

ONLINE MEDIATION AND DISPUTE RESOLUTION IN INDIA: ASSESSING THE ADVANTAGES AND DISADVANTAGES OF E-MEDIATION

*Kavita**

ABSTRACT

The term "online dispute resolution" (ODR) refers to a form of conflict resolution that makes use of any technology that can be accessed online in order to aid in the process of mediating or arbitrating disagreements between two or more parties. However, the data coordination and management technologies that are utilized in the processes appear to have an influence on the approaches that are employed to settle disagreements. As we are aware, the judicial system in India is now unable to keep up with the volume of outstanding cases in a variety of fields, including civil, criminal, and newly emerging cyber concerns. Creating an ODR system and using technology of the second generation that is more advanced may be able to aid India in developing a more cutting-edge judicial system. This study will look into online dispute resolution (ODR) and try to find out how common online mediation and conflict resolution are in India, as well as the pros and cons of using this method.

Keywords: Online Dispute Resolution, Arbitration, Mediation, Covid, E-Mediation, Indian Courts

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I. Introduction

INDIAN COURTS are overburdened with cases pending in many sectors, including civil, criminal, and recently developed cybercrime issue and covid has worsened the situation. Although the government is adopting reform steps to expedite the disposal of cases, the number of pending cases seems to be increasing every day. Due to caseloads and an increase in Covid-related issues, online

* Assistant Professor, Law Centre-1, Faculty of Law, University of Delhi.

mediation and arbitration have emerged as a better option than court procedures. As an IT hub, India clearly has the necessary components for implementing a comprehensive framework for technology in conflict resolution procedures, including institutional desire, knowledge, and, to a great degree, technological capability.¹ Many aspects of the legal system need to be enhanced, including the modernization of the procedures for the out-of-court settlement of disputes, such as platforms for online conflict resolution.

Moving ahead, the arbitration community need to embrace new technology to aid in the settlement of disputes, and this trend should be continued. It requires to become a fairly standard practice, for example, for case management conferences ought to be held by video-conferencing, and when the situation warrants it, cross-examination of certain individuals and professionals may be done remotely.² Developing ODR and using more sophisticated second-generation technologies may assist India in moving toward a more futuristic judicial system. These futuristic technologies, which not only use legal principles but may also extend to better economic principles for resolving civil disputes, are likely to come from the private sector, as has been the case with the development of ODR thus far. As a result, it will be critical for the judiciary and the administration to collaborate with these skills and embrace them for the benefit of the public. Technology is the way of the future when it comes to conflict resolution.

According to Richard Susskind,³ there are four levels of access to justice: legal health promotion, conflict avoidance, dispute containment, and authoritative dispute settlement. He points out that only the latter two of them have been addressed by the conventional judicial system. This statement holds true in India as well. The country's judiciary has methodically used technology to resolve conflicts and keep the judicial system active virtually. Nevertheless, now is the moment to move the emphasis away from conflict resolution and toward dispute prevention, containment, and general legal health.

¹ Niti Ayog, Designing the future of dispute resolution *available at*: <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf> (last visited on Oct. 28, 2022).

² Pon Staff, "Using E-Mediation and Online Mediation Techniques for Conflict Resolution." (June 14, 2021) *available at*: <https://www.pon.harvard.edu/daily/mediation/dispute-resolution-using-online-mediation/> (last visited on Aug. 28, 2021).

³ *Supra* note 1.

Online mediation, arbitration, and conciliation are indeed an essential component of the ODR services that are available. However, online mediation is a very crucial part of it. As ODR expands beyond its initial boundaries and investigates the use of e-mediation in new contexts, e-mediation may reclaim its dominance in ODR in general. To begin delving into these problems, this research paper will provide a short overview of the evolution of e-mediation within the larger framework of ODR expansion. Following that, a picture of the field's current state in terms of stakeholders, forms of communication and technology used, as well as prevalent trends, will be presented. The last part of this research paper will talk about the pros and cons of e-mediation in terms of its content and how it works. This will include modeling techniques, phases, and problems, professional skills, areas of practice, and ethics, including practitioner norms.

II. ADR and ODR

The idea of Online Dispute Resolution (*hereinafter* referred to as 'ODR') had emerged in a variety of jurisdictions due to the universality and effectiveness of Alternative Dispute Resolution (*hereinafter* referred to as 'ADR') as a part and parcel of it. The term ODR is often used to refer to any electronic dispute resolution procedure. It refers to the use of information technology for conducting ADR. The term "AODR" indicates the employment of both ADR and ODR in conjunction with one another to resolve disagreements.

ADR and ODR have many benefits, such being less time-consuming, faster, less expensive, and much more convenient. Because of these benefits, they are more lucrative than conventional litigation techniques. Due to a lack of suitable e-commerce laws, the time-consuming litigation procedure, and overloaded Indian courts, ODR seems to be a more helpful approach to solve e-commerce issues in India, particularly consumer complaints. ODR has parallels with offline conciliation as well as arbitration, however the data coordination and management tools used in the processes, which might also pertain to all or a part of the procedures, have an effect on the techniques used to resolve conflicts.⁴

⁴ Maliha Saifullah, "Using E-Mediation and Online Mediation Techniques for Conflict." (Oct, 2020), *available at*: <https://www.mediate.com/articles/safiullah-emediation.cfm> (last visited Aug. 28, 2021).

ODR at Global Level

Abroad, ODR is already beginning to be practiced. It is believed that mediation in the Kyrgyz Republic will be in demand specifically in the online format, as a form of mobile *commercial* (in business) or *social service* (family mediation, for example).⁵ In online dispute resolution, the role of managing information flows is often carried out not only by arbitrators and mediators, but also by computers and software. The participation of information and communication technologies in the settlement of the dispute is called the fourth party.

In addition to two contending parties and neutral third party – the intermediary, the designation of “technology” as the fourth participant is a metaphor that emphasizes how technology can have a powerful transformative effect on the already familiar traditional tripartite conflict resolution model. The fourth side is controversial with a whole range of possibilities, by analogy with the role of the third party in the conflict. While a fourth party may from time to time take the place of a neutral intermediary in dispute resolution procedures by implementing negotiation automation procedures, it will often play the role of a third neutral party to assist in finding options for an agreement.

Brief overview of ODR sites online abroad

Cyber Settle: It was used in the USA since 1998, has a number of industry applications. Through this system, USD 1.9 trillion of disputes were settled, 150000 arbitrators were registered in the system, of which 30000 successfully used the system to resolve disputes. The maximum price of a resolved dispute is USD 12.5 million. This platform has contributed to the resolution of 200000 economic disputes.⁶ Success was achieved thanks to industry solutions, such as for insurance companies, and the provision of a high degree of automation for the settlement of small cash disputes. The main advantage of automating the negotiation process is that it carries the potential of saving budgets and saving many years of litigation for the parties to the dispute. The main disadvantage is that it deals only with monetary claims, where there is no dispute regarding the

⁵ *Ibid.*

⁶ *Available at:* <https://www.linkedin.com/pulse/e-mediation-online-mediation-techniques-conflict-begaim-business-soft> (last visited on oct. 28, 2022).

grounds for the occurrence of obligations. Therefore, in order to realize its full potential, automation systems for the negotiation process should be used in addition to other ODR systems.

Square Trade: It was a leading provider of ODR for mediation in the consumer sector until 2008. The system was used in resolving disputes of the largest eBay and PayPal trading floors. The system has proven itself in resolving consumer disputes. The advantage of working with a large number of disputes is that similar problems arise repeatedly, which allows you to group disputes into categories. There are data from analytical studies on consumer loyalty in the trading platform after experience in participating in the resolution of the conflict using the System.

Modria: This system has a multi-stage dispute resolution process from diagnosis and negotiation to mediation, and is focused on resolving complex disputes, where Mondria has combined a development team with AAA - the American Arbitration Association. The system is expected to handle 100000 disputes annually.

Small Claims Mediation Scheme: It is practiced in the courts of the United Kingdom and is an algorithmized procedure of one-hour mediation by phone. The annual number of mediation sessions was 10000. In development of this technology, a program of mandatory pre-trial mediation on family disputes in the courts of Mediation Information and Assessment Meeting (MIAM) has been developed since 2011.

MoneyClaim Online: It is also used in the United Kingdom to resolve disputes between borrowers and debtors at a dispute price of up to STLG 100000.

Mediation.RF: It contains a module for initiating negotiations at the stage of family mediation/divorce proceedings.

e.Dogovor.ru: Online service for the resolution of commercial disputes. A dynamically changing world requires that claims and actions be considered online, competently, carefully and respectfully, without prevarication.

III. ODR and Technology

The fundamental requirement of alternative conflict resolution techniques – that is, the presence of a third party throughout the resolution process – remains constant. There are therefore indirect methods of filing petitions or proof, and also carrying out a complete online procedure and providing a verdict at the conclusion of proceedings. Each ODR technique may employ a different

technical system, altering the course of a particular procedure. Online mediation may take several forms, ranging from the use of completely automated Internet platform related to electronic conversation or teleconferencing through the sole use of asynchronous communication techniques like e-mail.⁷

The very first option seems to be a system that uses video conferences or online conversations (chat) to evaluate conflict resolution options with mediator - a much more direct version of ODR. The second option is utilized in mediation, as example, within the framework of financial duties. To use a system involving submitted proposals, the parties reach an agreement on a sum that would be acceptable to both parties with no need for a face-to-face meeting. Electronic arbitration, generally refers to procedures performed through the use of the Internet, may indeed be synchronous or asynchronous.

ODR methods may be utilized in a variety of ways, with varying degrees of incorporation into the process. Systems with a significant effect on processes may "assist" parties by proposing arguments or evaluating their degrees of satisfaction at every step. The use of modern technology enables the development of computer algorithms which analyses any data input into the system. Literature about e-mediation as a distinct aspect in the area of ODR is an indication that the discipline is developing.⁸ During the early stages of the field's growth, there was a lot of literature on ODR in general, with various procedures grouped under one discussion of "technology for ODR" or "justifications for ODR."⁹ This distinction between basic ODR ideas and e-mediation helps the development of ODR as a general area as well, since it offers a contrast of the significant advancements, this discipline is making outside mediation. This could be attributed to the many factors influencing the fast development of the ODR discipline.

Furthermore, the two most well-known positive stories in the area, which are mentioned in almost every article published on ODR, include online arbitration (ICANN's UDRP) and aided negotiation (the main procedure of eBay's dispute resolution mechanism). Furthermore, there

⁷ Risolvionline, *available at*: <https://www.risolvionline.com/index.html> (last visited on Oct. 28, 2022).

⁸ *Available at*: <https://www.oecd.org/digital/consumer/1878940.pdf> (last visited on Oct. 28, 2022).

⁹ Kayla Matthews, What Is E-Mediation? (July, 2020), *available at*: <https://www.mediate.com/articles/Matthews-e-mediation's> (last visited on Aug. 28, 2021).

might be some aspects of the online circumstances, which are more favorable to other processes, such as Fourth Party activities that are much more suited to supporting procedures apart from mediation. Automation functions, for instance, might well be significant instruments in automatic and aided negotiation, enabling for the handling of huge quantities of similar situations – but they are less useful in e-mediation. In certain instances, the Fourth Party may offer sufficient support or help on its own, enabling parties to sort things out of it without engaging a human mediator. Melissa Conley Tyler stated in 2005 that mediation would be the most frequent individual service provided among ODR service providers (closely followed by arbitration).¹⁰

IV. ODR and Indian Legal System

Globalization has played a significant role in the integration of economies and societies in many nations all over the world, and it continues to do so. It has been shown to be an excellent instrument for breaking down economic barriers and seeing the world as a trading market. The focus has shifted away from litigation and towards arbitration as the contemporary method of commercial dispute resolution. Because nothing is ever static, the focus is going even farther away from arbitration and toward alternative conflict resolution methods. Online dispute resolution in India is a critical component of the Legal Enablement of ICT Systems in India and the Legal Framework for the Information Society in India, both of which are ongoing initiatives.

Even India's traditional arbitration legislation has been reformed. The country now has the Arbitration and Conciliation Act, 1996, in force, which complies with the harmonized requirements of the UNCITRAL Model of International Arbitration. So far as civil procedure is concerned, the Code of Civil Procedure of 1908 has been modified, and section 89 has been added to allow (ADR) techniques across the country. This study aims to examine the potential use of online dispute resolution in India shortly. The need for this has emerged due to the increasing use of ADR mechanisms in India. It will help reduce the load on the already overcrowded Indian courts. Below, I have conducted a short descriptive study to illustrate the present backlog of cases in Indian courts.

¹⁰ Begaim Business Soft, E-Mediation and Online Mediation Techniques for Conflict Resolution. (March 10, 2020), *available at*: <https://www.linkedin.com/pulse/e-mediation-online-mediation-techniques-conflict-begaim-business-soft> (last visited on Aug. on 28, 2021).

States of Punjab, Haryana, Tamil Nadu, Karnataka, Andhra Pradesh, and Telangana; see the highest proportions of civil cases. On the other hand, Madhya Pradesh, Uttarakhand, and West Bengal see a higher proportion of criminal cases. Among High Courts, the Patna High Court and High Court of Jharkhand saw the highest proportion of institution of criminal cases, at about 70 percent. At the same time, the High Courts in Karnataka and Jammu and Kashmir registered only 10 percent criminal cases and about 90 percent civil cases.¹¹ As seen from Figure 1.1-1.6, the rate of cases pending at the end of 2015 and at the Present time is very high. This is occurring as a result of the high incidence of pendency seen in previous years, especially in civil cases. As shown in the figures, a similar situation continues in subordinate courts as well. As a result, the courts are able to keep the backlog under control, although they have not done so.

¹¹ Available at: https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard (last visited Aug. 28, 2021).

Table 1.1 Pending cases at (Pending cases India) latest by 27-8-2021

Total Civil Cases	Total Criminal Cases	Total Cases
10635983	29147154	39783137

12

Table 1.2 : Number of Cases freshly instituted in 2015 in District and Sessions Courts :

States	Civil cases	Percentage	Criminal Cases	Percentage	Year Total
Uttar Pradesh	5,44,080	16%	28,26,830	84%	33,70,910
Andhra & Telangana	2,55,324	38%	4,20,532	62%	6,75,856
Maharashtra	3,65,995	21%	14,08,502	79%	17,74,497
Goa	14,848	38%	24,531	62%	39,379
Diu & Daman	795	41%	1,163	59%	1,958
Dadra & Nagar Haveli	878	39%	1,396	61%	2,274
West Bengal	1,42,735	12%	10,11,424	88%	11,54,159
Andaman & Nicobar	1,070	13%	7,131	87%	8,201
Chhattisgarh	30,622	15%	1,71,627	85%	2,02,249
Delhi	1,08,281	15%	6,22,507	85%	7,30,788
Gujarat	1,80,098	17%	8,75,598	83%	10,55,696
Assam	45,026	16%	2,29,418	84%	2,74,444
Nagaland	1,946	38%	3,189	62%	5,135
Mizoram	5,383	48%	5,913	52%	11,296
Arunachal Pradesh	2,293	28%	5,826	72%	8,119
Himachal Pradesh	69,230	23%	2,27,990	77%	2,97,220
Jammu & Kashmir	57,465	19%	2,51,025	81%	3,08,490
Jharkhand	19,694	15%	1,08,284	85%	1,27,978
Karnataka	3,29,878	26%	9,23,892	74%	12,53,770
Kerala	3,16,119	23%	10,35,893	77%	13,52,012
Lakshadweep	70	31%	157	69%	227
Madhya Pradesh	1,19,107	11%	9,64,817	89%	10,83,924
Manipur	2,627	48%	2,791	52%	5,418
Meghalaya	3,834	20%	15,334	80%	19,168
Tamil Nadu	3,35,867	28%	8,59,455	72%	11,95,322
Puducherry	7,569	36%	13,382	64%	20,951
Odisha	68,715	17%	3,33,208	83%	4,01,923
Bihar	72,008	16%	3,70,464	84%	4,42,472
Punjab	1,66,763	29%	4,08,283	71%	5,75,046
Haryana	1,58,801	28%	4,14,152	72%	5,72,953
Chandigarh	12,389	9%	1,29,509	91%	1,41,898

Rajasthan	2,44,132	17%	11,52,237	83%	13,96,369
Sikkim	558	28%	1,467	72%	2,025
Tripura	7,669	4%	1,97,702	96%	2,05,371
Uttarakhand	25,987	12%	1,96,236	88%	2,22,223
Total	37,17,856	20%	1,52,21,865	80%	1,89,39,721

V. E-Mediation

It is one of the forms of ODR methods. Online mediation, is very similar to traditional mediation, with the main difference being that the parties to the dispute and the mediator do not interact in

¹² Available at: <https://main.sci.gov.in/> (last visited Aug. 28, 2021).

person but instead communicate via different virtual platforms, such as the internet and video chat rooms.¹³ The process for online mediation is quite similar to the procedure that is followed for traditional mediation. Typically, in online mediation, the parties submit the specifics of their disagreement to any official site that deals with such matters, which then offers the services of a qualified mediator to the parties. It is done in a similar way as traditional mediation. The main difference is that it is conducted entirely through encrypted chat boxes, e-mails, and in some instances, video conferencing, rather than conventional mediation. The parties will write up a settlement agreement that will have a binding force comparable to any other contractual arrangement, if the mediation process and long discussions prove to be successful. Parties and issues are kept entirely private, and the process and transactions are carried out via secure platforms, which aid in preserving the confidentiality of information of all parties involved.

A phenomenal success rate of 90 percent can be achieved via mediation, which is an extrajudicial method of settling conflicts.¹⁴ Mediation as one of method of ODR is an alternative to going to court or being under court supervision. It is a procedure in which an impartial mediator, appointed by the appropriate authority or otherwise, assists disputing parties in reaching a mutually agreeable settlement.

As more businesses depend on online technologies, the internet has become an indispensable business objective. As more companies transition to digital settings, it may even be necessary for mediators to follow suit. Online mediation, also known as e-mediation, may assist one in meeting the changing requirements of clients in such an evolving technological workplace.¹⁵ E-mediation is not a new idea, and today's developments have brought it to the forefront. Many businesses have switched to a work-from-home strategy as a result of COVID-19, putting most of their work online. Just because individuals are not in the same physical location does not imply that workplace friction has subsided.

¹³ Kopal Bansal, A Critical Analysis of Online Mediation | VIA Mediation Centre (2021), available at: <https://viamediationcentre.org/readnews/MjEw/A-Critical-Analysis-of-Online-Mediation> (last visited on Aug. 21, 2021).

¹⁴ S. Rajendran, Mediation findings in dispute settlement, *The Hindu Centre* (June 13, 2020), available at: <https://www.thehinducentre.com/the-arena/current-issues/article31810363.ece> (last visited on June 12, 2021).

¹⁵ DeepikaKinal, ODR: The Future of Dispute Resolution in India. (online), available at: <https://vidhilegalpolicy.in/research/the-future-of-dispute-resolution-in-india/> (last visited on June 12, 2021).

One may also communicate through email or even other chat platforms, but it does not mean that online mediation is over. Although most books on e-mediation have concentrated entirely on online dispute resolution, this imposes needless constraints. Techniques that utilized online technologies for a part of the process but not the entire process are also included in e-mediation. One might, for example, teleconference each party separately before gathering everybody in person. Alternately, one may utilize online papers to expedite the documentation procedure prior to beginning meetings. One possesses access to a wide range of internet resources; thus e-mediation may take a plethora of forms.

Central facets of E-mediation

1) Early Experimentation and Historical Growth

Kats & Rifkin characterized numerous noteworthy e-mediation projects performed during the initial, experimental stages of ODR, including: (a) the Online Ombuds project, a pilot ODR program founded in 1996, and¹⁶ (b) the Maryland Family Mediation project, one more initial project funding from the National Center for Automated Information Research (NCAIR) with in United States, (c) the Cyber tribunal project just at University of Montreal School of Law, that later evolved into e-Resolution, a commercial service provider that provides e-mediation and also dispute resolution for domain disputes; and (d) Square Trade, that also took over the eBay mediation project in which the Online Ombuds abandoned off as a commercial venture.¹⁷

Following these early trials and initiatives, the sector evolved towards providing e-mediation services to a broader public. Internet Neutral, e-Resolution (see above), and Online Resolution were among initial service providers. They worked with a broad variety of problem types, notably, commercial disputes between businesses and their consumers, workplace disagreements, and insurance difficulties. A majority of cases which proceeded to mediation in the formative days was most likely minimal, and several of the early arbitration service providers could not last more than

¹⁶ Available at: <https://sfinc.ch/wp-content/uploads/2021/01/SFINC-E-Mediation.pdf> (last visited on November 4, 2022).

¹⁷ Piyush Nair, Isha Singh, Mandatory commercial mediation in India and its impact on court of law (2020), available at: <https://www.jlsrjournal.in/mandatory-commercial-mediation-in-india-and-its-impacts-on-the-courts-of-law-by-piyush-nair-isha-singh/> (last visited on November 4, 2022).

a few years. Several service providers, meanwhile, have stepped in to make their mark, as well as the number of projects continues to increase.¹⁸

2) Optimal long-distance resolution

The traditional mediation method necessitates the attendance of the parties and the mediator at a location where the proceedings are taking place. However, what if there are vast distances between parties, cross-border conflicts, or parties that do not want to be in the same mediation session next to each other? Online mediation may help in this situation—transmitting and performing the whole procedure through the internet. Being able to respect each party's decision to have the mediator and their own attorneys and technical advisors at their own location is an important consideration.

3) Technological expertise

Two distinct degrees of expertise are required to handle electronic mediation procedures. Mediation and technical abilities, as well as their operational combination, are required for this project to succeed. Parties who want to conduct mediations online should be well-versed in the technologies available for electronic settlement. Various institutes provide a variety of free training and information programs, as well as online webinars and seminars to get the information required from professionals. 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. The findings of the panel were delivered at the Werner's Institute Cyber week conference in Berlin. The ZOOM platform came out on top.¹⁹

4) Attempts to Facilitate Mutual Accord amongst the Parties

Assume one want to engage a mediator to assist one settle a dispute with a person or a business, but speaking face-to-face would've been impossible for a variety of reasons. This is when online mediation comes into effect. The concept of online mediation is usually as context-specific as the dispute it seeks to settle. Mediation is frequently regarded as the last stage in the resolution of

¹⁸ Noam Ebner and Elayne E. Greenberg, Strengthening Online Dispute Resolution Justice, 63 *Washington University Journal of Law & Policy* (2020), available at: https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2166&context=law_journal_law_policy (last visited on Oct. 28, 2022)

¹⁹ ODR Europe, available at: <http://www.odreurope.com/zoom-mediation-room> (last visited on Aug. 21, 2021).

conflicts.²⁰ Mediation is indeed a discussion involving two or more parties mediated by a third party who has been agreed upon by the conflicting parties. Skilled third-party mediators may reduce the emotional temperature in such a negotiation, promote better effective communication, assist in uncovering less apparent interests, provide face-saving options for movement,²¹ and propose solutions that only the parties may have ignored. However, both parties may be in separate geographical regions. Perhaps the disagreement sprang from an internet transaction so they have never met. Possibly sometimes a party intimidated or frightened by another and seems to be unlikely to confront in person. Various start-ups started providing online mediation services or e-mediation to businesses and the broader population throughout the late 1990s.

Advantages of E-mediation

Online dispute resolution, in contrast to conventional dispute resolution techniques, is often more adaptable, unstructured, and innovative in its approach. In contrast to the conventional conflict resolution techniques, it is not subject to the same criteria of proof or procedure. Parties may engage in a procedure that can be customized to suit their particular needs as a result of this arrangement. When compared to a combative approach, a collaborative approach is encouraged by this method.

In most cases, (ADR) lowers litigation expenses. It is widely accepted that all parties will bear an equal share of the costs of the compensation or procedure provided to the impartial evaluator, thus giving all parties an equal feeling of ownership and an equal interest in the result. Using (ADR) can be a good option, particularly for high-volume, low-cost transactions, because it often allows for a more cost-effective, timely, and efficient resolution of problems when the amounts in dispute are not sufficiently large to justify the expense of a meeting-based mediation process.

Parties who would generally be unable to attend a face-to-face meeting due to a severe impairment may participate in an ODR session. The ODR process is entirely confidential. In cases where

²⁰ George Amoh Accra, Ghana Mediation the preferred alternative for conflict resolution, *available at*: <https://www.gdrc.org/u-gov/conflict-amoh.html> (last visited on oct. 28, 2022).

²¹ Diganth Raj Sehgal, Top Online Dispute Resolution (ODR) startups in India - iPleaders. (August 13, 2020) iPleaders, *available at*: <https://blog.iplayers.in/top-online-dispute-resolution-odr-startups-india/> (last visited on Aug. 12, 2021).

confidentiality is considered important or necessary by the parties, as is frequently the case, this process is appropriate: parties who use dispute resolution mechanisms typically do so on the basis that they can discuss matters freely in the expectation that they will not be disclosed, either publicly or to a court of law.²²

Online conflict resolution may be able to address some of the shortcomings of conventional methods. To begin with, e-mediation enables one to interact when interacting in person is not possible due to location or a pandemic. One would not have to compromise on nonverbal signals for ease while using videoconferencing technologies. Clients' knee-jerk responses may be reduced through e-mediation because they are in a better or more comfortable position. One may not be quite as nervous when you're not at an office under the intense glare of fluorescent lights. As a consequence, it may be simpler to work through conversations that might otherwise be emotionally charged. Other advantages may be gained by using a messaging service rather than videoconferencing. Clients could convey more effectively while they have extra time to really think over their answers. The additional time between responses may also let any tension dissipate, allowing for more fruitful discussions.

At the very least, e-mediation technologies may help to speed up the dispute resolution process. One may utilize document-sharing services and make submitting papers quicker and easier. When customers do not have to go to and from an office, they save time in travel. Online mediation is typically conducted via electronic methods such as emails, phone calls, video calls, as well as real-time conversations. Documents are typically delivered through email but have become subject of an e-discovery procedure. This online type of mediation has many benefits over conventional mediation, many of which are listed below and are by no means comprehensive: Mediators who are not subjected to direct personal contacts with the parties are generally able to retain their impartiality and, as a result, typically engage in more effective problem-solving. Because of the slower speed of settling the issue via emails and some other textual methods, the parties usually take a break before expressing passionate comments. They are able to reply once they have calmed

²² Soumya Jha, Online Dispute Resolution- A Compelling Option Or A Far -Fetched Reality During Pandemic Times - Litigation, Mediation & Arbitration - India. (August 7, 2020), *available at*: <https://www.mondaq.com/india/arbitration-dispute-resolution/972422/online-dispute-resolution-a-compelling-option-or-a-far-fetched-reality-during-pandemic-times> (last visited on Aug. 28, 2021).

down. Instead of being compelled to use their experience and knowledge at the precise moment, mediators have more time to prepare better answers. An online debate levelled the playing field in situations whereby the side may be dominating by nature or owing to class, economic, societal, ethnic, or physical factors. Since everything must be recorded, there is more transparency. The parties may be assured that perhaps the mediation would not be disregarded in any lawsuit if there is a documentation of the emails underlying reasons provided by the mediators.²³

Because the mediator must explain the legal situation to the disputing parties by demonstrating the probable court result and supporting this with case law as well as statute, the mediator has a higher responsibility to ensure that the answer is competent. These nonverbal signals often wind up escalating the situation instead of settling it. People spend a lot more time focusing on the 'tone' of their voice rather than the substance of their speech. Such nonverbal sparring misconceptions may be avoided if the mediation was based exclusively on factual issues given in writing with minimal opportunity for reading between the lines.

Problems with E-mediation

Notwithstanding all of these wonderful advantages, e-mediation is still not widely accepted by the general population. This is majorly attributable to the impression because online mediation is really not sufficiently grounded in the law. This view will alter over time when courts progressively direct the use of online mediation or the enforcement of e-mediation decisions. The absence of security measures has been another source of worry for bigger companies and the usage of e-mediation. At the moment, there is no adequate system in place to guarantee the information security provided in finding.

E-mediation is a desirable objective worth pursuing for companies and judicial systems in order to provide litigants with unparalleled ease. It has its difficulties, but none that cannot be overcome by human creativity. Of course, there are certain drawbacks to e-commerce. If one is not face-to-face, it is easy to suggest anything offensive on social media. Whenever you meet face to face, it

²³ The Financial Express. (2020). "India needs more online dispute resolution." [online], *available at*: <https://www.financialexpress.com/opinion/india-needs-more-online-dispute-resolution/2117658/> (last visited on Aug. 01, 2021).

is generally simpler being more sympathetic and less harsh. In some cases, the comfort of e-mediation could be a disadvantage. If a party becomes dissatisfied, they may exit the process entirely with the press of a button. If both parties were not in the same room, it would be more difficult to keep them involved.

Online mediation, like any other technology-dependent activity, is susceptible to technical setbacks. Interruptions in any party's internet access may cause the operation to halt or delay. Aside from taking up time, these interruptions may irritate the clients, which could be detrimental to the mediation.²⁴ Because there is no face-to-face contact between the parties throughout the online mediation process, it is challenging for the mediator to create effective communication 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.²⁵

In offline mediation, the parties engage with the mediator, who promotes communication between them. The parties then negotiate and debate their options until they reach a solution, which is often documented in a settlement agreement that is legally binding on the parties. Online mediation is fraught with uncertainty, both in terms of which laws are really in effect and the norms of the mediation process. As a result, the parties to the dispute often fail to comply with the final judgment of mediation. Even the mediator and the organization or any other body find it difficult to ensure compliance.

VI. Conclusion

It is the right of parties to choose whether to resolve a dispute via traditional courts or using other means. Due to Covid-related issues, online mediation and arbitration may be a better option than court procedures. Over time, the arbitration community has embraced new technology to aid in the

²⁴ Agarwal, Anurag K., "Is India Ready for Online Dispute Resolution?" IIMA Working Papers WP2006-10-03, Indian Institute of Management Ahmedabad, Research and Publication Department (2006).

²⁵ Prina Sharma, A Critical Analysis of Online Mediation | VIA Mediation Centre (2021), *available at*: <https://viamediationcentre.org/readnews/MjEw/A-Critical-Analysis-of-Online-Mediation> (last visited on Aug. 2, 2021).

settlement of disputes, and this trend has continued. The range of ODR and E- mediation techniques is restricted. Online mediation covers a wide variety of areas of law, including consumer and family law. 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. ODRS is a viable alternative to bringing a dispute from its inception to a judicial system that is ill-equipped to manage such situations. It provides quick, easy, and low-cost service, which is the hallmark of conducting business online. The virtual community's acceptance of ODRS is a significant accomplishment. Parties in India may, as a result, settle their issues online via arbitration and online mediation and only seek the courts for redress and/or the execution of the arbitral decision in the event of a disagreement.

A solid technological, legal foundation must be created ahead of time. It is also required under article 21 of the Indian Constitution. It should not matter if we realized in 1999 and began enforcing section 89 of the Code of Civil Procedure on July 1, 2002. It is better to be late than never. Every bar council, bar association, and a lawyer should prioritize conciliation/mediation over adjudication and give litigants a reasonable chance of settling their disputes to save time and money while allowing more complicated cases like criminal cases, to proceed to adjudication. It is undeniable that if the state encourages ODR, it is helping in the development of a more efficient, cost-effective, and comfortable judicial system. Hence, the sooner ODR in the form of E-mediation is implemented, the better for the Indian judicial system as a whole and the justice seeker in particular.