

EMBRACING THE DIGITAL AGE: THE RISE OF ONLINE MEDIATION IN DISPUTE RESOLUTION

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ABSTRACT

Online mediation has become a popular means of effectively and conveniently settling conflicts as a result of rapidly developing technology and its integration into legal process (especially after Covid-19), which has given rise to Online Dispute Resolution (ODR). In light of growing digitization and worldwide connectivity, this paper examines the development, structure, and prospects for online mediation. In a rapidly developing world, where traditional legal practices are frequently expensive, time-consuming, and unfriendly, this paper emphasizes the value of online mediation by analyzing its benefits and drawbacks. Online mediation is often flexible, cost-effective and convenient which enables parties to settle disputes through digital platforms, unlike before when the process was time consuming and tedious. It is especially important in consumer issues, cross-border conflicts, and times of crisis like the COVID-19 pandemic, which forced a worldwide change wherein the entire world shifted to the virtual domain, enabling virtual legal proceedings which have thereafter progressed rapidly till date. The necessity for legislative frameworks that guarantee anonymity, impartiality, data protection, and procedural fairness is covered in the paper, along with the legal acceptance and enforceability of online mediation in India and around the world. The paper also highlights the importance of platform accessibility, mediator training, and the ethical issues surrounding online mediation. It also looks at how automation and artificial intelligence can influence ODR in the future, increasing efficiency while posing fresh moral and legal dilemmas. The paper comes to the conclusion that, although it is not a cure-all, online mediation has a lot of potential as an adjunct to the larger justice delivery system. Online mediation can develop into a popular and reliable conflict resolution process with the right legal changes, stakeholder collaboration, and technological safeguards. This would support the objectives of party autonomy, access to justice, and judicial efficiency in the digital age.

Keywords: *Online Mediation, Artificial Intelligence, COVI-19, Online Dispute Resolution (ODR).*

I. Introduction

II. The Emergence of Online Mediation in India

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- III. Online Mediation: Format**
- IV. Notable use of Online Mediation: Some Examples**
- V. Online Mediation: The Better Option**
- VI. Challenges of Online Mediation**
- VII. Online Mediation: Better Promise for Tomorrow**
- VIII. Case Study Integration: The State of Tamil Nadu (2016-2018)**
- IX. Conclusion**

I. Introduction

We now live in the digital age, where communication between individuals and enterprises has transformed due to the exponential growth of digital technology over the past ten years. As a result, disagreements and confrontations around intellectual property, social media interactions, and e-commerce transactions have become more common in the digital realm. Due to time, money and geographical limitations, traditional methods of resolving disputes such as litigation and in-person mediation may not always be suitable or available in this day and age. In conventional mediation, trained impartial third-party mediators support the resolution of impasses by reducing stress, encouraging open conversation, spotting ulterior motives, and offering alternatives that maintain face. But what happens when due to physical factors like geographical distance or fear of intimidation or say the transaction was transacted online in its entirety etc, the traditional methods of dispute resolution fail?

The answer to all of the above concerns may be addressed by online mediation. Online mediation provides a virtual platform that allows parties to settle their disputes remotely while yet being accessible and comfortable, thereby overcoming all of these challenges. Hence, Online Dispute Resolution (ODR) has come about as the virtual alternative to traditional Alternative Dispute Resolution (ADR). ODR facilitates the settlement process and allows parties to settle their differences amicably by utilizing digital tools. From the initial filing of complaint filing to the choice of appointment of a neutral facilitator¹ to the presentation of the evidence, hearings and the settlement of dispute are all completed online. ODR uses technologies like blind bidding, audio and video conferencing, email, etc., that foster communication and ensure an efficient dispute settlement process.

¹ Arbitrator, mediator, or conciliator.

Online mediation works in two ways: first, it resolves e-commerce disputes; second, it addresses the backlog of court cases². By attending to the needs of both parties, it not only contributes to the preservation of harmony but is essential to the upkeep of long-term commercial partnerships/ relationships. This is particularly important in business-to-consumer (B2C) transactions, where the customer often has complaints since they are receiving goods or services in their individual capacity.³ Businesses, eager to protect their reputation, typically seek to resolve such disputes quickly, while consumers, driven by the value of their hard-earned money and the inconvenience involved, also favor speedy resolutions.

Online mediation has proven to be incredibly successful, especially when it comes to fast and efficiently settling consumer disputes. Dispute resolution services such as the Online Consumer Mediation Centre (OCMC) use digital technologies to facilitate the easy submission of claims, supporting documentation, and correspondence between parties in dispute. The potential of online mediation to expedite the settlement timeframe in comparison to traditional mediation or litigation is what makes it especially valuable. For example, OCMC seeks to resolve conflicts in as little as 21 days after a mediator are appointed, so cutting down on both the amount of time and money needed.⁴ The platform's use of electronic communication, which does away with the necessity for in-person meetings, drawn-out legal proceedings, and travel-related hassles, further enhances its efficiency and makes it a perfect resolution for modern disputes, particularly in a world that is fast going digital. Online mediation services are rapidly becoming an indispensable resource for both individuals and businesses, as they provide quicker, easier to access, and more affordable dispute resolution.

Ministry of Law and Justice under the Department of Justice, Government of India, released a notification stating “that there were more than three crore cases awaiting trial in different courts. Of them, 46% involved agencies or departments of the government.”⁵ Further it recommended that these departments reduce litigation and resolve disputes through ADR

² Quote by Hon'ble Mr. Justice Mohammad Mushtaq, Judge, Kerala High Court while speaking in International Conference on Mediation held on 6th and 7th April 2019 at Conference Centre, University of Delhi, *available at*: <https://www.lc2.du.ac.in/DATA/ICM%20REPORT%20-%20finished-1.pdf> (last visited on September 19, 2024).

³ Pablo Cortés 'Online Dispute Resolution Methods for Settling Business to Consumer Conflicts' 8 Online Dispute Resolution for Consumers 15, *available at*: <https://www.ombuds.org/odrbook/cortes.pdf> (last visited on September 19, 2024).

⁴ Online Consumer Mediation Centre Mediation Rules 2016, Rule 9(7), *available at*: <https://onlinemediationcenter.ac.in/mediation-rules/> (last visited on September 19, 2024).

⁵ *Ibid.*

and ODR, and provided a list of agencies offering such services” on September 13, 2018. This reflects the government’s strong interest in mediation, particularly online mediation, as most of the listed agencies offer online mediation services.

Mediation, whether online or offline, offers significant advantages over other forms of ADR, with online mediation often proving more effective in certain cases. It is easy to envision online mediation establishing a distinct role in the justice system, supported by India’s innovative and forward-thinking youth. With the integration of online mediation, the goal of accessible justice may become more attainable, enhancing the overall efficiency of the justice delivery system. This Article aims to highlight the unique aspects of online mediation and explore the reasons why India requires greater adoption of this method. This article is based on a report that was given to the Ministry of Law and Justice as part of the Mediation Bill, which aims to make mediation a significant dispute resolution process in India. In light of the nation’s digital revolution, the present article highlights the increasing significance of online mediation. Building on these insights, this article examines the potential of online mediation in modernizing access to justice.

II. The Emergence of Online Mediation in India

The progress of the legal system and the growing integration of technology into court procedures are closely linked to the growth of online mediation in India. Over time, India has dealt with a backlog of cases, resulting to delays in justice. The judiciary has advocated for Alternative Dispute Resolution (ADR) techniques such conciliation, arbitration, and mediation in order to remedy this. ODR- more especially, online mediation- rose to prominence as a result of the increased accessibility of technology, which created a new channel for conflict resolution:

- I. The Arbitration and Conciliation, 1996:** the way in which the Act has been construed, has allowed online platforms to be utilized in India for conciliation and arbitration, by making online mediation and conciliation on par with face to face negotiations. Particularly as section 73 of the Act makes settlement agreements entered online to have the same standing as agreements made in person.
- II. Information Technology Act, 2000:** As technology started evolving across numerous sectors, the legal field also realized that using digital technologies to speed up court cases could be beneficial. It was believed that integrating technology into the legal system would improve accessibility, efficiency, and transparency. Therefore, changes

were made to legal definitions of writing and signatures.⁶The legal foundation for digital communication and authentication is provided by this legislation, which is necessary for ODR platforms to operate. It guarantees the legal recognition of digital signatures and electronic records, which serve as the foundation for online contracts, including mediation.

III. The Mission Mode Project of e-Courts: this was launched as part of Digital India Program, with the aim to digitalize court rooms in India and promote use of technology to increase the courts efficiency in dispute resolution and address concerns of backlog of cases. This has allowed for better integration of ADR in the legal system.

There are also other statutory laws like the Consumer Protection Act, 2019, which allows online mediation for consumer disputes, especially those arising from online purchases. There is also Section 89 of the Code of Civil Procedure (CPC), under which courts are encouraged to recommend cases for different types of alternative dispute resolution. And again, under the Commercial Courts Act, 2015 and its 2018 revision, which allows the use of online mediation services, pre-institution mediation for commercial disputes is required. Furthermore, electronic records are recognized by the Indian Evidence Act, 1872, guaranteeing their inclusion in online mediation procedures. Together, these clauses establish a strong legal framework that will support the expansion of online mediation in India.

The integration of technology and the legal system, backed by legal standards, has helped consolidate online mediation as a valid and viable choice for settling conflicts in India, particularly as the country attempts to modernize its justice delivery methods.

III. Online Mediation: Format

One of the most concise explanations of the mediation process may be found in the preamble to the European Parliament and Council's 'Directive on specific aspects of mediation in civil and commercial matters':

“(6) Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes tailored to the needs of the parties. Agreements resulting from mediation are more likely to

⁶Yu H and Nasir M, “Can Online Arbitration Exist Within the Traditional Arbitration Framework?” 20 *Journal of International Arbitration* 455 (2003).

*be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements”.*⁷

Mediator: Similar to their offline counterparts, mediators in online mediation have specific responsibilities to ensure the process runs smoothly. In the absence of a physical setting, mediators must communicate with both sides continuously in order to comprehend and weigh their interests. The online environment retains the applicability of traditional mediation abilities despite the virtual setting. To encourage resolution, mediators must often provide information on the proceedings. Proficiency in written and oral communication, coupled with the capacity to establish rapport, is crucial. Mediators must follow the institution’s Code of Conduct and rules when working in private mediation. Moreover, mediators operating in an online environment are still subject to the conventional standards of impartiality, independence, and neutrality.

Fourth Party: Three people are usually involved in mediation: the disputants and the mediator. Online platforms or software, on the other hand, represent a fourth party, which is a concept introduced as a result of online mediation. Selecting the appropriate software or platform is a crucial step in this process.⁸ The term “fourth party” metaphorically signifies the added power that technology brings to online mediation. This fourth party can enhance communication between the parties, assist in identifying issues, and ultimately facilitate a more amicable settlement.⁹

Forms of Online Mediation:

- I. *Web-enabled Mediation:* Online mediation is primarily conducted through various digital platforms such as websites, email, social media, etc. Usually, one side uses an online form to get in touch with the service provider and describe the problems and possible solutions. The mediator then reads this form and reaches out to the other party to determine whether they are willing to participate. The respondent has two options: they can either independently fill out a form or respond to the initial

⁷ European Union, Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (2008), *available at:* <https://eur-lex.europa.eu/eli/dir/2008/52/oj> (last visited on September 19, 2024).

⁸ Negeen Rivani, ‘Online Mediation: If the Shoe Fits’ Meditate. Com (10 May 2013), *available at:* <https://mediate.com/online-mediation-if-the-shoe-fits/> (last visited on September 19, 2024).

⁹ Pablo Cortes, The Fourth Party in ODR (2020), *available at:* <https://mediatoracademy.com/topic/adr-directive-odr-regulation-mediation/fourth-party/> (last visited on September 19, 2024).

correspondence. This preliminary discussion can aid in both parties' comprehension of the conflict and possibly lead to an independent resolution. In case the discussion between parties does not result in an amicable agreement, the mediator intervenes to help them do so by outlining concerns, outlining interests, and assessing potential solutions.

II. *Automated Negotiation*: This term describes methods where technology takes partial control of the negotiation process. Often referred to as “blind-bidding” services, these methods are used for resolving disputes related to claims where liability is not in question. Similar to an auction, the blind bidding service conceals some or all of the details around a party’s bid. In order to register a claim, the aggrieved party first logs onto the secure website. The settlement offer is then sent to the opposing party by email, giving them the choice to accept or reject it. If the parties accept the agreement, they can enter terms acceptable to them. After which the software compares the terms of the opposing parties and automatically filters out whether they are within the acceptable criteria for settlement between the parties and whether any progress has been made towards a mutual solution.

- a. There are two more types of automated negotiation. They are the Visual Blind Bidding and Double Blind Bidding. While the visual blind bidding is used for discussions with any number of parties and questions, the double-blind bidding is used to identify individual financial difficulties that may exist between the parties. The fact that this method allows professionals to employ it without disclosing the subject matter of their approval prior to an agreement being made makes it particularly well-liked for business endeavors and insurance claims. In the event of a failure, the parties' right to appeal to the court is still in effect.

III. *Assisted Negotiation*: Here, the parties can settle their differences without the assistance of a third party by using an ODR provider. The ODR supplier provides resources to assist parties in creating objectives, exchanging information, and draughting agreements. These solutions are offered by businesses like Square Trade and are typically automated and free in the beginning. This method combines technology with mediation to create a more productive and economical substitute for face-to-face interactions.

IV. *Crowd Justice*: This is a fairly new type of online mediation in which video discussions are recorded and made available online for public voting.

IV. Notable Use of Online Mediation: Some Examples

Smart settle

This platform facilitates more effective and efficient resolutions by combining artificial intelligence (AI) and decision-support technologies. With Smart settle, parties can engage in online negotiations while the system analyses their goals, trade-offs, and preferences to assist them come to mutually advantageous agreements.

E Bay Resolution Centre

Buyers and sellers can settle disagreements about eBay transactions for free by using eBay's Online Dispute Resolution (ODR) system. The website offers mediation services to resolve disputes arising from transactions and helps both parties communicate with each other. It is considered as one of the most successful examples of ODR.

Community Justice and Tribunals System (CJTS), Singapore

CJTS is a unique platform for information and dispute resolution. It provides a number of services, the first of which is an e-Assessment that an aggrieved party must finish in order to be prepared to proceed, prior to submitting a claim. Following an online filing, the CJTS assists the claimant with every step of the procedure, including submitting the required paperwork. The portal also assists with paying fees and selecting a preferred court appearance date. Afterward, the claimant can choose between options such as e-Negotiation, e-Mediation, or the traditional legal process.

Beginning January 7, 2019, all Employment Claims Tribunal (ECT) matters must be submitted through and managed using the CJTS system.¹⁰ Sing Pass (or Corp Pass for business entities) is all that is required for a Singaporean citizen to access CJTS. For individuals who are not eligible for either pass; a temporary CJTS Pass can be requested.

¹⁰ 'Media Release: State Courts launch online filing for employment claims' (Singapore, 4 January 2019), available at: <https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-state-courts-launch-online-filing-for-employment-claims>(last visited on September 19, 2024).

India's Online Consumer Mediation Centre (OCMC)

This platform, which is managed by the National Law School of India University in Bangalore, focusses on online mediation as a means of resolving consumer disputes and encourages accessibility, efficacy, and economy in consumer-related issues.

Modria

This online platform for dispute resolution specializes in employing online mediation and arbitration techniques to settle insurance claims, property tax disputes, and medical problems. Prior to Tyler Technologies purchasing it, PayPal and eBay were among the businesses that used it.

V. Online Mediation: The Better Option

As of December 31, 2019, over 560¹¹ million people in India were active internet users, per an online study. This greatly expands the possibilities for online mediation, and more generally, online dispute resolution (ODR). The aim of Prime Minister Narendra Modi's 2014 launch of the Digital India Programme is to transform India into a technologically enabled knowledge-based economy and society. Providing high-speed internet connection even at the Gramme Panchayat level is one of its main objectives. The initiative also stresses the value of empowering citizens with digital tools and promoting universal digital literacy. Consequently, the percentage of Indians using the internet rose from 18% in 2014¹² to almost 50% by 2020¹³.

In today's globalized world, consumers can engage in trade across the globe with just a click. While this convenience opens up opportunities, it also brings a host of legal challenges in the online marketplace. Resolving such issues through traditional methods involving jurisdictional complexities, high litigation costs, and travel expenses is no longer a practical solution. This is where online mediation becomes a critical and efficient alternative.

Here are some advantages of online mediation:

- I. **Efficiency:** Compared to traditional mediation, online mediation is substantially more effective. It gets rid of the requirement for parties and negotiators to travel or find a

¹¹ Top 20 Countries with the Highest Number of Internet Users, *available at:* <https://www.internetworldstats.com/top20.html> (last visited on September 19, 2024).

¹² Statista, 'Internet penetration rate in India from 2007 to 2020', *available at:* <https://www.statista.com/statistics/792074/india-internet-penetration-rate/> (last visited on September 19, 2024).

¹³ *Ibid.*

physical space. Because the online platform saves time by imposing tougher deadlines for settlement, it promotes a more concentrated workplace. Economically speaking, online mediation is typically provided at a flat fee, which is usually, substantially less expensive than traditional mediation. Furthermore, the shortened process duration lessens the disputants' financial obligations.

- II. ***Freedom from Inferences and Greater Candor***: In conventional negotiations, physical presence and body language are important factors that frequently shape the outcome of the process. A person may come across as either dominant or submissive, which can create an imbalance in the negotiation process. This dynamic can hinder open communication, as one party may feel intimidated by the other. Online mediation eliminates this issue since most communication occurs electronically, minimizing the influence of body language. Even in video conferencing, the impact of physical posturing is greatly reduced, allowing for more candid conversations.
- III. ***Truly Confidential Caucus***: In traditional mediation, caucuses are held in physical spaces where privacy is often compromised, especially in court mediation centers that lack proper facilities. For instance, in district courts outside major cities, private mediation rooms are often unavailable, leading to a lack of confidentiality. In online mediation, however, such issues are avoided as communication occurs electronically, ensuring that only the intended recipient has access. This creates a more secure environment for sharing emotions and confidential information.
- IV. ***Anonymous Parties***: Online mediation offers the unique advantage of maintaining anonymity, which can be beneficial in situations where the mediator or the participants are unaware of each other's identities. Although mediators are supposed to maintain objectivity, they are also people, and as such, they could unwittingly be influenced by certain facets of a party's identity. As internet-based transactions become more common, it's possible that the parties involved have never met, with all communications taking place via phone or email. This is often seen with government agencies or insurance claims. As mediation grows in popularity due to its confidentiality, online mediation further enhances this by preserving anonymity, making it particularly appealing to minorities or individuals seeking relief without the risk of bias linked to their identities being revealed.¹⁴

¹⁴*Supra* Note 14.

V. **Flexibility:** Asynchronous online mediation is the most popular form of online mediation due to its flexibility in scheduling and its ability to resolve matters faster compared to traditional mediation.¹⁵ Traditional mediation sessions are often delayed because of conflicting schedules between the parties. However, online mediation allows the mediator to arrange caucuses based on each party's availability, eliminating the need for both parties to agree on a common date.

VI. **Encourages International Trade:** Online mediation transcends jurisdictional boundaries, enabling parties to participate in mediation proceedings from their offices or homes. In the era of globalization, trade often extends across national borders. Businesses are more likely to invest in countries with efficient, fast, and straightforward dispute resolution systems, which help boost international trade.

VI. Challenges of Online Mediation

While electronic communication offers many benefits, it cannot fully replicate the key advantages of face-to-face conversations in fostering essential mediation values.¹⁶ Despite the advantages of online mediation over traditional methods, it also presents certain drawbacks.

Constrained Applicability in Certain Cases

Automated online mediation, though beneficial, has its limitations in form of its limited applicability in specific situations only. It works best in situations where the parties have previously agreed upon all other talks, facts, and issues, and the main disagreement is the settlement amount. This limits the inventive problem-solving and creativity that are generally essential to the success of many negotiations and mediations.

Impersonal Nature

Traditional method of mediation lies in the notion that it works best when the parties and mediator are face to face, in person.¹⁷ Mediation is typically viewed as an informal process involving face-to-face discussions, with the mediator facilitating communication. In many disputes, expressing emotions is a key part of the mediation process, something that cannot happen as freely in a formal courtroom setting. Online mediation lacks this personal

¹⁵ Derric Yeoh, 'Is Online Dispute Resolution the Future of Alternative Dispute Resolution' (29 March 2018), available at: <https://arbitrationblog.kluwerarbitration.com/2018/03/29/online-dispute-resolution-future-alternative-dispute-resolution/> (last visited on September 19, 2024).

¹⁶ Joel B Eisen, "Are We Ready for Mediation in Cyberspace?" *Brigham Young University Law Review* 135 (1998).

¹⁷ William T D'Zurilla, "Alternative Dispute Resolution" 45 *Los Angeles Business Journal* 352 (1997).

interaction as it occurs through technology rather than in-person dialogue. This can create barriers to open communication between the parties, in terms of being unable to gauge the tone of discussions. It could be more difficult for the mediator, who is initially only a voice and not physically present, to relax the parties and create an atmosphere that encourages fruitful problem-solving. Moreover, nonverbal cues like body language, facial expressions, and voice tone are important in face-to-face mediation but are overlooked by the mediator in virtual meetings.¹⁸

VII. Online Mediation: Better Promise for Tomorrow

Future prospects for online mediation as a more effective and convenient dispute resolution tool are quite promising. Online mediation offers a more flexible, economical, and time-saving alternative to traditional means of resolving disputes. With technological developments and increased internet usage, online mediation has the potential to completely change the conflict resolution landscape. The ability of online mediation to remove geographical obstacles and enable participation from participants in different areas without the need to travel is one of its main advantages. Online mediation allows parties to save money and time on expenditures which usually occur in traditional mediation. Technology also makes scheduling flexible, taking into account the various time zones and availability of participants, which makes mediation more practical and realistic for all parties.

For different kinds of issues that do not require the personal touch in terms of emotional engagement, online mediation is a more convenient choice; on the other hand in issues involving family disputes traditional mediation may still be necessary. Additionally, taking into account the kind of disagreements that usually occur in digital contexts, many of the disadvantages of online mediation become less important. Online mediation's impersonal aspect is a major disadvantage, but as technology develops and the number of people using the internet rises, the difference between offline and online mediation is rapidly getting smaller. While video conferencing may not be appropriate for sensitive issues like marital disagreements just yet, it has already started to demonstrate promise to replace traditional methods.

The potential of online mediation to resolve typical jurisdictional difficulties is one of its main benefits. Governments and citizens alike can draw in more foreign investment by

¹⁸Ethan Katsh and Others, "E-Commerce, E-Disputes, and E-Dispute Resolution: In the Shadow of eBay Law" 15 *Ohio State Journal on Dispute Resolution* 705 (2000).

encouraging the use of online mediation, since investors find it appealing when a dispute resolution process is simplified and less complicated. Put another way, the Honorable Prime Minister's goal of improving the ease of doing business in India is likely to be accomplished by streamlining and promoting online mediation for B2C and B2B conflicts.

A case study of Tamil Nadu's court mediation data, which offers rich insights into the volume, types of cases, and success rates of mediation, could serve as an exemplary model for this paper. This data would provide a practical perspective on the efficacy of mediation across various types of disputes and allow for a comparison of online and offline mediation practices. By analyzing Tamil Nadu's mediation outcomes, we can better evaluate the potential of mediation as a preferred alternative in diverse legal contexts.

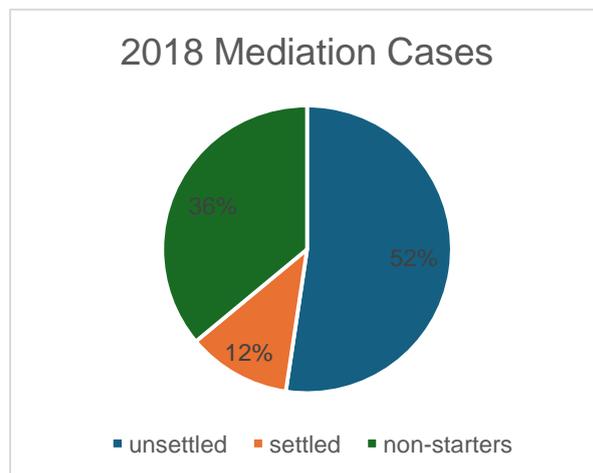
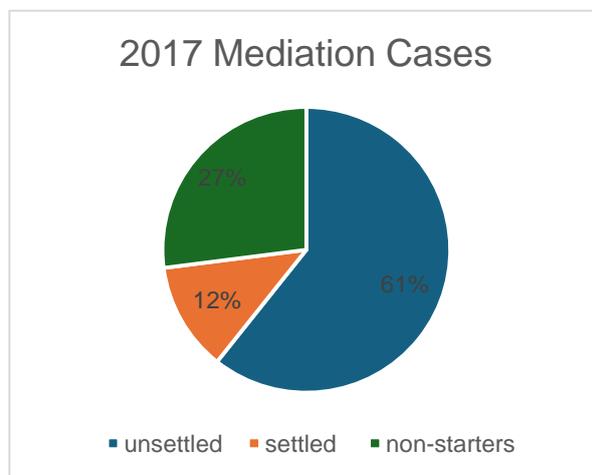
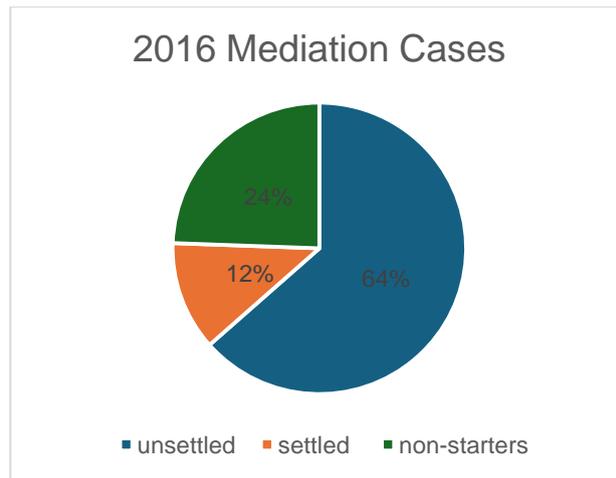
VIII. Case Study Integration: The State of Tamil Nadu (2016-2018)

This analysis explores the mediation cases handled across Tamil Nadu and Puducherry from 2016 to 2018. The primary goal is to understand trends in referrals, settlement efficiency, and the challenges faced in different mediation centers.

Overview of Data¹⁹

- i. The total number of cases referred increased significantly from 9,315 in 2016 to 20,570 in 2018. This growth indicates a rising reliance on mediation as a dispute resolution mechanism.
- ii. Settled cases also increased, from 967 in 2016 to 2,213 in 2018. However, as a percentage of referred cases, the settlement rate fluctuated, improving slightly in 2017 but declining again in 2018.
- iii. A substantial number of cases remained unsettled, and the number of non-starters also rose significantly over the three years.

¹⁹ The Data is available with the Author (as collected by Project Investigator and co-Investigators).



The charts show the proportions of settled, unsettled, and non-starter cases for each year, highlighting the changes over time.

District-Level Performance

Top Performing Centers

- i. TNMCC Madras High Court consistently managed a high volume of cases (e.g., 1,518 referrals in 2018) with moderate settlement rates (14.75% in 2016).
- ii. Madurai Bench saw a settlement rate increase from 11% in 2016 to 14% in 2018.
- iii. Family Court Chennai: This center handled significant numbers of cases, settling 206 in 2016 and 204 in 2018. However, it also had a high number of non-starters, reflecting difficulties in engagement.

Underperforming Centers

- i. Smaller Districts: Some districts like Salem and Tirunelveli saw persistently low settlement rates despite moderate referral numbers. For instance, Tirunelveli had only 24 settled cases out of 442 referrals in 2016, and Salem settled 6 out of 89 cases.
- ii. Namakkal: Despite improvements in referral numbers, the district had low settlement rates and high non-starters throughout all three years.

Geographic Disparities

- i. Some mediation centers like Coimbatore and Madurai consistently performed better in terms of settlements, reflecting regional disparities in mediation outcomes. This could be due to differences in legal infrastructure, staffing, or the complexity of cases in these regions.
- ii. In contrast, rural districts such as Namakkal and Pudukkottai exhibited lower settlement rates and higher non-starter rates, pointing to challenges in these less urbanized areas.

Comparative Yearly Trends

- i. Increase in Referrals: Over the three-year period, the referral count more than doubled, which could be attributed to greater public awareness of mediation or judicial encouragement to resolve disputes outside of courts.
- ii. Difficulties in Managing Increasing Caseloads: Settlement rates did not rise in line with the increased referrals. In actuality, the settlement percentage decreased little in 2018, and the increase in non-starters raises the possibility that mediation centers experienced operational or capacity constraints.

Implications for Policy and Practice

- i. Increasing Efficiency: To guarantee that only cases most likely to succeed in mediation are referred, there is a need for improved mediation training, resources, and maybe case intake procedural improvements. This is highlighted by the consistent increase of unsettled cases and non-starters.
- ii. Addressing Non-Starters: A focus on pre-mediation counseling or better engagement practices could reduce non-starters, which would improve overall settlement rates.
- iii. Capacity Building: To handle increasing referrals, particularly in high-volume centers like Madras High Court and Madurai, more mediators and better infrastructure may be required.

IX. Conclusion

The mediation centers in Tamil Nadu and Puducherry have shown commendable efforts in handling a growing volume of cases from 2016 to 2018. However, the settlement rate, non-starter cases, and regional disparities indicate that there are still significant challenges to be addressed. With the implementation of targeted reforms, especially in regions with high non-starter rates, and more resources allocated to mediation centers with heavy caseloads, the overall efficiency and effectiveness of the mediation process could improve, leading to faster and more satisfactory resolutions for disputing parties.²⁰

²⁰This article is based on findings and recommendations from the report on Mediation, as undertaken by the Ministry of Law and Justice, Government of India.