



## Evaluating the benefits and drawbacks of online mediation and dispute resolution in India

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### Abstract

The phrase "online dispute resolution" (ODR) describes a type of conflict resolution that uses any online-accessible technology to facilitate the mediation or arbitration of disputes involving two or more parties. Nevertheless, the coordination of data and it seems that the management technologies used in the procedures have an impact on the strategies used in dispute resolution. As is well known, India's legal system is currently overwhelmed by the number of pending cases in a number of areas, such as criminal, civil, and the recently developing cyberspace. Establishing an ODR system and utilizing more sophisticated second-generation technology could benefit India. This paper presents a concise treatment with an abstract, an introduction that frames the Indian problem-space and opportunities, and a focused literature review that surveys foundational policy instruments, empirical findings, technical developments, comparative implementations, and critical concerns that should guide India's adoption of advanced ODR systems.

**Keywords:** Online dispute resolution, Indian courts, mediation, arbitration, COVID 19

### Introduction

India's legal system is known to be experiencing a capacity problem. The Supreme Court, High Courts, and district courts still have millions of cases waiting, which strains institutional legitimacy and costs plaintiff's money in delays. The magnitude of the backlog across judicial tiers and the pressing need for systemic innovation are highlighted by recent public data and discussion. ODR provides a mechanism to lower barriers, increase access, and redirect appropriate cases away from overburdened courts. When properly defined, ODR encompasses more than just remote hearings and includes algorithmic support, workflow<sup>[1]</sup> automation, secure evidence management, and online mediation/arbitration platforms. ODR's potential has been acknowledged by the Indian government and policy scholars, who have started to develop policy roadmaps that define it as a technology-enabled alternative dispute resolution process that can incorporate private platforms and court-annexed services.

However, the exact combination of procedural designs and management technologies (what we refer to as "second-generation" ODR) is important since different architectures result in varied procedural outcomes for speed, enforceability, fairness, and transparency. In order to map where India stands, what the data indicates, and what trade-offs need to be addressed while scaling ODR across civil, consumer, commercial, and cyberspace conflicts, this article synthesizes pertinent policy papers, empirical studies, and technical literature.

### Literature review

#### 1. Online Mediation in Resolving Divorce Matter by Nur Farahiyah Mohd, Nasir Zinatul Ashiqin, Zainol Shamsuddin Suhor and Muhamad Helmi Md

In this Research Paper the authors stated in the past, internet mediation was used to settle disagreements that arose online. However, this does not preclude online mediation from resolving offline conflicts, particularly when it comes to divorce proceedings. This article examines how internet mediation has been used to settle divorce cases in the

Netherlands, Canada, and Maryland. The study's goal is to help Malaysia learn from the following states' experiences using internet mediation to settle divorce disputes. This work employs both doctrinal and comparative Methodologies<sup>[2]</sup>. The results of this study demonstrate how flexible online mediation is for settling divorce cases in Malaysia. In order to settle divorce disputes amicably, this research concludes by recommending online mediation as a potential substitute.

#### 2. A Literature Review on Online Dispute Resolution and Application to B2B E-commerce by Nikola Simkova.

In this Research Paper the author stated unavoidably, as the volume of business-to-business e-commerce transactions increases, so do the conflicts surrounding such transactions. The needs of online consumers involved in disputes over online transactions are not satisfied by traditional offline dispute resolution procedures (litigation, arbitration, or mediation). Numerous studies have been conducted globally in response to the need for dispute resolution processes that acknowledge internet users' desire for a quick, adaptable, and globally accessible system. Studies on online conflict resolution are covered in this survey of the literature. Initiatives, techniques, factors, efficacy, and an effective system are the four primary themes that emerge from the outcomes. There is discussion of the intricacy of ODR and its consequences for further study.

#### 3. The Use of Online Mediation in the Resolution of Civil and Commercial Disputes in Theory and in Practice by Ihab Amro published in International Journey of Arbitration Vol 87 Issue 2 pp. 204 – 222

In this Research Paper the author stated the present coronavirus pandemic demonstrates—and may perhaps demonstrate—the practical value of using online dispute resolution methods for both civil and business issues. In order to address the practical and legal issues brought on by the lack of in-person meetings between parties, attorneys, and mediators, the pandemic crisis requires the use of online dispute resolution (ODR) procedures, such as online mediation.

#### 4. A Study on Effectiveness of Online Mediation in Resolving Commercial Disputes in India by Serena Mehul published on International Journal of Research Publication and Reviews Journal ISSN2582-7421

In this Research Paper the author stated businesses frequently suffer large financial losses as a result of complicated and time-consuming commercial disputes. Through the use of technology, online mediation enables parties to resolve disputes from a distance, promoting effective negotiation and communication [3]. By assessing online mediation's efficacy in the context of commercial conflict resolution in India, this study seeks to add to the body of knowledge already available on the subject. In India, online mediation is not a good way to settle business issues. When it comes to settling business issues, online mediation is more practical than traditional in-person mediation. Despite this, internet mediation presents certain difficulties. Concerns, limited physical presence, language and cultural differences, power imbalance, intimidation, lack of human engagement, limited control over the surroundings, and restricted nonverbal cues are some of the problems.

#### 5. Online Mediation and Dispute Resolution in India: Assessing the Advantages & Disadvantages of Online Mediation by Kavita published in ILI Law Review

In this research Paper the author states Consumer and family law are just two of the many legal topics covered by online mediation. However, mediation is impacted by a number of legal issues, including a lack of trust, a violation of legal obligations, numerous procedural barriers, etc. The Online conflict resolution has emerged as a result of the Internet community's growing expectations. Instead of taking a conflict all the way to the court system, which is not prepared to handle such cases, ODRS is a good option. It offers the quick, simple, and affordable service that characterizes internet business transactions. The adoption of ODRS by the online community is a noteworthy achievement. As a result, Indian parties may use online mediation and arbitration to resolve their disputes [4].

#### Research Questions

1. In terms of procedure, goals, technology, and results, how is online mediation different from conventional (offline) mediation and litigation?
2. In comparison to the traditional court system, how much can online mediation improve access to justice, particularly for underserved or isolated communities?
3. To what extent has internet mediation helped ease the backlog of cases in Indian courts?
4. How do people' low levels of digital literacy and awareness impact the use and effectiveness of online mediation platforms in India?
5. How does online mediation fit into India's larger Online Dispute Resolution (ODR) framework?

#### Research Objectives

1. To explain what online mediation is and how it differs from conventional mediation, court cases, and other Online Dispute Resolution (ODR) processes.

2. To examine the technological and theoretical underpinnings of online mediation as a contemporary technique for resolving disputes.
3. To assess how online mediation contributes to the Indian legal system's efficiency, transparency, and access to justice.
4. To look at the laws and rules that facilitate online mediation in India, such as the Information Technology Act of 2000, the Mediation Act of 2023, and other procedural regulations.
5. To look at whether digitally executed mediated settlement agreements are recognized and enforceable under Indian law.

#### Globalisation & Impact On Mediation

In many countries around the world, globalization has contributed significantly to the integration of economies and communities, and it still does. It has been demonstrated to be a highly effective tool for dismantling economic boundaries and viewing the entire world as a marketplace. The emphasis has changed to arbitration as the modern means of resolving business disputes, moving away from litigation. The emphasis is shifting even further away from arbitration and toward alternative dispute resolution techniques as nothing is ever static. In India, online dispute resolution is an essential part of the current projects known as the Legal Framework for the Information Society in India and the Legal Enablement of ICT Systems in India. The conventional arbitration laws in India have also been changed. The nation currently abides by the harmonized provisions of the UNCITRAL Model of International Arbitration thanks to the 1996 Arbitration and Conciliation Act. Regarding civil procedure, in this regard, section 89 of the Code of Civil Procedure of 1908 has been added to permit alternative dispute resolution (ADR) methods nationwide. The purpose of this study is to investigate the possible application of online dispute resolution in India in the near future. The growing usage of ADR procedures in India has made this necessary. It will lessen the strain on India's courts, which are already overburdened.

However, the percentage of criminal cases in Madhya Pradesh, Uttarakhand, and West Bengal is greater. The Patna High Court and the High Court of Jharkhand had the largest percentage of criminal cases instituted among High Courts, at over 70 percentage. At the same time, just 10% of criminal cases and almost 90% of civil cases were registered by the High Courts in Karnataka and Jammu & Kashmir. The number of cases that are still waiting as of the end of 2015 and today is quite high. The high rate of pendency observed in prior years, particularly in civil proceedings, is the cause of this. Similar circumstances also exist in lower courts. A strong legal and technological basis needs to be established in advance. Article 21 of the Indian Constitution also mandates it. If we were aware of it in 1999 and started implementing section 89 of the Code of Civil Procedure on July 1, 2002, that shouldn't make a difference. Being late is preferable to being late. Each and every Conciliation and mediation should be given priority over adjudication by the bar council, bar association, and attorneys in order to save time and money while enabling more complex cases, such as criminal charges, to move on to adjudication. It is indisputable that promoting ODR by the state contributes to the creation of a more effective, economical, and welcoming legal system.

### Key Elements of Online Mediation

Historical Development and Early Experimentation Kats and Rifkin described a number of notable e-mediation projects carried out during the early, experimental stages of ODR, such as:

- a. the Online Ombuds project, a pilot ODR program established in 1996;
- b. the Maryland Family Mediation project, another initial project funded by the National Center for Automated Information Research (NCAIR) in the United States;
- c. the Cyber Tribunal project at the University of Montreal School of Law, which later developed into e-Resolution, a commercial service provider that offers e-mediation and dispute resolution for domain disputes; and
- d. Square Trade, which also took over the eBay mediation project in which Online Ombuds abandoned as a commercial venture. After these initial experiments and projects, the industry developed to offer e-mediation services to a wider audience. Among the first service providers were Internet Neutral, e-Resolution (see above), and Online Resolution. They worked with a wide range of problem kinds, including insurance issues, workplace conflicts, and commercial disputes between companies and their customers. Many of the early arbitration service providers were only able to operate for a few years, and the bulk of cases that went to mediation in the early days were probably quite small. In the meantime, a number of service providers have stepped up to leave their imprint, and the number of projects keeps growing.

The best long-range resolution must be present at the venue where the mediation is being conducted in order for the traditional mediation method to be used. But what if the parties are separated by great distances, there are cross-border disputes, or the parties do not like to be next to each other during the mediation session. After these initial experiments and projects, the industry developed to offer e-mediation services to a wider audience. Among the first service providers were Internet Neutral, e-Resolution (see above), and Online Resolution. They worked with a wide range of problem kinds, including insurance issues, workplace conflicts, and commercial disputes between companies and their customers. Many of the early arbitration service providers were only able to operate for a few years, and the bulk of cases that went to mediation in the early days were probably quite small. In the meantime, a number of service providers have stepped up to leave their imprint, and the number of projects keeps growing <sup>[5]</sup>.

One crucial factor is being able to honor each party's choice to have the mediator, their own lawyers, and technical experts at their own location. 3) Knowledge of technology Electronic mediation techniques involve two different levels of knowledge. Mediation and technical abilities, as well as their operational combination, are required for this project to succeed. Parties should be familiar with the electronic settlement technologies if they wish to conduct mediations online. To obtain the necessary information from experts, a number of organizations offer a range of free training and information programs in addition to online webinars and seminars. Participation in a research assessment panel of video conferencing technologies to select the most complete medium for conducting online mediations was carried out

by ODR Europe. Efforts to Promote Mutual Understanding Between the Parties Let's say you want to hire a mediator to help you resolve a conflict with a person or company, but it would have been hard to meet with them in person for a number of reasons. Online mediation takes effect at this point. Online mediation is typically as context-specific as the conflict it is intended to resolve. Mediation is frequently regarded as the last stage in the resolution. Mediation is indeed a discussion involving two or more parties mediated by a third party who has been agreed upon by the conflicting parties.

Expert third-party mediators can help unearth less obvious interests, lower the emotional temperature in such a discussion, improve communication, offer face-saving choices for movement, and suggest solutions that the parties may have overlooked. Both parties, though, can be in different parts of the world. They have never met, possibly because of a dispute that started over an online transaction. Perhaps occasionally one side is scared or intimidated by another and appears unlikely to face them face-to-face. Throughout the late 1990s, a number of start-ups began offering corporations and the general public online mediation services, or emediation <sup>[6]</sup>.

### Advantages of Online Mediation

Benefits of Online Mediation Compared to traditional dispute resolution methods, online dispute resolution is frequently more flexible, unstructured, and creative in its methodology. It is not bound by the same standards of proof or procedure as traditional conflict resolution procedures. This structure allows the parties to participate in a process that can be tailored to their specific requirements. This style encourages a collaborative attitude as opposed to a hostile one. ADR typically reduces litigation costs. It is generally acknowledged that each party will pay an equal portion of the fees associated with the procedure or compensation given to the objective assessor, so providing each party with an equal sense of ownership and interest in the outcome. Because it frequently enables a more economical, quick, and effective resolution of issues when the sums in dispute are not big enough to warrant the expenditure of a meeting-based mediation process, alternative dispute resolution (ADR) might be a suitable option, especially for high-volume, low-cost transactions. ODR sessions are open to parties who, in most cases, would be unable to attend a face-to-face meeting because of a serious handicap. The ODR procedure is completely private. This procedure is useful in situations where the parties believe confidentiality is crucial or necessary, which is often the case: Usually, parties that use conflict resolution procedures do so with the understanding that they can freely discuss issues with the hope that they won't be revealed.

Some of the drawbacks of traditional conflict resolution techniques might be addressed by online conflict resolution. First of all, e-mediation allows people to communicate when face-to-face interaction is impossible because of geographical limitations or pandemics. When employing videoconferencing technologies, one would not have to sacrifice nonverbal cues for convenience. Because they are in a better or more comfortable position, e-mediation may lessen clients' automatic reactions. Without the harsh glare of fluorescent lights in an office, one might not feel quite as anxious. Conversations that could otherwise be emotionally fraught may therefore be easier to resolve. Additionally, the

extra time between answers might allow any tension to release and facilitate more productive conversations. E-mediation technologies have the potential to expedite the conflict settlement process, at the very least. By using document-sharing services, one can expedite and simplify the process of submitting papers. Customers save time on travel when they are not required to go to and from an office. Usually, technological means like emails, phone calls, video calls, and real-time chats are used for online mediation. Usually provided over email, documents are now subject to an e-discovery process. There are numerous advantages of online mediation over traditional mediation, many of which are mentioned below but are by no means all-inclusive: Generally speaking, mediators who are not in close personal contact with the parties are able to maintain their objectivity and, thus, solve problems more successfully. The parties typically take a pause before making vehement remarks because emails and certain other textual techniques of dispute resolution move more slowly. After they have calmed down, they can respond.

### Disadvantages of Online Mediation

While online mediation offers convenience, accessibility, and efficiency, it also comes with several significant disadvantages that impact its overall effectiveness. One of the major drawbacks is the lack of personal interaction, as virtual communication can limit the mediator's ability to observe non-verbal cues, emotions, and body language—elements that are often crucial in understanding the true nature of a dispute. Technical issues, such as poor internet connectivity, software glitches, or lack of familiarity with digital tools, can interrupt proceedings and reduce the quality of communication between parties. Moreover, confidentiality and data security concerns pose a serious challenge, as sensitive information exchanged online is vulnerable to cyberattacks, unauthorized recordings, or data breaches. Another key limitation is the digital divide, as many individuals, especially in rural or economically weaker regions of India, lack the technological access or literacy required to effectively participate in online mediation. Additionally, trust-building becomes more difficult in a virtual environment, particularly in emotionally charged disputes where face-to-face interaction fosters understanding and empathy. Finally, legal and procedural uncertainties, including questions around the enforceability of online-mediated settlements and jurisdictional issues, further complicate the process. Together, these challenges suggest that while online mediation has great potential, its successful implementation in India requires strong legal frameworks, technological infrastructure, and public awareness. Like any other activity that relies on technology, online mediation can experience technical difficulties. The operation may stop or be delayed if any party's internet connectivity is interrupted. In addition to consuming time, these disruptions could annoy the customers, which could be harmful to the mediation. It is difficult for the mediator to facilitate productive discussion between the parties during the online mediation process because there is no in-person interaction between them. In contrast to traditional mediation, the parties have had no genuine connection or contact, which is why the mediator has no basis on which to base their decisions. As a result, creating a relationship, managing emotions, and facilitating conversation throughout the negotiating process becomes a tougher job for the mediator.

### Conclusion

Parties have the freedom to decide whether to use conventional courts or alternative methods to settle a disagreement. Online mediation and arbitration might be a superior alternative to court procedures because of COVID-19. In order to continue to assist, the arbitration community has adopted new technology over time. There is a limited selection of ODR and e-mediation modalities. Consumer and family law are just two of the many legal topics covered by online mediation. Nevertheless, numerous legal problems, such as a lack of confidence, a breach of legal responsibility, a large number of procedural obstacles, etc., impact mediation. The increasing demands of the Internet community have led to the development of online conflict resolution.

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