

INTERNATIONAL CONFERENCE ON MEDIATION

2024



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(Friday, Saturday)

Venue

Hotel Himalaya, Kathmandu
Nepal

COLLABORATIVELY ORGANISED BY

Supreme Court Bar Association of Nepal

&

Bangladesh International Mediation Society BIMS

Welcome Address



Dr. Namrata Pandey

Respected Chief Guest, Honorable chief justice of Supreme Court Nepal, respected Special Guests, Distinguished Guests from Bangladesh and Nepal, Ladies and Gentlemen, Namaste. On behalf of the Mediation Committee of the Supreme Court Bar Association Nepal and BIMS Bangladesh, I extend a heartfelt welcome to each one of you to the beautiful country of the Himalayas, the vibrant city of Kathmandu.

I would like to express my sincere gratitude to Respected S.N. Goswami, who serves as the guiding force as the Chairperson of BIMS, especially in our endeavors for the mediation campaign.

As a Mediation Activist of Nepal and a Regional Director of BIMS (Bangladesh International Mediation Society), it brings me immense joy to welcome you. Our collective effort to promote the Mediation system and services is showcased through the organization of the International Conference on Mediation in collaboration with the Mediation Committee of the Supreme Court Bar Association of Nepal.

BIMS, with its primary vision and goal to popularize the operation and practices of Mediation globally, aligns perfectly with the mission of the Mediation Committee of the Supreme Court Bar Association Nepal. Both organizations are dedicated to advancing the use of Mediation across diverse sections of society.

As we are aware and actively practicing, Mediation serves as an effective method for resolving disputes, especially those involving relationships that may not find easy resolution through the litigation process. It allows parties to reach mutual satisfaction, avoiding the need to go to court and entrusting a judge or jury to decide their issues.

Throughout this conference, we will have the privilege of hearing from our esteemed national and international speakers. Their experiences and practices will provide valuable insights, making this event a significant platform for sharing knowledge and perspectives. I am grateful for the opportunity to welcome you all to this remarkable occasion.

May you have a wonderful and enriching time during your stay in Kathmandu. Thank you.

Dr. Namrata Pandey
Regional Director BIMS"

Opening Remarks



S. N. Goswami, Senior Advocate
Supreme Court of Bangladesh
Accredited Mediator IIAM & BIMS

Good morning. All of you.

It is my great pleasure and honour to well come you **Hon'ble Justice Dr. Ananda Mohon Bhattaraj**, Supreme Court of Nepal, **Hon'ble Justice Ahmed Sohel**, High Court Division, Supreme Court of Bangladesh, recipient Gold Medal Award on Mediation, **Dr. Namrata Pandey**, BIMS Director in Nepal, **Dr. Apoorva Patel**, BIMS Director (Training), Assistant Professor of Social Work and Head-Center for Law and Society at Gujarat National Law University, Ms. Priyanka Chakraborty, BIMS Secretary General (International), Chair : **Mr. Hari Shankar Niraula**, Senior Advocate, President, Supreme Court Bar Association of Nepal, Master of ceremony **Mr. Shyam Kumar Khatri**, Advocate, Secretary, Supreme Court Bar Association of Nepal.

Dear Accredited mediators

I express my sincere appreciation to all of you. Programme schedule with you, the programme looks very professional and has lots in it. There are lot of things to learn from this conference and peaceful perspective on how mediation is currently practiced, how it could be structured to accomplish more, and how to refine the process for future application. Through out this conference, we will have the privilege of hearing from Hon'ble **Bishow-ambhar Prasad Shrestha**, Chief Justice of Nepal, **Hon'ble Justice (Rtd.) Geeta Mittal**, (recipient Gold Medal Award on Mediation). Former Chief Justice of Jammu and Kashmir, India and Faculty of BIMS, **Hon'ble Justice Ishwor Prasad Khatiwada**, Chairman of Nepal Mediation Council, **Mr. Shri Dhanraj Gurung**, Hon'ble Minister of Law, Justice and Parliamentary Affairs, Nepal, **Dr. Dina Mani Pokhrel**, Attorney General of Nepal and Chairman, Nepal Bar Council, **Mr. Chandra Dhakal**, President, Federation of Nepalese Chamber of Commerce and Industry, **Ms. Tanushri Roy**, Policy Consultant and Negotiator (Ministry of Commerce and Industry, Government of India), Certified Mediator and BIMS Trainer, **Ms. Manisha T Karia**, BIMS Director in India, **Dr. Mukti Rijal**, Advocate, Mediation Council of Nepal, **Dr. Kumar Sharma Acharya**, Senior Advocate, Nepal, **Mr. Gopal Krishna Ghimire**, President of Nepal Bar Association and **Mr. Shri Matrika Prasad Niraula**, Senior Advocate, Coordinator of Mediation Committee, Supreme Court Bar

Association of Nepal. Their experiences and practice will provide valuable insights, making this event a significant platform for sharing knowledge and perspectives.

The decisions to have this conference was made early January, 2023 with Ombudsmen Committee and later on in December, 2023 with **Mr. Hari Shankar Niraula**, Senior Advocate, President, Supreme Court Bar Association of Nepal, when realizing that mediation is now becoming a dispute mechanism of choice on both countries Bangladesh and Nepal.

We would like to recognize our partner Mediation Committee, Supreme Court Bar Association of Nepal and thanks them for their support towards this important conference. This event creates the forum for on going conversation and dialogue about mediation trends, practices and futures and provides the opportunity for practitioners to develop and maintain professional relationship and to provide a unique platform for exchange of views in this area as part of its aim and vision to be a leading dispute resolution centre in the South Asia region.

I feel proud to on this note, I wish this conference every success. For those coming from overseas, I wish all of you an enjoyable stay in Kathmandu. Thank you.

S. N. Goswami

Senior Advocate

Chairman, Bangladesh International Mediation Society (Bims)

Introduction to the International Conference on Mediation

~ Dr. Apoorva Patel



Dr. Apoorva Patel

Accredited Mediator (BIMS)
BIMS Director (Training)
Associate Professor of
Gujarat National Law University

*Distinguished Guests, Honourable Delegates,
Esteemed Colleagues, Ladies, and Gentlemen,*

I am extremely honoured to stand before you on behalf of the Bangladesh International Mediation Society (BIMS) and as one of the proud organizers of this prestigious event.

With immense pleasure and profound gratitude, I welcome one and all present here to the International Conference on Mediation, a ground-breaking event collaboratively organized by the Mediation Committee of the Supreme Court Bar Association of Nepal and the Bangladesh International Mediation Society (BIMS). Today marks the commencement of a significant dialogue that transcends borders and unites us in our pursuit of justice and conflict resolution.

As we gather here on this auspicious day, I am reminded of the words of Martin Luther King Jr., who once said, *“True peace is not merely the absence of tension; it is the presence of justice.”* Indeed, the essence of our gathering resonates deeply with these sentiments. As we navigate the intricacies of the legal landscape, we recognize the indispensable role mediation plays in fostering an inclusive, efficient, and equitable avenue for justice. In a world where access to justice remains a cornerstone of democracy, mediation emerges as a beacon, guiding us towards a realm where disputes are resolved amicably and the wheels of justice turn smoothly for all. Thus, in a world fraught with discord and strife, mediation emerges as a beacon of hope—a pathway that leads us towards reconciliation, understanding, and, ultimately, justice.

Link to Sustainable Development Goal (SDG) 16

Our collective mission to promote mediation aligns seamlessly with Sustainable Development Goal 16, fostering ‘Peace, Justice, and Strong Institutions.’ By advancing the cause of mediation, we contribute to building strong and just legal systems, fostering peace, and ensuring access to justice for all.

South-Asian Unity in Mediation

Our focus on South-Asian collaboration is intentional. By harnessing the collective

expertise and cultural richness of India, Bangladesh, and Nepal, we aim to strengthen mediation's roots in our legal systems. This unity is not just a symbolic gesture but a strategic move towards building a more resilient, adaptable, and effective justice framework in our region.

Objectives of the Conference

The objectives we set for this conference are ambitious yet imperative. Over the next two days, we aim to create a dynamic platform for dialogue and collaboration, bringing together legal minds, practitioners, and scholars from the South-Asian region, with a particular focus on India, Bangladesh, and Nepal. This collaborative effort will be instrumental in achieving the outlined objectives.

Theme of the Conference

The theme of our conference, "Mediation", serves as a guiding light, illuminating the vital role that mediation plays in bridging the gap between individuals and the justice system. In an era marked by increasing legal complexity and resource constraints, mediation offers a pragmatic and human-centric approach to resolving disputes, empowering individuals to assert their rights and seek redressal promptly and efficiently.

Proceedings of the Conference

Over the next two days, we have the privilege of hosting esteemed participants from across the South Asian region, representing nations such as India, Bangladesh, and Nepal. This diverse gathering underscores the universal relevance and significance of our shared mission. It embodies the essence of our collective mission—to promote mediation as a means to facilitate access to justice for all.

Throughout our deliberations, we will explore a myriad of topics, ranging from the principles and practices of mediation to its application in diverse legal contexts. We will delve into the transformative potential of mediation in alleviating the burden on formal judicial systems, fostering community harmony, and promoting social cohesion, highlighting the rich and diverse discussions that attendees can anticipate.

Furthermore, our conference is a forum for academic discourse and a platform for actionable insights and collaborative initiatives. Through interactive sessions, workshops, and networking opportunities, we aim to cultivate a vibrant ecosystem of mediation practitioners, scholars, and policymakers committed to advancing the cause of justice and conflict resolution.

As we embark on this collective journey together, let us reaffirm our shared commitment to the principles of fairness, equity, and dignity. Let us harness the power of dialogue and mediation to build a more inclusive and just society for future generations. Let us remember that our deliberations today can shape the future of justice delivery in our nations. Let us approach each session with an open mind, ready to learn, unlearn, and redefine the boundaries of what is possible through mediation.

Closing Remarks

In conclusion, I extend my heartfelt gratitude to all the organizers, sponsors, speakers, and participants who have worked tirelessly behind the scenes, contributing to the success of this conference. Special thanks to Senior Advocate Shri SN Goswami, Chairman, Bangladesh International Mediation Society (BIMS). This initiative and many such efforts are his brainchild, and for his pivotal role in making this day possible. A big shout out to Senior Advocate Shri Harishankar Niraula, President, Supreme Court Bar Association, Nepal, who has shown light to this day. Special appreciation to both of their team for their unwavering support and who have contributed to making this conference a reality.

We become a part of the transformative journey as we gather here on the vibrant soils of collaboration, set against the picturesque backdrop of shared values and a commitment to justice. May our collective efforts pave the way for a future where mediation stands tall as the pathway to accessible and impartial justice. And let us embrace the spirit of collaboration and cooperation as we chart a course towards a brighter and more just future.

Thank you, and I wish you all a productive and enlightening conference.

Innovations and Challenges in Mediation: An Overview

~ **Tanushri Roy**



Tanushri Roy

Policy Consultant and Negotiator,
Ministry of Commerce and Industry,
Government of India;
Certified Mediator and BIMS Trainer

Mediation offers various benefits as a method of resolving disputes, providing an alternative to traditional litigation. The process is voluntary, informal, flexible, private and confidential, timely and cost effective. It offers a greater degree of party control to reach a mutually agreeable resolution. The resulting outcomes have a high rate of compliance and often help preserve ongoing relationships. There is no denying the tremendous transformative power that mediation has in attending to the complex challenges of today's globalised and contemporary world.

Economic growth, diversification and rapid modernization have spurred developments across multifarious sectors. These have had an impact on mediation practice as well, by

necessitating cross-cutting innovation and contextualization. This has taken the form of novel modes of dispute resolution in terms of new institutional structures, forums and tools being established. For example, there is an increasing use of online mediation platforms, artificial intelligence, blockchain technology, mobile applications and gamification related tools being adopted. There are new laws and legal frameworks aimed at tackling the evolving nature of disputes and emergent sectors like sustainability, privacy, and other non-traditional emerging businesses. Mediation today is being applied across diverse contexts including community, commercial, construction, family, financial, education, insurance, medicine among others. This evolving global landscape has also led to weaving in aspects like cultural competence training for mediators, client centred processes and applying insights from neuroscience to mediation.

Dispute resolution mechanisms have thus evolved over time to take into account the changing dynamics of contemporary times. As mediation practitioners, it is essential to stay updated with the latest developments in the field, while understanding that the adoption of these innovations may vary across jurisdictions and contexts.

However, while mediation is a valuable alternative dispute resolution method, it is not without its challenges. The first such challenge is the lack of codification and resistance to mediation itself by different stakeholders due to information asymmetry, among other reasons. Then there may be inconsistency between existing laws and infrastructural and quality control concerns. Lack of training, lack of referrals, lack of adequate funds and management processes may also compound the problem. Within the mediation process as well, a lack of understanding of the issues or legal implications among the parties, communication barriers, unrealistic expectations, cultural barriers, intraparty conflict and fear of losing face- may potentially hinder productive discussions. This coupled with resource and power imbalances, emotional dynamics, complexity of multi-party and cross-cultural disputes and ineffective enforcement of agreements- can all contribute to challenges faced by parties today. Mediators also have to adapt to the evolving nature of disputes and issues like ensuring accessibility and inclusivity and, incorporating technology and digitalization in mediation processes today. Addressing these challenges often requires skilled and experienced mediators, effective communication strategies, and a commitment from all parties to engage in the process in good faith. Ongoing training and advancements in mediation techniques aim to address and mitigate these challenges.

The session seeks to elaborate on the above themes using specific examples and case studies to provide a broad understanding of the innovations and challenges in mediation today.

By Tanushri Roy
Policy Consultant and Negotiator, Ministry of Commerce and Industry,
Government of India; Certified Mediator and BIMS Trainer

MEDIATION AND TECHNOLOGY: REVOLUTIONIZING CONFLICT RESOLUTION IN THE DIGITAL AGE

~ Priyanka Chakraborty



Ms. Priyanka Chakraborty
Accredited Mediator IIAM & BIMS
Secretary General (International), BIMS

ABSTRACT

In today's interconnected world, technology serves as a cornerstone of modern civilization, permeating nearly every aspect of human interaction. Its influence extends to conflict resolution, where traditional methods are being supplemented and, in some cases, supplanted by innovative technological solutions. This paper delves into the evolving relationship between mediation and technology, exploring the profound impact of digital tools on the mediation process. Through an in-depth analysis of the advantages, challenges, and ethical considerations associated with integrating technology into mediation, this paper seeks to illuminate the transformative potential of technological advancements in fostering more efficient, accessible, and equitable conflict resolution mechanisms.

Keywords: Mediation, Technology, Conflict Resolution, Digital Innovation, Artificial Intelligence, Ethics, Access to Justice.

INTRODUCTION

Conflict is a fundamental aspect of human interaction, stemming from the inherent diversity of interests, perspectives, and values within societies. Whether it be disagreements between individuals, groups, organizations, or even nations, conflicts inevitably arise as people navigate complex social, economic, and political landscapes. In response to these conflicts, various methods of resolution have emerged throughout history, ranging from violent confrontation to peaceful negotiation.

Among these approaches, mediation stands out as a non-coercive and collaborative means of resolving disputes. Rooted in principles of impartiality, empathy, and dialogue, mediation empowers parties to engage in constructive communication and problem-solving

under the guidance of a neutral third party—the mediator. Unlike adversarial processes such as litigation or arbitration, which often result in winners and losers, mediation emphasizes mutual understanding, compromise, and win-win solutions. By fostering open dialogue and empowering parties to shape their outcomes, mediation not only addresses immediate conflicts but also lays the groundwork for sustainable relationships and future cooperation.

As our world becomes increasingly interconnected and technologically driven, the practice of mediation is undergoing a profound transformation. The integration of digital technologies into traditional mediation practices has opened up new avenues for communication, collaboration, and conflict resolution. Virtual mediation platforms, online dispute resolution mechanisms, and AI-driven decision-support tools are just a few examples of the innovative technologies that are reshaping the mediation landscape.

This convergence of mediation and technology holds significant promise for enhancing the accessibility, efficiency, and effectiveness of conflict resolution processes. Virtual mediation platforms, for instance, enable parties to participate in mediation sessions from anywhere in the world, reducing the need for costly and time-consuming travel. Online dispute resolution mechanisms provide a user-friendly and accessible means of resolving disputes, particularly for individuals and communities with limited access to traditional legal institutions. AI-driven decision-support tools can assist mediators in analysing complex data sets, identifying underlying patterns, and generating optimal solutions, thereby enhancing the quality and efficacy of mediation outcomes.

However, the integration of technology into mediation also presents challenges and ethical considerations that must be addressed. Privacy and data security concerns, algorithmic bias, and the digital divide are just a few of the issues that require careful attention to ensure that technology serves as a force for good in conflict resolution. Moreover, the reliance on technology must not overshadow the human elements of mediation, such as empathy, trust, and cultural sensitivity, which are essential for building rapport and fostering meaningful dialogue between parties.

In light of these promises and pitfalls, this paper seeks to explore the multifaceted implications of the convergence of mediation and technology. By shedding light on both the opportunities and challenges associated with leveraging technology in the pursuit of conflict resolution, this paper aims to inform practitioners, policymakers, and stakeholders about the transformative potential of technological advancements in fostering more inclusive, equitable, and sustainable approaches to resolving conflicts in the digital age.

TECHNOLOGICAL INNOVATIONS IN MEDIATION

The advent of the digital revolution has brought forth a diverse array of technological innovations that are fundamentally transforming the practice of mediation. Among these innovations are virtual mediation platforms, which provide a dynamic and interactive space for parties to engage in conflict resolution remotely. These platforms leverage video conferencing, messaging, and collaboration tools to facilitate real-time communication and negotiation between parties, regardless of their geographic location. By transcending physical boundaries, virtual mediation platforms not only eliminate the need for parties to be physically present in the same location but also offer greater flexibility and convenience in scheduling sessions.

In addition to virtual mediation platforms, online dispute resolution (ODR) mechanisms represent another significant technological innovation in mediation. ODR platforms leverage web-based interfaces and automated processes to facilitate the resolution of disputes in a digital environment. Through features such as online case filing, document exchange, and secure communication channels, ODR platforms streamline the mediation process and reduce the administrative burden on parties and mediators alike. Furthermore, ODR platforms can be customized to accommodate a wide range of dispute types and complexities, making them accessible to individuals and organizations across diverse sectors and industries.

Artificial intelligence (AI) is also playing an increasingly prominent role in mediation, with the development of AI-driven decision-support systems that assist mediators in analyzing data, identifying patterns, and generating insights to inform negotiation strategies. These decision-support systems leverage machine learning algorithms to process large volumes of information and provide personalized recommendations tailored to the specific needs and preferences of parties. By harnessing the power of AI, mediators can gain valuable insights into the underlying dynamics of conflicts, explore creative solutions, and facilitate more informed decision-making processes.

Furthermore, blockchain technology is revolutionizing how agreements are formed and enforced in mediation through the use of smart contracts. Smart contracts are self-executing digital contracts that are stored and executed on a decentralized blockchain network. By automating the execution of contractual terms and conditions, smart contracts enhance the transparency, security, and efficiency of mediation proceedings. Parties can use smart contracts to codify their agreements in a tamper-proof and immutable format, thereby reducing the risk of disputes arising from misunderstandings or breaches of contract.

Collectively, these technological innovations offer unprecedented opportunities to overcome geographical barriers, streamline administrative tasks, and enhance the efficiency and efficacy of mediation proceedings. Moreover, they hold the potential to democratize access to justice by making mediation more accessible to marginalized communities and individuals with limited resources or mobility. By leveraging these technologies responsibly and ethically, mediators can empower parties to resolve their disputes more effectively and collaboratively, ultimately contributing to a more just and equitable society.

Here are some examples to illustrate the technological innovations in mediation mentioned:

1. Virtual Mediation Platforms:

o Example: Zoom Mediation - In response to the COVID-19 pandemic, mediators worldwide swiftly adopted virtual mediation platforms like Zoom to conduct mediation sessions remotely. Parties can join mediation sessions from their homes or offices using video conferencing technology, enabling seamless communication and negotiation despite physical distancing measures. This approach has not only maintained continuity in conflict resolution processes but has also expanded access to mediation services for individuals and organizations worldwide.

2. Online Dispute Resolution (ODR) Platforms:

o Example: eBay Resolution Centre - eBay's Resolution Centre utilizes an ODR platform to facilitate the resolution of disputes between buyers and sellers on its e-commerce platform. Through the Resolution Centre, parties can file complaints, submit evidence, and engage in negotiation with the assistance of automated dispute resolution mechanisms. This online platform streamlines the dispute resolution process, reduces the workload on eBay's customer support team, and enhances user satisfaction by providing a transparent and efficient means of resolving conflicts.

3. AI-Driven Decision-Support Systems:

o Example: Courtroom5 - Courtroom5 is an online platform that utilizes AI-driven decision-support systems to assist self-represented litigants in navigating the complexities of the legal system. By analysing case law, statutes, and procedural rules, Courtroom5 generates personalized legal strategies and document templates to help litigants effectively represent themselves in court. This AI-powered platform democratizes access to legal assistance and empowers individuals to assert their rights and interests in legal proceedings.

4. Blockchain-Enabled Smart Contracts:

- o Example: Kleros - Kleros is a blockchain-based dispute resolution platform that utilizes smart contracts to adjudicate disputes arising from online transactions. Smart contracts on the Kleros platform automatically execute predetermined rules and conditions, ensuring the fair and impartial resolution of disputes without the need for intermediaries. By leveraging blockchain technology, Kleros enhances the transparency, efficiency, and trustworthiness of dispute resolution processes, thereby fostering greater confidence and reliability in online transactions.

These examples demonstrate how technological innovations are revolutionizing the field of mediation, offering new opportunities to overcome geographical barriers, streamline administrative tasks, and enhance the accessibility and effectiveness of conflict resolution processes. By embracing these innovations, mediators can empower parties to resolve their disputes more efficiently, equitably, and collaboratively in the digital age.

BENEFITS OF TECHNOLOGICAL INTEGRATION

The integration of technology into mediation presents a wide array of benefits, addressing various challenges encountered in traditional mediation practices. Among these benefits, increased convenience, cost-effectiveness, and scalability stand out as paramount advantages.

Virtual mediation platforms represent a cornerstone of technological integration, facilitating the seamless conduct of mediation sessions across vast distances. This eliminates the logistical hurdles associated with physical proximity, as parties can engage in mediation from disparate locations with the click of a button. By transcending geographical barriers, virtual mediation platforms not only reduce travel expenses but also alleviate time constraints, allowing parties to participate in mediation sessions without the need for extensive scheduling or coordination efforts. Moreover, the virtual format enables parties to engage in mediation from the comfort and privacy of their surroundings, fostering a more relaxed and conducive atmosphere for constructive dialogue and negotiation.

Furthermore, technological solutions such as algorithmic analysis and predictive modeling offer valuable decision-support tools for mediators. By leveraging advanced algorithms and data analytics, mediators can identify underlying patterns, assess the potential outcomes of different negotiation strategies, and explore creative solutions to complex conflicts. This analytical prowess enables mediators to make more informed decisions, anticipate potential

roadblocks, and tailor their approach to meet the specific needs and preferences of parties. By automating routine tasks and augmenting human capabilities, technology liberates mediators to focus on the substantive aspects of conflict resolution, thereby enhancing the quality and efficacy of the mediation process.

For example, consider a virtual mediation session mediated through a platform like Zoom. Parties involved in a complex commercial dispute spanning multiple jurisdictions can convene virtually, eliminating the need for costly and time-consuming travel arrangements. During the mediation session, mediators can utilize AI-driven decision-support tools to analyze voluminous documents, identify key issues, and propose innovative solutions tailored to the parties' interests. This collaborative approach enhances the efficiency and effectiveness of the mediation process, ultimately facilitating the resolution of disputes in a timely and cost-effective manner.

In essence, the integration of technology into mediation revolutionizes traditional practices, offering unparalleled convenience, cost-effectiveness, and scalability. By harnessing the power of virtual mediation platforms, algorithmic analysis, and predictive modelling, mediators can unlock new opportunities for creative problem-solving, enhance decision-making processes, and ultimately empower parties to resolve their disputes with greater efficiency and effectiveness.

CHALLENGES AND ETHICAL CONSIDERATIONS

The integration of technology into mediation brings about transformative potential, yet it also presents a host of challenges and ethical dilemmas that must be carefully navigated. Among these challenges, the paramount concerns revolve around data privacy and security, as well as the digital divide, both of which are critical to ensuring the integrity and fairness of the mediation process.

Data privacy and security are of utmost importance, particularly in the context of online mediation platforms where sensitive information may be transmitted and stored electronically. The confidentiality of mediation proceedings is a cornerstone of the mediation process, as parties must feel assured that their discussions and agreements remain private and protected. However, the digital nature of online mediation platforms introduces vulnerabilities, such as the risk of unauthorized access, data breaches, or cyberattacks. Safeguarding the confidentiality and integrity of mediation proceedings is therefore paramount to preserving trust among parties and ensuring the legitimacy of the process. Mediators and

platform developers must implement robust data encryption, access controls, and cybersecurity measures to mitigate these risks and protect the privacy of participants.

Moreover, the digital divide—the gap between those who have access to technology and those who do not—poses a significant barrier to equitable participation in technologically mediated mediation processes. Not all individuals or communities have equal access to the internet, computers, or digital literacy skills, thereby limiting their ability to engage in online mediation effectively. This disparity exacerbates existing inequalities in access to justice and undermines the principles of procedural fairness and equal treatment under the law. It is incumbent upon mediators, policymakers, and technology developers to address these disparities and implement measures to bridge the digital divide. This may involve providing access to technology resources, offering training and support in digital literacy skills, or developing alternative mediation formats that accommodate diverse needs and preferences.

For example, mediators can partner with community organizations or government agencies to establish mediation centres equipped with computer terminals and internet access for individuals who lack access to technology at home. Additionally, mediators can offer remote assistance and support to parties who require assistance navigating online mediation platforms or participating in virtual sessions. By actively addressing the digital divide, mediators can ensure that technologically mediated mediation processes are inclusive, accessible, and equitable for all parties involved.

In conclusion, while the integration of technology into mediation offers significant benefits, it also presents ethical challenges and considerations that must be carefully managed. By prioritizing data privacy and security, and addressing the digital divide, mediators can uphold the principles of fairness, transparency, and accessibility in technologically mediated mediation processes, ultimately fostering greater trust, confidence, and legitimacy in the mediation process.

FUTURE DIRECTIONS

As technology continues to evolve at an exponential pace, the future of mediation holds boundless possibilities for innovation and advancement. Emerging technologies such as augmented reality (AR), natural language processing (NLP), and decentralized autonomous organizations (DAOs) are poised to further disrupt and revolutionize traditional mediation practices, ushering in a new era of conflict resolution.

Augmented reality (AR) has the potential to transform the way parties interact and communicate during mediation sessions. By overlaying digital information onto the physical environment, AR technology can create immersive and interactive mediation environments where parties can visualize complex concepts, explore hypothetical scenarios, and collaboratively brainstorm solutions. For example, AR could be used to create virtual simulations of disputed properties or construction projects, allowing parties to assess potential design modifications or land use scenarios in realtime.

Natural language processing (NLP) holds promise for enhancing the efficiency and effectiveness of mediation proceedings by automating tasks such as document analysis, summarization, and translation. NLP algorithms can analyze written and spoken communication between parties, extract relevant information, and generate summaries or translations in multiple languages. This technology can help mediators quickly identify key issues, track the progress of negotiations, and facilitate communication between parties with different linguistic backgrounds or preferences.

Decentralized autonomous organizations (DAOs) represent a novel approach to governance and decision-making that could have profound implications for the field of mediation. DAOs are self-governing entities that operate on blockchain technology, enabling decentralized and transparent decision-making processes without the need for centralized authority or intermediaries. In the context of mediation, DAOs could be used to facilitate collective decision-making among parties, automate the execution of mediated agreements through smart contracts, and ensure the equitable distribution of resources or benefits among stakeholders.

Interdisciplinary collaboration between mediators, technologists, legal scholars, and ethicists will be crucial in harnessing the full potential of technology to address complex social, economic, and environmental conflicts. By bringing together diverse perspectives and expertise, interdisciplinary teams can develop innovative solutions that integrate technological tools with ethical principles and legal frameworks. For example, mediators could collaborate with AI researchers to develop advanced decision-support systems that prioritize fairness, transparency, and inclusivity in conflict resolution processes.

By embracing technological innovation responsibly and ethically, mediators can leverage the power of technology to foster greater understanding, empathy, and collaboration among parties in conflict. By providing parties with access to cutting-edge tools and methodologies, mediators can empower them to navigate conflicts more effectively and constructively, ultimately contributing to the realization of a more just and peaceful society.

CONCLUSION

In conclusion, the convergence of mediation and technology represents a paradigm shift in the field of conflict resolution, ushering in a new era of possibilities and challenges for practitioners, policymakers, and stakeholders alike. The integration of technology into mediation offers unprecedented opportunities to enhance the accessibility, efficiency, and efficacy of conflict resolution processes, ultimately empowering parties to navigate disputes more effectively and constructively.

By harnessing the transformative potential of technology, mediators can transcend traditional boundaries and overcome longstanding obstacles in conflict resolution. Virtual mediation platforms, online dispute-resolution mechanisms, and AI-driven decision-support systems provide innovative tools and methodologies to streamline mediation processes, facilitate communication, and foster creative problem-solving. These technological advancements enable parties to engage in mediation from anywhere in the world, reducing barriers to access and empowering them to seek resolution on their terms.

However, realizing the full benefits of technological integration requires a concerted effort to address ethical concerns, mitigate disparities, and uphold the principles of fairness, transparency, and accountability. Data privacy and security, algorithmic bias, and the digital divide are among the ethical challenges that must be carefully managed to ensure the integrity and legitimacy of technologically mediated mediation processes. Moreover, efforts to bridge the digital divide and promote digital literacy are essential to ensure equitable participation in technologically mediated mediation.

As we chart a course into the digital age, we must embrace technology as a tool for positive change and strive to create a world where disputes are resolved with dignity, respect, and mutual understanding. By fostering interdisciplinary collaboration, promoting ethical standards, and prioritizing the needs and interests of parties, we can harness the power of technology to transform conflict resolution and build a more just and peaceful society for generations to come. Let us seize this opportunity to leverage technology as a force for good, advancing the cause of justice and reconciliation in an increasingly interconnected world.

Challenges and Innovations in Mediation

~ MANISHA KARIA



MANISHA KARIA
BIMS Regional Director (India)
Accredited Mediator BIMS
Advocate-on-Record
Supreme Court of India

“Peace does not mean an absence of conflicts; differences will always be there. Peace means solving these differences though peaceful mean through dialogue, education, knowledge and through humane ways”

.....Dalai Lama

The very same philosophy is accepted and followed in mediation process and hence there are several challenges and need of innovative humane methods in fast evolving society to overcome changing scenarios to mediate and resolve.

Informal nature and confidentiality:

Considering informal nature of mediation there are apprehensions as to confidentiality, fairness, and

outcomes of mediations. As the mediation is voluntary it is most important to enforce confidence in parties to opt for mediation for resolution. The informal nature of the process has its own advantages to connect with parties and making them comfortable etc but at the same time it brings up other challenges and mediators / legal advisors must be very mindful about boundaries to make the keep the mediation process successful.

Public awareness and role of advisors:

There is lack of public awareness as to the process and benefits of mediations. Despite several legislations across the countries directly and/or indirectly recognizing, recommending and even mandating medication for dispute resolution there is lack of awareness. Combined efforts by executives and legal fraternity including bar and bench can help overcoming major challenges about the objectivity of process and advantages. The legal advisors play significant role to bring parties to the mediation forum that is where the main problem is resolved.

Voluntary process challenges:

Major challenge is to get parties to an agreement to mediate as it is a voluntary process. Hence getting proper advice and motivation to choose mediation for resolution than any other legal forum is crucial. This will be easy to achieve by identifying distinctive incentives to the parties and advisors involved. Though some statues across world have adopted

mandatory mediation before initiating legal proceedings in court but that appears to be taken as formality and success rate adopting this method and resolving is marginally low. Hence the encouragement to parties for selecting mediation voluntarily is the solution and way.

Online mediations:

Post covid there has been trend of online mediations, and this is most viable option to get parties together from different locations to make it more cost effective and provide easy access to expert mediators. The primary issue that online platforms need to address is confidentiality. It is also an added challenge that there are limited secure servers which can be used for online mediation and equal availability of technical facilities as well as internet support also pose a challenge in remote areas. The online mediation hence is only for a selective class of society who has technical support and knowledge. Therefore, it's always a matter of striking a balance between humane touch and benefits of technology while mediating.

The rise of online mediation platforms and their role in making mediation more accessible and convenient. The use of technology in mediation is becoming increasingly prevalent and for good reason, technology can make mediation more efficient, cost-effective, and accessible while also providing a more comfortable and constructive environment for parties to communicate and negotiate. Online mediation platforms, video conferencing, electronic document management, and AI-assisted mediation are just a few examples of how technology is transforming the mediation process. As technology continues to evolve, it will enhance the effectiveness and efficiency of mediation.

AI-driven virtual mediation platforms leverage VR technology to create immersive environments where parties can engage in mediation sessions remotely. These platforms can simulate physical spaces, such as conference rooms or courtrooms, and provide interactive tools for visualizing evidence or demonstrating proposed solutions. Predictive Analytics AI algorithms can analyse historical mediation data to predict the likelihood of successful outcomes based on various factors, such as the nature of the dispute, the background of parties involved, and the mediator's approach. This information can help mediators tailor their strategies to improve the chances of reaching mutually satisfactory agreements.

Uncertainty of Enforcement:

Many domestic legal systems are still unfamiliar with mediation. As a result, if the determination of a particular model of invocation and enforcement of a mediated settlement agreement were left to the contracting states, it would lead to a great deal of uncertainty with respect to an effective application of the Convention in all jurisdictions. The absence of a

clear mechanism would cause practical difficulties in jurisdictions in which the enforcement of mediated settlement agreements and more broadly, mediation as an alternative dispute settlement mechanism – are not specifically recognised in the domestic legal system. In a survey conducted in 2016–2017, the absence of a cross-border mechanism for enforcement of mediated settlement agreements was cited by many stakeholder groups as the main shortcoming that should be addressed in commercial dispute resolution. Parties often voluntarily abide by the terms of the settlement agreement resulting from mediation, but there are times when they fail to do so. It is imperative to have an enforcement mechanism in place in these instances.

Lack of Infrastructure & training:

Mediation is an emerging process that requires good training and upgradation of the trainers and mediators to evolve the mechanism. In many jurisdictions there is a lack in infrastructure and professional training for mediators in highly technical areas. The mediators should undergo training from competent trainers with experience and expertise in the field. While accreditation is crucial to assist judges in selecting mediators or for court-connected mediation centres to form panels, it may not need to be mandatory for all types of mediation. Accreditation should primarily serve as a means of signalling quality to parties interested in mediation. There should be a deliberate initiative to create and develop mediation institutions and training centres, mirroring the existing structures (found in the field of arbitration) throughout centres located in different cities based on the size of the population. This effort aims to enhance and formalize the practice of mediation, fostering a comparable level of expertise and support that is currently present in arbitration.

One of the major problems is of adequate budget for running and establishing the mediation centres. The establishment and maintenance of mediation centres needs a robust budget allocation covering various aspects such as training, honorarium, basic infrastructure facilities, and public awareness campaigns. The adequate funding ensures the provision of high-quality training programs for mediators, fair compensation for their services through honorariums, as well as the establishment and upkeep of essential infrastructure to facilitate mediation sessions effectively.

Cultural differences:

The Cultural issues significantly impact the dynamics of mediation. The outcomes of mediation can vary widely due to cultural differences, with each culture having distinct values and beliefs that influence the way conflicts are perceived and resolved. The mediators must navigate these cultural nuances skilfully, drawing on additional expertise to facilitate a

resolution that respects and incorporates diverse perspectives, different communication methods, deeply rooted in the historical development, legal systems, and ethnic backgrounds of each jurisdiction. All these pose a considerable challenge during cross-cultural mediations.

Co-Mediation and Multidisciplinary Approaches:

Highlights the benefits of involving multiple mediators from different backgrounds or disciplines to provide diverse perspectives and expertise. Mediators often contend with the concept that a limited segment of practitioners are best qualified to mediate or that mediators should be experts on the subject of dispute. Restricting mediation to only one category of practitioner excludes a wealth of talent from applying unique skills to the process. Stewart Levine, Esq., in a Department of Energy teleconference, succinctly rejects such exclusion: "The more people we can engage in the tools and skills of conflict resolution, the better for all." Therefore, mediators from different professional backgrounds should be trained and included in the mediation processes. This in turn would ensure unique and innovative approaches to mediation which would in turn help in resolving highly technical matters with the help of industry experts and practitioners in their respective fields.

Enhanced Communications through social media and Utilising Geographic Information Systems for cross border disputes:

Mediators and their teams can use different social media tools and applications to support analysis, can strengthen channels for engaging with the parties in conflict, foster greater inclusivity with the community at large and strengthen public communications strategies. The use of social media in cases of violence and similar circumstances, where tensions are fuelled through social platforms, can be managed effectively via the use of social media by mediators.

In international cross border mediations, social media can serve as a valuable tool for understanding the underlying issues and identifying effective strategies for resolution. However, the volume of misinformation can be a challenge for the dispute resolution, hence the information should be filtered after which it can be analysed.

Further, additional technological tools like Data analytics and Geographical information system (GIS) can also be a great source for analysis of disputes across the world. Geographical Information System are tools which store, analyse and present the data in a map format, this data is gathered through satellite imaging and further cross referenced with other available data; this is utilized by mediators to get accurate information that can

be utilized by the mediators to monitor situation while interacting with the conflicting parties. For example: To mediate between two independent countries locked in disputes related to water sharing or territorial jurisdictions.

Digital maps have also been successfully integrated into the practice by many mediation teams to monitor real time developments on the ground, including violent incidents, movements of troops, and movements of civilian populations. The correct use of these technologies can help the mediator to study the patterns and help the mediator in taking instant decisions regarding conflicts.

Conclusion:

Navigating the myriad challenges and embracing innovations in mediation is paramount to advancing the effectiveness and accessibility of the mediation process. By recognising and actively engaging with these challenges, mediators can help in developing a more transparent, responsive, and inclusive system of mediation.

Challenges in mediation cannot be simply resolved by incorporating small changes in the system, it needs to be completely revolutionised and rehailed with the help of all stakeholders involved with changing problems in new era. Technology and training are only tools, they require human empathy and acceptance to make mediation easily accessible to the general population.

Utilizing a blend of technology, human sensitivity, and innovations we can develop a unique system of alternative dispute resolution that can be accessible to everyone and minimize the long pending litigations.



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