the technology used. If ODR systems are designed and implemented with these values at the forefront, then the principle of *audi alteram partem* is not just sustained but rejuvenated in the digital age; if not, it becomes empty rhetoric behind a screen.

V. SUGGESTIONS AND RECOMMENDATIONS

What is urgently required is a comprehensive ODR law in India, moving beyond the current ad hoc reliance on the Information Technology Act 2000, Section 89 CPC, and case-specific directions, and setting out the parameters of jurisdiction, accreditation, enforcement, due process, and cyber security, etc. The importance and need for an ODR law have been demonstrated through the experience in the EU and Singapore, and indeed the need for model law approaches to cross-border and local ODR.⁵⁴

Such legislation will establish certain minimum non-derogable criteria including proper notice, a hearing, an unbiased adjudicator, a rationale decision, and proper records, and will be guided by principles of natural justice like *audi alteram partem* as a basic requirement of constitutional importance from *Mohinder Singh Gill v. Chief Election Commissioner* and also the autonomy of the parties as recognised under Section 2(6) of the Arbitration and Conciliation Act, 1996, which permits parties to determine procedural aspects of arbitration, with Section 19 further operationalising

⁵⁴ Saion Pal, *Access to Justice in the Digital Era: A Comparative Study of ODR Implementation in India vis-à-vis International Best Practices*, 7 Int'l J. for Multidisciplinary Rsch., no. 4, 2025, <https://doi.org/10.36948/ijfmr.2025.v07i04.51548>.

this autonomy by allowing parties to agree upon the procedure to be followed by the arbitral tribunal. It could also be argued from the comments of the Supreme Court in *Union of India v. U.P. State Bridge Corporation Ltd.* (2015) 2 SCC 52 on party autonomy in India.

The necessity for such legislation is seen when put to test against the hypothetical situation set out at the beginning of the paper – a daily wage laborer from rural Maharashtra uses an ODR portal one time through shared computer, misses subsequent e-mail notices sent only, faces English language documents, and ends up “being heard” regardless. This sort of situation reveals the vulnerability of Procedural Due Process in ODR. A process built around the concept of *Digital Audi Alteram Partem* will ensure multi-modal notifications, hearing confirmations, pre-hearing technical verification, language compatibility, and the ability to ask for either physical or hybrid hearing. These measures will make it possible to give effect to Constitutional Portability of Hearing via Virtual Presence Jurisprudence. Without this Hybrid Justice model, Articles 14, 19(1)(a), and 21 will merely be affirmed by way of formalism.

Parliament should incorporate technology accessibility mandates, where the State is under obligation to provide infrastructure, assisted access, and legal aid linked technical support, in accordance with its equality and access to justice provisions under the Constitution and legal aid under Section 12 of the Legal Services Authorities Act.⁵⁵ In particular, amendments to the CPC, the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023 (replacing the Code of Criminal Procedure, 1973, from 1 July 2024) and the *Bharatiya Sakshya Adhinyam* (BSA), 2023 (replacing the Indian Evidence Act, 1872), should focus on identifying and plugging any gaps that still exist in these legislations concerning virtual attendance, 'e'-services, electronic evidence and exhibits.

The BNSS and BSA both already have some sections addressing issues of electronic records and digital proceedings but neither fully addresses the procedural framework necessary for ODR and virtual courts. Recommendations for reform should, therefore,

⁵⁵ Fátima Botelho, *Accessibility to Digital Technology: Virtual Barriers, Real Opportunities*, 33 *Assistive Tech.* 27 (2021), <https://doi.org/10.1080/10400435.2021.1945705>.

concentrate on the gaps in the new laws rather than those in legislation that no longer exists, using the more specific approach found in the Singapore code of electronic evidence as a starting point.

The Supreme Court can consolidate and update its video conferencing guidelines in the form of binding practice directions under Articles 141 and 142, leading to a uniform baseline for all High Courts and subordinate courts.⁵⁶ These can include an ODR suitability matrix, reserving fully virtual processes for small, fact-light claims and channeling complex or credibility-heavy claims into hybrid or physical processes, similar to international best practices.⁵⁷ Standardised technology protocols, including platforms, encryption, recording, data retention, public access, etc., should be conceptualised in relation to new security standards in ODR, including information security, privacy, etc.⁵⁸ Mandatory judicial training in technology, technology ethics, and vulnerability-sensitive judging online is essential to ensure the sustainability of procedural justice and user trust.⁵⁹

To address the issue of the digital divide, courts and LSA authorities need to provide digital kiosks and assisted access centers to litigants to file, connect, and participate, as recommended in studies on Indian and comparative ODR research. The platforms need to offer vernacular language support and plain language interfaces, with the EU ODR platforms supporting multiple languages and the Indian constitutional framework being in 22 languages.

In addition, ODR systems can leverage the body of global accessibility research, as well as the capabilities of artificial intelligence-driven assistive technologies, to incorporate disability-friendly design features, e.g., screen reader support, captioning,

⁵⁶ Tania Sourdin, Bin Li & Donald McNamara, *Court Innovations and Access to Justice in Times of Crisis*, 9 Health Pol'y & Tech. 447 (2020), <https://doi.org/10.1016/j.hlpt.2020.08.020>.

⁵⁷ Faisal Abedi, John Zeleznikow & Clare Brien, *Developing Regulatory Standards for the Concept of Security in Online Dispute Resolution Systems*, 35 Computer L. & Security Rev. 105328 (2019), <https://doi.org/10.1016/j.clsr.2019.05.003>.

⁵⁸ Udechukwu Ojiako et al., *An Examination of the 'Rule of Law' and 'Justice' Implications in Online Dispute Resolution in Construction Projects*, 36 Int'l J. Project Mgmt. 301 (2018), <https://doi.org/10.1016/j.ijproman.2017.10.002>.

⁵⁹ Letícia Chaves et al., *Best Practices of Judicial Governance: A Scoping Review Protocol*, 20 PLOS One (2025), <https://doi.org/10.1371/journal.pone.0329904>.

speech-to-text, etc.) in line with WCAG-type standards.⁶⁰ All platforms must be designed to ensure security by design principles, including end-to-end encryption, strong authentication, auditing, etc., which are the core pillars of an ODR regulatory framework.⁶¹ Investment in hybrid infrastructure: Courtrooms will be designed to facilitate physical-virtual integration seamlessly, allowing the deployment of the platform to be tailored according to the types of cases.

A presumptive option to request a physical or hybrid hearing in appropriate cases should be entrenched in the law, allowing for meaningful consent while avoiding involuntary exclusion in digital hearings, in keeping with the due process considerations of party autonomy.⁶² Enhanced notice protocols multi-channel service (email, SMS, portal, physical), with confirmation-of-receipt mechanisms are vital where connectivity and literacy gaps exist.⁶³ Institutionalization of Mandatory Pre-Hearing Technical Checks to assess connectivity, hardware, and overall platform competency, especially for legally aided and vulnerable parties.

Recording and Verbatim Transcription of All ODR Hearings Should Be Mandatory. Respect for confidentiality, e.g., breakout rooms, unauthorized recording, and handling of sensitive information, must be codified, similar to other data protection and cybersecurity standards.⁶⁴ Rules on liberal adjournment in the event of genuine technical failure are necessary to avoid ex parte decisions and ensure audi alteram partem. Judicial or law ministry-specific units can undertake periodic audits and assessments of ODR effectiveness, fairness, and security with the aid of developing methodologies of judicial governance. A multi-level grievance redress mechanism

⁶⁰ Nkiruka Eziamaka, Theodore Odonkor & Abayomi Akinsulire, *AI-Driven Accessibility: Transformative Software Solutions for Empowering Individuals with Disabilities*, Int'l J. Applied Rsch. in Soc. Sci. (2024), <https://doi.org/10.51594/ijarss.v6i8.1373>.

⁶¹ Husni Khuan et al., *The Dispute Resolution Revolution: A Civil Law Analysis of Online Dispute Resolution (ODR) Mechanisms*, Ipso Jure (2025), <https://doi.org/10.62872/rfr3fg70>.

⁶² Vijaya Amarnath, *AI-Driven Multimodal Cognitive Support: Advancing Digital Accessibility Through Adaptive Technologies*, Int'l J. Computer Engineering & Tech. (2025), <https://doi.org/10.34218/ijcet.16.01.170>.

⁶³ Alpesh Patel et al., *Online Dispute Resolution Mechanism as an Effective Tool for Resolving Cross-Border Consumer Disputes in the Era of E-Commerce*, Int'l J. L. & Mgmt. (2025), <https://doi.org/10.1108/ijlma-07-2024-0245>.

⁶⁴ Praneeta Yadav, *Digitizing Justice: The Case for Dedicated Online Dispute Resolution Legislation in India*, SSRN Elec. J. (2024), <https://doi.org/10.2139/ssrn.4840167>.

involving technical and procedural grievances is vital to rectify flaws and strengthen the system's legitimacy.⁶⁵

VI. CONCLUSION

Audi alteram partem, if viewed as a substantive right to an effective hearing, is not necessarily tied to bricks, mortar, or physical co-presence. The above doctrinal analysis of Articles 14, 19(1)(a), and 21, and decisions such as *Maneka Gandhi*, *Binapani Dei*, *A.K. Kraipak*, *Mohinder Singh Gill*, and *S.L. Kapoor*, reveals that the Constitution guarantees a cluster of non-negotiable components such as adequate notice, effective participation, representation if necessary, confrontation of adverse material, and reasons demonstrating genuine consideration of the case of the party. ODR, if properly protected, can transport all of these components into cyberspace; technology is thus an instrument for enforcement of constitutional principles, not an index for watering them down.

At the same time, the experience of India's e-Courts Mission Mode Project, pandemic-era virtual courts, and ODR-facilitated Lok Adalats demonstrates the potential of digital divide exclusion, the weakness of cross-examination, the diminished significance of oral advocacy, privacy risks, and the erosion of the open court principle to undermine the formal portability of rights. The constitutional requirement, therefore, is translation rather than transposition: the essential substance of Articles 14, 19(1)(a), and 21 must be re-expressed in terms of reliable multi-modal notice, realistic opportunities for counsel and confidential consultation, robust digital evidence principles, and auditable and reasoned decision-making, with the support of enabling legislation such as the Information Technology Act 2000, the Consumer Protection Act 2019, Section 89 of the CPC, and the Arbitration and Conciliation Act's model of consent-based ODR clauses.

A balanced evaluation also recognizes that ODR has already increased accessibility and reduced time, including disposing of ten million or so cases through remote Lok Adalats, and is backing millions of disputes worldwide through online platforms such

⁶⁵ Jiangqiong Zheng, *ODR Procedural Standards*, in *Online Dispute Resolution* 211 (2020), https://doi.org/10.1007/978-3-030-54120-0_5.

as the EU ODR Portal, UDRP, and other platforms. However, comparative and Indian experience also warns that online hearings, if badly designed, may actually erode participation, equality, and even perceptions of fairness. The future is neither about technophobia and the need for physicality, nor about unqualified digitization, but about a proportionate and hybrid approach that matches the form to the nature and seriousness of the dispute and vulnerability.

From the trajectory of the UK, the EU, North America, and Singapore, it is clear that ODR will – and indeed should – develop as a complement rather than a replacement. High volume, low value, and fact-light disputes will fully migrate to online platforms, while more serious, credibility-heavy, or rights-sensitive cases will increasingly develop sophisticated hybrids that integrate digital case management with written advocacy and in-person phases of evidence and cross-examination. While technology will continue to advance with AI-assisted translation tools, greater accessibility, and greater security and usability, it is only with the incorporation of constitutional minimums that the current deficits will be addressed.

The underlying truth is that constitutional principles are mode neutral and context sensitive: they apply with equal force to physical courts, hybrid hearings, and private platforms alike but require closer examination as the level of mediation by code increases. Enlarging access to justice via ODRs is a constitutionally attractive proposition only if it does so without compromising the quality of justice or reducing the right “to be heard” to a hollow login requirement. Procedural justice, as the Indian case law from *Binapani Dei* to *Mohinder Singh Gill* shows, is a flexible rather than a rigid concept: its forms change, but its purpose remains the same.

It is therefore submitted that the constitutional project cannot rest on the foundations of first-generation reforms. The monitoring of ODR's distributive consequences, doctrinal adaptation by the courts, and legislative and participatory refinement and setting of standards are all important dimensions of “vigilance” against digital exclusion and “black box” adjudication. The ultimate claim of this study is therefore intended to be low-key but normatively significant: while “*audi alteram partem*” may live on, and even be enhanced, in ODR, this is only possible if technology is

“domesticated” through constitutional values, rather than “silently and cumulatively” refashioning the very meaning of “being heard.”

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