
Mediation Renaissance: Navigating Legal Frontiers in a post-COVID Era

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Abstract

The COVID-19 pandemic has catalyzed a transformative shift in dispute resolution mechanisms, heralding a "Mediation Renaissance" as stakeholders increasingly seek efficient and adaptable alternatives to traditional litigation. This paper explores the evolving landscape of mediation in a post-COVID era, emphasizing its role in navigating legal frontiers amidst unprecedented challenges. Key themes include the integration of technology in mediation processes, the rise of online dispute resolution (ODR), and the importance of emotional intelligence and cultural competence in mediators. Furthermore, the paper examines the implications of these changes for legal practitioners, businesses, and individuals, highlighting the necessity for a paradigm shift towards collaborative problem-solving. Through a comprehensive analysis, this work aims to illuminate the benefits of mediation as a viable and effective means of conflict resolution in a rapidly changing world.

Keywords: *Mediation, Post-COVID Era, Dispute Resolution, Online Dispute Resolution (ODR), Legal Frontiers.*

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I. Legal Developments in Mediation

i. Pre COVID-Era

The Arbitration and Conciliation Act, 1996 [**“Arbitration and Conciliation Act”**] largely governed mediation in India before the COVID-19 epidemic. This Act included measures pertaining to mediation in addition to providing a framework for arbitration and conciliation. Important characteristics comprised:

Conciliation is covered in Part III of the Act, and mediation is one of its forms. It places a strong emphasis on the parties' voluntary participation and the mediator's assistance in fostering communication between them.

Without going into great detail about the procedure, the Act offered a fundamental framework for mediation that was centred on voluntary agreements and the mediator's function as a facilitator.

Indian courts acknowledged the value of mediation but were limited by the legislative framework. For example, the Supreme Court recognized the value of mediation in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd.*, (2010)¹, but pointed out that there was insufficient legal backing for an organized mediation procedure.

ii. Post COVID Era

The COVID-19 pandemic brought to light the shortcomings of conventional mediation techniques, especially those that depend on face-to-face communication. Legislative and procedural changes were prompted by the necessity for social separation and lockdown measures, which hastened the implementation of remote and virtual mediation. The enactment of the Mediation Act, 2023 [**“Mediation Act”**] brought structural changes in the methods used to resolve disputes under mediation.

As a result, remote or as more famously known online mediation was adopted. Parties were compelled by the epidemic to switch to digital platforms for mediation, which allowed for virtual sessions. As a result of the same, various High Courts and international organizations establishing guidelines to support distant conflict resolution, courts started to recognize and adjust to virtual mediation.

¹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd.* (2010) 8 SCC 24

The new legal framework has received support from the courts, who have highlighted its importance in modernizing and optimizing the mediation process. For instance, the Supreme Court emphasized the necessity for effective dispute resolution procedures in *MR Krishna Murthi v. New India Assurance Co. Ltd.*, (2020)², in line with the Act's emphasis on enhancing mediation procedures.

iii. *Arbitration and Conciliation Act vs. Mediation Act*

Part III of the Arbitration and Conciliation Act, addresses mediation; the remaining sections of the act deal primarily with arbitration and conciliation. The emphasis is mostly on arbitration, with the mediation rules providing only a limited and informal framework. For instance, the Supreme Court emphasized arbitration as the primary method of resolving disputes in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd.*, (2010)³, mentioning mediation as an additional choice. On the other hand, the Mediation Act offers a thorough and established framework that is especially dedicated to mediation. It brings mediation to the forefront of conflict resolution by addressing all facets of mediation, including the pre- and post-litigation phases. This new strategy is supported by the Supreme Court's ruling in *MR Krishna Murthi v. New India Assurance Co. Ltd.*, (2020)⁴, which upholds the structured mediation procedure that the Mediation Act envisions.

The Arbitration and Conciliation Act provides minimal procedural guidance on mediation, emphasizing voluntary agreements and informal processes instead. The Court's observations in *K. Srinivas Rao v. D.A. Deepa*, (2013)⁵ make this limitation plain by emphasizing the need for more precise procedural standards. A codified framework with extensive rules for mediator selection, mediation behaviour, and agreement enforcement is introduced by the Mediation Act. According to *HDFC Ltd. v. Smt. Meera*, (2022)⁶, the Supreme Court placed a strong focus on a clearly defined mediation process, which is in accordance with this methodical approach.

Because of its emphasis on conventional, in-person sessions, the Arbitration and Conciliation Act, does not address online mediation in terms of technological integration. In keeping with the pre-pandemic legislative background, the Supreme Court in *Kailash v.*

² *MR Krishna Murthi v. New India Assurance Co. Ltd.* (2020) 15 SCC 493.3

³ *Afcons Infrastructure Ltd* (n 2).

⁴ *M.R. Krishna* (n 3).

⁵ *K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226.

⁶ *HDFC Ltd. v. Smt. Meera* (2022) SCC Online SC 1170.

Nanhku, (2005)⁷, did not take technical developments in mediation into account. The Mediation Act, on the other hand, specifically allows for online mediation and includes provisions for distant sessions and digital recordkeeping. The Supreme Court's ruling in *S.P. Jain v. Union of India*, (2021)⁸, which emphasized the significance of incorporating technology into dispute resolution, supports this move towards modernizing mediation procedures.

Under the Arbitration and Conciliation Act, the enforcement of mediation agreements is less thorough and necessitates independent legal action or court intervention. In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*,⁹, the Supreme Court drew attention to problems with arbitration and conciliation enforcement and identified weaknesses in the enforcement of mediation. In order to close these gaps, the Mediation Act, specifies precise guidelines for the execution and registration of mediation agreements. In keeping with the improvements brought about by the new Act, the Supreme Court's ruling in *Sandeep Kumar v. Sunil Kumar*, (2023)¹⁰, highlights the need of upholding mediation agreements.

II. The Evolution from Arbitration to Structured Mediation

Comparing the Mediation Act, to the Arbitration and Conciliation Act, reveals a dramatic shift in India's legal approach to conflict resolution, especially when considering the pre- and post-COVID era. The Arbitration and Conciliation Act offered a fundamental framework for dispute resolution procedures, with its main emphasis on arbitration and its secondary treatment of mediation. However, its lack of technology adaption and low procedural guidance presented challenges. On the other hand, the COVID-19 pandemic hastened the transition to contemporary methods by highlighting the need for more flexible and easily available dispute resolution procedures.

In response to these modern expectations, the Mediation Act seems as a significant breakthrough, providing a comprehensive and codified structure that includes online mediation and strong enforcement procedures. This change in the law is a reflection of the increasing acceptance of mediation as a vital and unique instrument for settling conflicts, especially in a time when digital solutions are becoming indispensable. The Mediation Act,

⁷ *Kailash v. Nanhku* (2005) 4 SCC 480

⁸ *S.P. Jain v. Union of India* (2021) SCC Online SC 1525

⁹ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552 (India)

¹⁰ *Sandeep Kumar v. Sunil Kumar* (2023) SCC Online SC 184

conforms with the changing demands of the legal community in the post-pandemic context while also improving the efficiency and efficacy of conflict settlement by resolving the procedural, technological, and enforcement deficiencies of its predecessor. The Mediation Act's emphasis on a methodical and technologically advanced approach will probably be crucial in determining how the judicial system continues to adjust to these developments.¹¹

III. Role of technology and legislation in promoting Online Dispute Resolution

The advent of digital platforms and the internet has drastically changed several industries, including dispute resolution. Online Dispute Resolution [“ODR”] is the term for using technology to help resolve conflicts. It has become more popular around the world as a productive, affordable, and adaptable substitute for traditional litigation. Online dispute resolution, or ODR, uses resources including instant messaging, email, video conferencing, and specialist software to mediate, negotiate, or arbitrate disputes. ODR has been gaining momentum in India over the past few years, thanks in part to the COVID-19 epidemic and an industry-wide move towards digitalization. Technology is now a key factor influencing how conflict resolution is shaped in the future in the nation, especially when combined with legal measures like the Mediation Act.

By alleviating a number of important problems with conventional conflict resolution procedures, technology plays a crucial part in advancing online dispute resolution. One of the most prominent obstacles is the backlog of cases in Indian courts, which frequently causes delays in the administration of justice. More than 40 million cases are pending in Indian courts, with a significant portion of civil and criminal cases remaining unresolved for more than a year, according to data from the National Judicial Data Grid [“NJDG”].¹² ODR is a desirable alternative because technology can overcome geographical boundaries, save expenses, and improve access to justice.¹³

i) *Accessibility and Convenience*

The ability of ODR to improve access to justice for people in different geographic places is one of its main benefits. Without having to physically travel, parties who are located in separate towns, states, or even countries can participate in mediation or arbitration sessions using video conferencing or other digital means. In a country the size of India, where people

¹¹‘Mediation – A Better Option During and Post COVID-19 Era?’ (20 August 2020). <<https://legallyflawless.in/mediation-a-better-option-during-and-post-covid-19-era/>> accessed 06 October 2024

¹² National Judicial Data Grid (NJDG) <https://njdg.ecourts.gov.in/njdg_v3/> accessed 6 October 2024.

¹³ Ashutosh Mishra, ‘Online Mediation: Prospects and Challenges in India’ (2023) 13 *Res Militaris*

from remote or rural areas frequently encounter major obstacles in accessing traditional legal systems, accessibility is extremely important. ODR gives these people the chance to resolve disputes from the comfort of their own homes or communities, saving them money on travel expenses as well as time.

ii) Cost-Effectiveness and Efficiency

The costs of resolving disputes are also reduced by the use of technology. Conventional litigation entails costs for travel, court fees, and legal counsel. On the other hand, ODR saves a lot of these expenses, which makes it a more affordable choice for parties in dispute. Furthermore, the elimination of in-person meetings and improved communication procedures greatly accelerate ODR proceedings.

ODR platforms frequently include features that make it easier for parties to share documents, communicate in real time, and have asynchronous discussions. This allows conflicts to be resolved in a matter of days or weeks as opposed to months or years. For example, Smart Settle and other ODR services have been remarkably effective in settling business disputes in under 21 days. Reducing the backlog of cases and giving disputants timely justice depend on this kind of efficiency.

iii) Online Consumer Mediation

The Online Consumer Mediation Centre [**OCMC**],¹⁴ which was founded to settle complaints resulting from online transactions, is one of the most effective examples of ODR in action. With the growing amount of e-commerce conflicts, online mediation has become a significant instrument in addressing customer difficulties. To settle issues between customers and businesses, the OCMC hires a mediator and works to arrange meetings within 21 days of the mediator's appointment. This effectiveness in settling conflicts draws attention to how important technology is to improving consumer protection in a world where the economy is becoming more and more digital.

IV. Legislation Supporting ODR in India

The Indian legal system has gradually included procedures for ODR after realizing the potential of this process. Government policy initiatives and recent legislative revisions, such as the Mediation Act demonstrate the increased emphasis on institutionalizing out-of-court settlement as a standard dispute resolution process.

¹⁴ *Online Consumer Mediation Centre* <<https://www.nls.ac.in/centres/online-consumer-mediation-centre/>> accessed 16 September 2024.

i. The Mediation Act

An important step toward institutionalizing mediation as a crucial part of India's conflict resolution system is the passage of the Mediation Act. With provisions that specifically enable online mediation, the Act offers a statutory framework for pre-litigation and post-litigation mediation. The Mediation Act's Section 30¹⁵ emphasizes the use of electronic communication in mediation, recognizing technology's contribution to the mediation process' modernization.

The increased need for ODR services following the COVID-19 outbreak makes the legal support for online mediation more welcome. The Mediation Act opens the door for the extensive use of technology in conflict resolution in a variety of fields, such as consumer protection, family law, and business disputes, by specifically including online mediation in its provisions.

ii. The Arbitration and Conciliation Act (Amended in 2015 and 2019)

Provisions endorsing the use of electronic communication for arbitration processes were added to the Arbitration and Conciliation Act, which was modified in 2015 and 2019. This act regulates arbitration and conciliation proceedings in India. Although the Act mainly concentrates on conventional arbitration procedures, the modifications acknowledge that technology can help with communication between parties, document exchange, and distant hearings.

The Mediation Act and these changes demonstrate how the Indian legislature is beginning to acknowledge the role that technology plays in advancing ADR procedures. The legislative framework conforms to worldwide trends towards digital transformation in dispute resolution by permitting electronic communication and digital platforms in arbitration and mediation.

iii. NITI Aayog's Policy Initiatives

Apart from enacting new laws, government organizations such as NITI Aayog have played a significant role in advancing open data adoption in India. "Designing the Future of Dispute Resolution: The ODR Policy Plan for India,"¹⁶ a 2021 report from NITI Aayog, highlights the significance of incorporating technology into the legal system and provides

¹⁵ Mediation Act, s 30.

¹⁶ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* <<https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf>> accessed 15 September 2024.

a path for the growth of ODR in India.¹⁷ In order to complement government activities, the research emphasizes the need for increased access to digital infrastructure, technological awareness, and the creation of private ODR platforms.

The proposals made by NITI Aayog are intended to strengthen ODR's entire support structure in India and make it a more attractive and practical option than traditional litigation. It is anticipated that these regulatory measures will be essential in advancing the use of ODR in a number of domains, such as business dealings, consumer complaints, and international disputes.

V. Recent Case Laws Promoting ODR

Recent judicial interpretations have also endorsed the role of technology in dispute resolution, further legitimizing ODR as a viable method in the Indian legal context.

i. *Trimex International FZE Limited v. Vedanta Aluminium Limited (2020)*¹⁸

In this landmark case, the Supreme Court of India held that online arbitration proceedings were valid and enforceable under Indian law. The Court ruled that the Arbitration and Conciliation Act, allows for electronic communication in arbitration proceedings, including video conferencing.¹⁹ This case sets a precedent for the use of technology in dispute resolution and paves the way for the broader application of ODR mechanisms.

ii. *Jindal Steel & Power Ltd. V. M/s D.S. Construction Ltd. (2022)*²⁰

This case before the National Company Law Tribunal [“NCLT”] focused on the role of ODR in resolving commercial disputes. The NCLT recognized the growing importance of technology in commercial arbitration and supported the use of online platforms for conducting hearings and communicating with parties. The case demonstrated the judiciary's willingness to embrace technology as an essential tool for resolving disputes in a timely and cost-effective manner.

¹⁷ The NITI Aayog Expert Committee on ODR, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (October 2021).

¹⁸ *Trimex International FZE Limited v. Vedanta Aluminium Limited* (2020) SCC Online SC 562.

¹⁹ Arbitration and Conciliation Act, s 19, 24.

²⁰ *Jindal Steel & Power Ltd. V. M/s D.S. Construction Ltd. (2022)* SCC Online SC 347.

VI. Conclusion

In conclusion, the COVID-19 pandemic has significantly accelerated advancements in mediation, marking a transformative period for dispute resolution in India. The introduction of the Mediation Act represents a substantial shift from the earlier Arbitration and Conciliation Act, which provided only a limited and informal framework for mediation. The pandemic highlighted the shortcomings of traditional, in-person mediation processes, driving the need for more flexible, technology-enabled methods. The Mediation Act meets these demands by institutionalizing online mediation and offering a comprehensive legal structure that supports both pre- and post-litigation mediation. The adoption of ODR during the pandemic has shown the potential for technology to expand access to justice. Digital platforms have made mediation more efficient, cost-effective, and accessible, particularly for those in remote areas. This shift has been supported by the judiciary, with courts recognizing the necessity of integrating technology into the mediation process. Notably, key rulings have reinforced the importance of technology in dispute resolution, promoting virtual mediation as a viable and modern alternative.

One of the critical advancements introduced by the Mediation Act is the formalization of the enforcement of mediation agreements. Unlike the previous legal framework, which required separate legal actions for enforcement, the new Act ensures that mediation outcomes are legally binding and enforceable without further judicial intervention. This streamlines the mediation process and strengthens its role as a primary mechanism for conflict resolution. As India continues to embrace digital solutions in the post-pandemic era, the Mediation Act positions mediation as a central element of the legal system.