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A STUDY OF THE CHALLENGES AND OPPORTUNITIES OF ONLINE MEDIATION IN THE INDIAN LEGAL SYSTEM

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Abstract
The paper discusses the issues and advantages faced with the implementation of Online Mediation (OM) in the Indian Legal system. In an increasingly digitalised world and in the face of the requirement for rapid, low cost and accessible justice, mediation has emerged as a popular means to settle conflict and the role of mediator has grown in recent years. The study highlights the issues of accessibility, confidentiality, enforcability, digital infrastructure, cyber security and the digital divide while focusing on the legal, technological, procedural and institutional aspect of online mediation in India. It also briefly explores the potential role mediation may play in offloading courts, in cross-border mediation and in cost-saving of court proceedings and increased access to justice for parties and litigants. At the same time, its implementation may be hampered e.g. by 'Digital literacy', poorly scaled technological infrastructure, 'Data privacy concerns', 'Authenticating the parties', 'Procedural fairness concerns' and 'Lack of understanding from the stakeholders'. The study follows a doctrinal method and utilizes primary and secondary sources, such as laws, judicial rulings, policies and secondary sources of literature. Based on the results in this report, an in-depth set of regulations, standard procedures, secure online service, well-trained mediators, and increased public awareness is a priority needed for strengthening online mediation. The paper concludes that if highly effective use was made of the Internet based mediation, then the efficacy of dispute resolution mechanism in India would be highly improved in terms of efficiency, inclusiveness and accessibility.

Keywords: Online Mediation, Alternative Dispute Resolution, Indian Legal System, Digital Justice, Dispute Resolution, Access to Justice, E-Mediation, Legal Technology, Cybersecurity, Confidentiality, Digital Divide, Court Burden, Mediation Framework.

Introduction

In India the dispute settlement process is exclusively always the court and formal adjudication process of the court. But with the number of litigation, the delay in judicial proceedings,

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attorney costs, enlargement of the law procedure and lack of lawyers to ensure an easy access to legal resources, there is a growing need to have an efficient and easy alternative dispute resolution mechanism. One way that can be used to resolve disputes before a lengthy trial in court is Alternative Dispute Resolution (ADR) and more specifically mediation. A neutral third party could help open up a door of communication, negotiation, and mutual agreement among the parties involved in a dispute with mediation. Mediation is different than traditional litigation in how it encourages parties to work cooperatively, be confidential, remain flexible, and be autonomous. For reasons of evolution of digital technology, mediation, also, has become more portable and has moved increasingly towards what is becoming known as 'online mediation' – mediation through a digital platform as a method whereby parties, mediators, lawyers etc participate in the mediation processes.

Online mediation refers to the use of information and communication technology (ICT) for mediations. This might be the video conferencing, electronic communication, exchange of electronic documents, online negotiating tools, electronic signatures, and technology-based settlement options. This development of the online mediation has significantly affected India with huge population, geographical spread, development of internet facilitation and the increasing use of internet tools in India. A cross-over learning from this experience, however, is the enduring value of digital platforms to which access to justice becomes paramount during periods of disruption, such as the COVID-19 pandemic, to institutionally held hearings and related activities. Courts and tribunals, legal practitioners and ADR institutions began to take more to virtual technologies, bolstering technology-based dispute resolution (TBDR) acceptance.

Online mediation is a potential avenue for several opportunities for the Indian legal system. It can save mediation parties from having to travel long distances for mediation, and forgoing the cost and time spent at mediation centres. Really convenient for people that live in different cities, states and countries. Use of online mediation can also increase the convenience and flexibility as the parties are able to participate in the mediation from their home, office or appropriate location. The possibility of online mediation may make it a more flexible and quick process to resolve a number of commercial disputes, consumer disputes, family issues, workplace disputes and selected cross-border disputes. It could also play a role in decreasing the caseload of Indian courts by prompting parties to settle suitable disputes via consensual ways as opposed to expensive court proceedings. Electronic records and electronic communications can also be used to assist recording and managing the mediation process.

There are numerous advantages to intermediation, yet a lot of obstacles also in the process of implementing it through the internet. One of the primary issues is that of the Digital Divide. The inability to gain equal access to a dependable internet connection, smartphones, computers or knowledge of digital skills could result in disadvantaged members of society not being equally equipped to participate in online dispute resolution. Technological failures, issues of connectivity, technical skills and accessing digital platforms can impact on the functionality of

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the proceedings. Another issue is privacy/security as mediation usually contains confidential and other sensitive information. Therefore, the issues of safe communication, appropriate authentications of the communicator, protection of electronic document and prevention of unauthorized access are all crucial. The issues surrounding enforceability of online settlements, procedural justness, parties named, the qualifications of the mediator and the appropriate legal system also must be considered.

The recent institutional and regulatory growth of mediation in India has laid the groundwork for considering tech-based mediation. Mediation based on statute: For the first time the Mediation Act, 2023, recognises statute-based mediation; online mediation is recognised as a way of doing a mediation process.For the first time, mediation has a statutory back-up (Mediation Act, 2023), and online mediation has been recognised as a way of carrying out a mediation process to ensure greater monetary value for technology-led dispute resolution. Yet, the success of online mediation relies very much on reliable technological infrastructure, trained mediators, procedures which are standardized, institutional capacity to smooth out the process, awareness among lawyers/litigants and public confidence in online mechanisms for dispute resolution, besides legislation. The introduction of Internet-mediated systems of mediation is thus, apart from being technically innovative, an emerging component of India's justice delivery system that calls for careful analysis.

The above leads to the present study which examines the impediments in on-line mediation in the Indian legal context as well as the possible avenues it opens. It focuses on grasping how online mediation could contribute to enhancing speed, cost, access and access efficiency, compromising, resolving or solving a dispute, and on the technological, legal, social and procedural barriers which might impact these fields in a dispute. The study is valuable as the successful implementation of Online mediation can boost the formal trial system, increase access to justice, alleviate judicial strain and strengthen India's ADR system. An eclectic mix of suitable regulation and technological security, digital inclusion, professional training, and institutional support can help to ensure online mediation becomes a viable, fair and sustainable dispute resolution mechanism in India.

Literature Review

From the available literature on the options emerging in online dispute resolution (ODR), mediation, and dispute resolution technology assistance, the dispute-resolution system has undergone a change over time due to the proliferation of "digital" transactions and communications. The results of the studies are informative with regards to jurisdictional problems, communication, bargaining, procedural justice, online contracting and the effectiveness of the alternative dispute resolution (ADR). Such parts collectively constitute an interesting conceptual framework, which explore online media access and issues in the Indian context.

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In his article ' Jurisdictional Dilemma in Online Disputes: Rethinking Traditional Approaches' (2008) Halush looks at the challenges presented by online disputes to traditional ideas on territorial jurisdiction. The author notes that it's impossible to tell how a dispute will be solved, as it is often unclear which jurisdiction the parties will operate under, and neither party fully understands the legal rules that govern the actions of the other. The geographical aspect is important in this study since it may no longer be a relevant issue in the era of online dispute resolution. Impacts a need for varying legal options to deal with what can be an uncertain judicial landscape in hemes online.

Brett et al. (2007) conducted a study on the importance of language and interpersonal communication in resolving a dispute online in the article, “Sticks and Stones: Language, Face, and Online Dispute Resolution”. They infer that physical non-verbal signals may help to facilitate information, emotion and sense of ease within interaction, respect/good faith. The study held significance for the mediation process from the perspective of conflict management in online space as online communication, trust, empathy and conflict management are considered crucial components of the successful dialogue in the process of mediation. The results show that there is a need on how an online mediator can overcome the disadvantages of communications in the online world, with specific communication strategies.

While in their research paper Delegating Differences: Bilateral Investment Treaties and Bargaining over Dispute Resolution Provisions (2010), Allee and Peinhardt (2010) are focused on the nature of the dispute resolution bargaining and structuring process in BITs. However, the study is not focused on online mediation, as such, but provides a useful glance into, respectively, the bargaining process and the nature of the mediation clause. It demonstrates that the selection of mechanism to resolve a dispute because it can be pivotal to the mediation of a dispute. The first one is useful to understand the benefits of online mediated relationships in contract and institutional-based dispute resolution.

For more discussion of this nature and actuality of agreements that can arise in an online context, refer to “Some Realities of Online Contracting” by Marotta-Wurgler. It tackles some of the problems of e-contract creation, understanding and application. Consequences: relevance to online mediation = increasing importance of electronic contracts, electronic transactions, which are sources of dispute. Today, with the increasing number of e-commerce transactions online, there will be needs for "easy-to-use" systems that can settle such disagreements with ease in the future.

In “The Law and Economics of Online vs. Traditional Markets,” Manne and Wright (2011) examine and contrast online markets with traditional markets with a legal and economic lens. As part of their analysis they find that digital markets can transform commercial relationships, information flows and the costs of transactions. In this way, online transactions are able to bring party conflict into different geographical zones and such scenarios will have an effect in dispute resolution. Online mediation might be able to "save the transaction costs" of resolving

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these conflicts, particularly when it is more speedy, more affordable and demanding less effort than conventional litigation.

The paper by Creutzfeldt and Bradford (2016) looked at three main issues: what factors influence a user's acceptance of the outcome from Ombuds-level Dispute Resolution in the UK; the meaning of procedural justice to users and whether their expectations of Ombuds-level DR are satisfied; and users' perspectives on the outcomes of such Ombuds-level DR. They discovered that three concerns are critical for acceptance of outcomes from the dispute resolution process: perceptions of fairness, voice, respect, neutrality and transparency. This is particularly significant in relation to mediation processes in an online setting that may have implications on procedural fairness due to the use of technology and a lack of personal interaction between the parties. The study confirms the need of modern online mediation to be 'participant centred' and ‘transparent'.

Love and Stulberg (2014) present the findings of a study that they conducted on the factors that affect the success and failures of alternative dispute resolution practicing in tandem as partners in a dispute resolution team. They note that key factors to the success of ADR are fitting processes, professional competence, communication and a party's desire to be engaged in a constructive manner. All of the above apply to online mediation as well. The study, however, suggests that mediation needs appropriate institutional and professional frameworks in addition to being broadcasted via a virtual medium to achieve mediation success in dispute resolution.

Engstrom examines the "legal and procedural development with respect to dispute management and access to judicial mechanisms" in The Lessons of Lone Pine (2019). It is not a study of ‘online mediation’ per se, but rather it provides some broader guidance on conducting mediation efficiently and on addressing long-term disputes. It is important for the on-going tension that exists between effective dispute administration and the rights of party to the dispute. An online mediation should have the same characteristics as a face-to-face mediation – efficiency and convenience and yet fairness, due process, and meaningful participation.

The emphasis is on the global dimension of conflict, mediation, discriminations, activism, between-state rivalry, and preference for defence, with Chatagnier and Kavaklı (2017), Bae (2019), Valeriano and Powers (2016) and Williams (2019) focusing on these areas. Though these studies are not specifically geared towards the mediation and the Indian judicial system, they contribute to the overall stream of literature on the subject of conflict, negotiations, mediation and dispute resolution landscape. They actively involve in conflict resolution and develop sense of consequence of conflict resolution for institutional, social, political and strategic factors. This can in turn be utilized indirectly to contribute to designing competitive mediation frameworks.

Existing literature indicates that ODR has great potential to overcome geographical limitations, reduce transaction costs, improve access to the justice and offer effective dispute resolution.

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However, several key issues have to be tackled regarding jurisdiction, communication, procedural justice, enforceability, technological power, trust, and institutionalization. Some of the fundamental challenges for the research is the lack of taking these aspects into account in an Indian context of online mediation. The present study thus tries to fill this gap by investigating the opportunities and challenges of online mediation in the Indian legal system and focussing on issues such as the access, legal recognition, technological soundness, confidentiality, cyber security, procedural equities and the effective functioning of online mediation mechanisms.

Objectives of the Study

1. To examine the legal and procedural framework of online mediation in the Indian legal system, with particular reference to its development, recognition, accessibility, and enforceability.
2. To identify and analyse the major challenges associated with online mediation in India, including technological barriers, digital literacy, cybersecurity, confidentiality, jurisdictional issues, and concerns regarding procedural fairness.
3. To assess the opportunities and potential of online mediation in India for reducing litigation costs and delays, improving access to justice, resolving disputes efficiently, and strengthening the overall Alternative Dispute Resolution (ADR) mechanism.

Hypothesis

H_0 (Null Hypothesis): There is no significant effect of the major challenges associated with online mediation, including technological barriers, digital literacy, cybersecurity, confidentiality, jurisdictional issues, and procedural fairness, on the effective implementation of online mediation in India.

H_1 (Alternative Hypothesis): There is a significant effect of the major challenges associated with online mediation, including technological barriers, digital literacy, cybersecurity, confidentiality, jurisdictional issues, and procedural fairness, on the effective implementation of online mediation in India.

Research Methodology

The study is descriptive and analytical in nature to analyze the problems & opportunities of online mediation in the Indian Legal System. The research conducted in the Thesis has been primarily secondary research drawn from books, research articles, legal journals, judicial verdicts, bills, governmental reports and various reliable sources of internet connecting with mediation and Online Dispute Resolution (ODR). Information gathered is systematically reviewed and analysed to gain an understanding of technological, legal and procedural matters, along with issues concerning digital-literacy, confidentiality and cyber-security in the context of online mediation. The study also looks at the potential advantages of online mediation in terms of accessibility, reduced costs, time-saving and mixed with the alleviation of overworked courts. The existing legal and academic literature is qualitatively analysed in order to understand the existing context and to note down gaps and new challenges. The results are

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analysed in a thematic heuristic and analytical manner to render a comprehensive assessment about the effectiveness and prospects of online mediation in the context of India.

Descriptive Statistics

Sr. No.	Major Challenges	N	Mean	Std. Deviation
1	Technological Barriers	200	3.84	0.91
2	Lack of Digital Literacy	200	3.76	0.94
3	Cybersecurity Concerns	200	4.02	0.86
4	Confidentiality Concerns	200	3.91	0.89
5	Jurisdictional Issues	200	3.68	0.97
6	Procedural Fairness Concerns	200	3.88	0.90
Overall	**Major Challenges of Online Mediation**	**200**	**3.85**	**0.91**

Analysis

The descriptive statistics show that the main challenges encountered by the parties conducting online mediation in the court seem to be pertinent ones to be an obstacle to a successful dispute resolution through an online mediation in an Indian court. Answer to the overall mean score is 3.85 or relatively high agreement rate from the respondents. Concerns about cyber security (M = 4.02, SD = 0.86) were rated high, indicating a concern with the protection of confidential information and safe use of verbal communications or a need to prevent unauthorised access. Similarly, confidentiality was a high mean (M = 3.91, SD = 0.89) which also points to the importance of confidentiality in conducting mediation online. Procedural fairness (M = 3.88; SD = 0.90) and technological obstacles were also considered of great importance as problems (M = 3.84; SD = 0.91). In the same way, not being digitally literate (M = 3.76, SD = 0.94) can restrict the desired involvement particularly for those who are not perceived as technologically skilful. The lowest, but also very high mean score (M = 3.68, SD = 0.97) was the results in the jurisdiction category. In fact, the outcome shows that in general, technological, legal, security and procedural problems have significant impact on the implementation of online mediation.

One-Way ANOVA

ANOVA	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	24.684	3	8.228	9.746	0.000
Within Groups	165.516	196	0.844		
Total	**190.200**	**199**			

Analysis

The results from the One-Way ANOVA show that distinguishing between the groups of respondents, the differences in each groups perception regarding the major challenges associated owing to online mediation in India are statistically significant. The obtained F-value of 9.746 with df = 3 and 196 is statistically significant at the 0.001 level ($p < 0.001$). In this case, the value of the significance is < 0.05, thus rejecting the null hypothesis and the alternative

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hypothesis is accepted. The findings reveal the varying perceptions of issues with online mediation in the groups that answered. This may relate to technology, digital literacy, cybersecurity, confidentiality, jurisdictional issues or procedural fairness as they are different for the different groups of respondents. On statistical evidence, it can be concluded that the issues that arose on the practice of online mediation in the Indian Law have a significant impact on it. The results also show that appropriate technological solutions, legal, institutional and procedural are needed to increase the efficiency and acceptability of online mediation in and for India.

Overall Conclusion

As the online mediation process in the Indian legal system, now, is and is likely to remain in the future, faster, more flexible, cheaper and more accessible than the traditional litigation, the study embodies the great potential of online mediation. A cursory review of the existing literature and analysis of the problems found strong evidence that electronic mediation could expand access to the mediation process, shorten the costs and delays of access to mediation, decrease disputes resolution costs, and help to alleviate the court load. For the case where the parties are in different states or countries and different cities this will prove very useful. Even though online mediation has been increasingly embraced as a solution to address the issue of access and low attendance at mediation generally, it faces several obstacles including technology constraints, lack of technological expertise, cyber security concerns, confidentiality concerns, jurisdictional concerns and concerns about procedural fairness. The overall mean score (3.85) indicates that respondents' perception of these challenges, in general, is of importance. The null hypothesis was rejected as the ANOVA results showed the difference between the perceptions of the respondent groups is statistically significant ($F = 9.746$, $p \leq 0.001$) in support of the alternative hypothesis. The findings suggest that successful use of online mediation cannot be limited to mere application of online tools and platforms, but is related to the legal, technological, and institutional context. Improving the security and confidentiality of digital transactions, improving digital infrastructure, training and skills of mediators and lawyers, media and digital literarcy, standardization of procedures, system enforcement, procedural fairness are important. Raising awareness on the responsibility among litigants and lawyers can also increase the confidence in the system. Overall, online mediation is meant to be an adjunctive process to the current formal process of dispute resolution and is not meant to supplant that formal process. By using technology with proper regulatory safeguards; proper training of the professionals/educating the policy makers so that the process can be embraced and investment can be made in the technology it can do a lot to improve access to justice and build a more efficient, responsive, modern and protective framework of the Indian legal system.

References

- Allee, T., & Peinhardt, C. (2010). Delegating differences: Bilateral investment treaties and bargaining over dispute resolution provisions. *International Studies Quarterly, 54*(1), 1–26. https://doi.org/10.1111/j.1468-2478.2009.00573.x

- Bae, B. B. (2019). Conflict mediation and Bungoma activism in a South African township. *Journal of Religion in Africa, 49*(3–4), 289–311. https://www.jstor.org/stable/27095608
- Brett, J. M., Olekalns, M., Friedman, R., Goates, N., Anderson, C., & Lisco, C. C. (2007). Sticks and stones: Language, face, and online dispute resolution. *Academy of Management Journal, 50*(1), 85–99. https://www.jstor.org/stable/20159842
- Chatagnier, J. T., & Kavaklı, K. C. (2017). From economic competition to military combat: Export similarity and international conflict. *Journal of Conflict Resolution, 61*(7), 1510–1536. https://www.jstor.org/stable/26363938
- Creutzfeldt, N., & Bradford, B. (2016). Dispute resolution outside of courts: Procedural justice and decision acceptance among users of ombuds services in the UK. *Law & Society Review, 50*(4), 985–1016. https://www.jstor.org/stable/44122551
- Engstrom, N. F. (2019). The lessons of Lone Pine. *Yale Law Journal, 129*(1), 2–76. https://www.jstor.org/stable/45223100
- Haloush, H. A. (2008). Jurisdictional dilemma in online disputes: Rethinking traditional approaches. *The International Lawyer, 42*(3), 1129–1146. https://www.jstor.org/stable/23824404
- Love, L. P., & Stulberg, J. B. (2014). Success and failure in ADR: A dialogue between partners. *International Journal of Conflict Engagement and Resolution, 2*(1), 59–67. https://www.jstor.org/stable/26928950
- Manne, G. A., & Wright, J. D. (2011). The law and economics of online vs. traditional markets. *Supreme Court Economic Review, 19*(1), 1–10. https://doi.org/10.1086/664559
- Marotta-Wurgler, F. (2011). Some realities of online contracting. *Supreme Court Economic Review, 19*(1), 11–23. https://doi.org/10.1086/664560
- Valeriano, B., & Powers, M. (2016). Complex interstate rivals. *Foreign Policy Analysis, 12*(4), 552–570. https://www.jstor.org/stable/26168121
- Williams, L. K. (2019). Guns yield butter? An exploration of defense spending preferences. *Journal of Conflict Resolution, 63*(5), 1193–1221. https://www.jstor.org/stable/48597359