

ROLE OF UNIVERSITIES IN CONSUMER ONLINE MEDIATION

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ABSTRACT

The mediation movement has developed from a mere private business to being an integral part of the judicial structure. While the judiciary has embraced the process of mediation through court-annexed and court-referred mediations, private mediations are largely held by business organisations, consumer associations, non-profit bodies, governmental agencies and international organisations. Law Schools across the world have also been active participants in supporting and encouraging mediation as an alternate to dispute resolution. Online mediation has emerged as a technology equivalent to the traditional mediation mechanisms. The article brings forth the role played by universities in the development and application of mediation as a conflict resolution process. The article begins with comprehending the need for online mediation in conflicts relating to business-to-consumer transactions. The article further expands to explore the different forms of online mediation tools for assisting the process of mediation. Though the objective of the article is not to weigh the advantages and disadvantages of online mediation, the article attempts to bring forth some of the legal and technical challenges in making online mediation an effective tool to resolving consumer disputes. The last part of the article discusses the ways in which universities and education centres across the world have contributed towards dispute resolution through the mediation tool.

INTRODUCTION

Alternate dispute resolution (ADR) is a term used to refer to different methods of dispute resolutions that the parties can resolve, with or without the help of a neutral third party. It primarily involves arbitration, negotiation,

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mediation or a combination of the three. ADR is a less formal mechanism of dispute resolution, which is based on a voluntary co-operation between the conflicting parties. In general, the process involves appointment of a neutral third party who facilitates communication between the parties to the dispute, assists them on concentrating on core issues of the disagreement and attempts to get the parties reach a workable solution. ADR has become a much sought after alternative method of dispute resolution in commercial disputes, both in the domestic and international realm.

In India, Alternative Disputes Resolution has been statutorily recognized by the Civil Procedure Code (Amendment) Act, 1999 under Section 89 thereto. Arbitration and Conciliation Act 1996, makes elaborate provisions for mediation/conciliation of disputes arising out of legal relationship, whether contractual or not, and to all proceedings relating thereto. Enumerating matters that are suitable for Alternate Dispute Resolution (ADR), the Supreme Court of India in *M/s Afcons Infra Ltd. v. M/s Cherian Varkey Construction Company Ltd. and Others*,¹ held that all consumer disputes including disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity can be referred to ADR.

In view of the above, the need for mediation in the consumer context in India has been recognised under the proposed Consumer Protection (Amendment) Bill, 2014, which has introduced Court-annexed mediation in consumer cases, to resolve disputes through mediation either at the commencement of proceeding before the Consumer Forum or at any time during the proceeding.² Mediation as a conflict resolution mechanism is known in its many forms since ages. The non-adversarial approach adopted by mediation to problem solving is what makes it different from a litigation based method, which involves a detrimental process of dispute resolution.

1 *M/s Afcons Infra Ltd. v. M/s Cherian Varkey Construction Company Ltd. and Others*, Civil Appeal No.6000 of 2010, available at <http://indiankanoon.org/doc/1875345/>, (last visited on April 24, 2015).

2 Consumer Protection (Amendment) Bill, 2014, Chapter V.

Ancient Indian Jurist Patanjali said, “*Progress comes swiftly in mediation for those who try hardest, instead of deciding who was right and who was wrong.*” Abraham Lincoln encouraged peace-making in the following words: “*Discourage litigation. Persuade your neighbours to compromise whenever you can... the nominal winner are often the real loser in fees, in expenses and waste of time.*”

Article 3(a) of the European Union (EU) Directive defines mediation as -

“Mediation means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.

It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in question.”³

Mediation is not only good in terms of attempting a mutual understanding between parties to address concerns, but also has great potential to preserve enduring business relationships. Sustainable relationship is an important factor in all business practices, more so in business-to-consumer (B2C) relations. As in the words of Mahatma Gandhi, a consumer is the purpose of business. In a B2C transaction, disputes often arise from the side of the consumer being at the receiving end of the goods or services in a personal capacity.⁴ There is more potential to a business acting in professional

3 European Commission, Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters,(2008), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=en>,(last visited on April 29, 2015).

4 Pablo Cortés , “*Online Dispute Resolution Methods for Settling Business to Consumer Conflicts*”, p.151, available at <http://www.mediate.com/pdf/cortes.pdf>, (last visited on April 20, 2015).

capacity to abuse its dominant position as against the buyer who is a weaker party to the transaction. Whenever a consumer dispute arises, consumer is focused on exercising his consumer rights in a quick and economic way. At the same time, the business is interested not only in expeditiously resolving the dispute, but also maintaining their reputation and goodwill. The application of mediation to such consumer related disputes can be advantageous to both parties in terms of problem solving and sustainable relations. Mediation also acts as an evaluative tool to enable parties to factually and legally evaluate their dispute and assess the potential legal outcomes.

Going a step further in finding innovative ways to quick and easy dispute settlements, Online Dispute Resolution (ODR) has emerged as a branch of dispute resolution, which is the online equivalent of Alternative Dispute Resolution mechanism. ODR involves use of Information and Communication Technology (ICT) to facilitate grievance settlement between parties. Hence, ODR involves the carrying out of most of the dispute resolution procedure online, from filing of complaint, appointment of neutral third party, evidentiary procedures, hearings or negotiations, and rendering of final award/binding settlements. The Online Dispute Resolution service may be processed utilizing email, chat or messaging software, audio-conferencing or video-conferencing software for communication or such other automated systems like blind-bidding between the arbitrator/mediator and the parties.

Consumerism in the digital age has acquired an altogether different landscape, with the use of Information and Communication Technology (ICT) being used not only for the purpose of carrying out electronic transactions, but also has a burgeoning application in terms of dispute resolution. Online dispute resolution (ODR) in the consumer context refers to settlement of consumer related disputes by the use of ICT tools employed by business and consumer in resolving dispute.

The United Nations Commission on International Trade Law (UNCITRAL) ODR Working Group defines ODR as “ [...] means online dispute resolution which is a mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology”, and an ODR platform is defined as “[...] a system for generating, sending, receiving, storing, exchanging or otherwise processing electronic communications used in ODR, and which is designated by the ODR provider in the ODR proceedings”. ODR provider is defined as “[...] means the online dispute resolution provider specified in the dispute resolution clause referring disputes to online dispute resolution under these Rules. An ODR provider is an entity that administers ODR proceedings [and designates an ODR platform], whether or not it maintains an ODR platform.⁵ With the enactment of Information Technology Act, 2000 in India, e-commerce and e-governance have been given a formal and legal recognition in India.

Such online methods of dispute resolution can be especially beneficial to millions of everyday consumer disputes involving small claims with parties often located at far-off distances and who look for a cost-efficient way to resolve the dispute. For instance, the PayPal online dispute resolution centre acts as a neutral third party in resolving consumer issues by enabling the parties to first negotiate and on failure to adjudicate their disputes.⁶ The application of such alternative techniques is however only to supplant and not supplement the existing legal dispute resolution process.⁷ All that alternate dispute resolutions such as mediation can do, if applied in the early stages, is to avoid complaints escalating to disputes.

Mediation as a form of ADR (and ODR) has emerged in various forms such as entrepreneurial start-up companies, law firms, consumer

5 United Nations Commission on International Trade Law, Report A/CN.9/WG.III/WP.123, 19, (2013), available at www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html, (last visited on April 23, 2015).

6 Dispute Resolution and Claims Management for Buyers, available at <https://www.paypal.com/in/webapps/mpp/buyer-dispute-resolution>, (last visited on April 25, 2015).

7 *Food Corporation of India v. Joginder Pal*, AIR 1989 S.C.1263.

organisations, court-annexed mediation centres, government and international organisations such as International Consumer Protection and Enforcement Network (ICPEN) and European Consumer Centres Network (ECC-Net). Apart from these actors, universities also play an integral role in consumer mediation in several ways from conducting training programmes for mediators, progressive research opportunities in Mediation and Consumer Mediation Clinics which actively participate in providing mediation services. Such university established mediation centres serve both in terms of academia and meeting the social needs.

This article begins with an understanding of the need for online mediation in consumer disputes in the digitised environment and the prevalent online mediation methods in practice. The article further expands to examine the legal and technical challenges involved in such technology assisted dispute resolution. The article lays special emphasis on exploring the ways in which Universities who have launched online dispute resolution have contributed to dispute settlement.

NEED FOR ONLINE MEDIATION

Mediation as a dispute settlement system is established in its many forms since times immemorial. Indian history reveals various participatory and voluntary methods of dispute resolution, which have been the founding principles to modern mediation. For instance, the Panchayat systems which was widely adopted in villages, involved five wise men who were recognised and accepted as arbitrators or mediators.⁸ Lok Adalat system, earlier adopted by the tribal, provided a system where litigants could resolve their disputes early and affordably, which was eventually promoted as a legal mechanism under the Legal Services Authority Act, 1987. Buddhism propounded mediation as the wisest method of resolving problems. In the words of Mahatma Gandhi - "*I realized that the true function of a lawyer*

8 Mediation Training Manual of India, Mediation and Conciliation Project Committee, Supreme Court of India, p.2, available at <http://supremecourtindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf>, (last visited on April 20, 2015).

was to unite parties given as under. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul.”

A 2014 statistical report reveals that there are 243 million Internet users in India and India ranks third among the country’s share of the world internet users.⁹ To boost digital power further, the “Digital India” Programme, approved by the Hon’ble Prime Minister Narendra Modi in August 2014 aims to transform the country into a digitally empowered society and knowledge economy. Among the visions areas in terms of infrastructure, the programme aims at providing high speed internet access to all upto Grama Panchayat levels. The programme also aims at digital empowerment of citizens and emphasises need for universal digital literacy.¹⁰ With the developments of ICT infrastructure at such grassroot level, it will be possible for a common consumer to access to online mediation from any corner of the country. This would specially benefit farmers and self-employed consumers to resolve their disputes from their respective towns and villages, instead of having to travel each time to reach the nearest consumer Redressal agency.

Preamble (6) of the EU DIRECTIVE on certain aspects of mediation in civil and commercial matters¹¹ provides a useful description as to the need for mediation, which reads as follows.

“(6) Mediation can provide a cost-effective and quick extrajudicial resolution of disputes in civil and commercial matters through processes

9 *Internet Live Stats*, (2014), 2014 List of Countries by Internet Usage (table), available at <http://www.internetlivestats.com/internet-users/>, (last visited on April 26, 2015).

10 Press Release of Press Information Bureau Government of India Cabinet, “*Digital India – A Programme to Transform India into Digital Empowered Society and Knowledge Economy*”, (August 20, 2014), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=108926>, (last visited on January 10, 2015).

11 European Commission, Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, (2008), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0052&from=en>, (last visited on April 29, 2015).

tailored to the needs of the parties. Agreements resulting from mediation are more likely to be complied with voluntarily and are more likely to preserve an amicable and sustainable relationship between the parties. These benefits become even more pronounced in situations displaying cross-border elements.”

Complaints that may be referred to mediation are broadly classified into two kinds-

- a. Private Mediation – In private mediation, the parties to the dispute agree to appoint a qualified mediator and resolve their dispute as an alternative to litigation.
- b. Court-Referred/Court–Annexed Mediation – This form of mediation refers to disputed complaints brought before the Court of law. In a court-referred mediation, the Court merely refers the matter or part of the matter to a mediator whereas in case of court-annexed mediation, mediation services are provided by the Court as part and parcel of the judicial system. Such matters may be referred to mediation at any stage of the proceedings.

Today, online purchase of goods and services are as much a preferred mode of procurement as much as offline transactions. Use of the new technology and its proliferation in the global market has opened up a Pandora’s Box of legal issues. It is, no doubt, convenient for a consumer to procure goods/services from any corner of the world at the click of a mouse in an internet driven market. But it may be inconvenient or impractical for the consumer to resolve disputes arising out of such transaction considering factors such as cost and time involved in settlement, jurisdiction and other prohibitive factors. In such situations, the consumer may be left without a remedy despite there being an effective Consumer law to protect his interests. Mediation is seen as a preferred Redressal mechanism than Arbitration in consumer disputes because unlike in arbitration, mediation

is much less formal in terms of applicable law, place of arbitration and enforceability of awards.¹²

Other factors that make online mediation an effective tool to consumer protection include confidentiality, flexibility, economy and elimination of jurisdictional issues.

MODES OF ONLINE MEDIATION

The tech-savvy generation is continuously developing new technologies to automate various functions of the judicial system from electronic filing of complaints, electronic documentation, case tracking etc. to make dispensation of justice more effective. Likewise, the less formal mediation has also embraced several modalities of technology based tools to resolve disputes. In ODR, the information management is not only carried out by physical persons but also by computers and software. The assistance of ICT has been named by Katsh and Rifkin as the “fourth party” because ODR is seen as an independent input to the management of the dispute.¹³ In addition to the two (or more) disputants and the third neutral party, the labelling of technology as the fourth party is a clear metaphor which stresses how technology can be as powerful as to change the traditional three side model. The fourth party embodies a range of capabilities in the same manner that the third party does. While the fourth party may at times take the place of the third party, i.e. automated negotiation, it will frequently be used by the third party as a tool for assisting the process.¹⁴ The fourth party is engaged in various activities such as to organize information, send automatic responses, shape writing communications in a more polite and

12 *Mirèze Philippe, “ODR Redress System for Consumer Disputes - Clarifications, UNCITRAL Works & EU Regulation on ODR”, International Journal of Online Dispute Resolution, Eleven International Publishing, Volume 1, Issue 1, (2014), p. 69, available at http://www.international-odr.com/documenten/ijodr_2014_01_01.pdf, (last visited on March 15, 2015).*

13 *Ethan Katsh, and J. Rifkin, J., “Online Dispute Resolution: Resolving Conflicts in Cyberspace” (San Francisco, Jossey-Bass), (2001).*

14 *Ethan Katsh and Leah Wing, “Ten Years of Online Dispute Resolution (ODR): Looking at the Past and Constructing the Future”, p.31, 38 University of Toledo Law Review, 101 (2006).*

constructive manner e.g. blocking foul language etc. Techniques of online mediation differ based on their level of automation.

Some of the common modes of Online Mediation are –

- (i) **Web-enabled Mediation** - This form of online mediation involves use of websites, email, chat rooms and social media as “fourth party” to enable parties to the mediation to resolve their disputes. Typically, a party contacts the ODR service provider through any of the above modes and fills out an online form that identifies the problem and possible resolutions. A qualified mediator then reviews the online form and contacts the other party to check if they will participate in the mediation. If the other party agrees to participate, they are allowed to either fill out their own form or respond to the initial form through e-mail or such other recommended communication within a stipulated period. This initial exchange of views may help the parties to understand the dispute and possibly reach an agreement. If the dispute remains unresolved, the mediator will work with the parties to help determine issues, articulate interests, and evaluate potential solutions. The ODR provider may allow the parties to choose any of its online infrastructures such as chat conference rooms or video conferencing to allow the parties to dispute and the mediator to carry out the mediation procedure.¹⁵ Web Mediate is an ODR project managed by The Conflict Information Consortium, University of Colorado, USA, that adopts assistance of professional mediators and arbitrators apart from new techniques of online mediation.¹⁶ Similarly, Consumer Online Resource and Empowerment

15 Joseph W. Goodman, “*The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites*”, pp. 5-6, 2 *Duke Law & Technology Review* 1-16 (2003), available at: <http://scholarship.law.duke.edu/dltr/vol2/iss1/2>, (last visited on April 29, 2015).

16 Online dispute resolution services of Beyond Intractability, available at <http://www.beyondintractability.org/internal-biblio/20019>, (last visited on April 30, 2015).

Centre (CORE) in India provides for an online complaint registration and mediation mechanism, where consumers can log on their complaints through their website or seek Redressal by using a toll-free helpline. Credit Information Bureau (India) Limited (CIBIL) adopts a similar technique to enable consumers settle any discrepancy with respect to their credit information report (CIR), which plays an important role in loan application process.¹⁷

- (ii) **Automated Negotiation** – This form of mediation involves a process where the online service provider provides for algorithm based negotiation between the parties. Such techniques are considered appropriate where factors relating to the dispute can be easily quantified, for instance monetary settlement. Here, the website serves as a neutral ground for settlement offers. The aggrieved party initiates a claim by logging onto the secured service of the website. The service then emails the other party about the settlement offer, where the party can either accept or declines to participate. If the party decides to participate, he or she logs onto the website and submits a demand. Computer software automatically compares the demand with the settlement offer and emails both parties to let them know whether they are within the “range” of settlement or whether there has been any movement towards settlement. Such ODR services are also called “blind-bidding” services. There are two forms of automated negotiation, Double Blind Bidding, which is a method for single monetary issues between two parties, and Visual Blind Bidding, which can be applied to negotiations with any number of parties and

¹⁷ Dispute Resolution Process at CIBIL, available at <https://www.cibil.com/dispute-resolution>, (last visited on April 30, 2015).

issues. *Smartsettle*¹⁸ is an online negotiation website which provides for visual bling bidding.

- (i) **Assisted Negotiation** – ODR mediators such as Square Trade adopt such techniques, wherein the parties in the initial stages of settlement attempt to reach an agreement by communicating directly through the negotiation tool, which is completely automated and usually free of cost. If the parties fail to resolve the issue, then they have an option of requesting for assistance of a qualified web mediator who facilitates discussion between parties to reach a solution. This process could be defined as “mediated negotiation”.
- (ii) **Crowdjustice** – This is a new form of Online Dispute Resolution which is an alternative to small claims court, allowing disputants to create video arguments for the Internet public to vote on the outcome. Ujud (pronounced “you judge”) is a patent pending online alternative to small claims court that allows parties to a small claims case to create their arguments on video and upload them to the Ujud web site¹⁹ for the Internet public to vote on the outcome. Parties to a case, known as Claimant and Respondent, agree, through an electronically signed contract, to be bound by the final outcome determined by a jury consisting of the Internet public. Registered users select from all open cases, view the video arguments of the Claimant and Respondent, and then cast their vote on a sliding scale from 0% to 100%, which represents the amount that the user feels should be awarded based on the amount claimed by the Claimant. This vote is added to all other votes on the case and upon case expiration, an average vote is calculated

18 Smartsettle Online Negotiation System, available at <http://www.smartsettle.com>, (last visited on April 30, 2015).

19 Crowdjustice – The New Social Way to Resolve Disputes, available at <http://www.ujud.org/>, (last visited on April 23, 2015).

from all votes received. This average is then multiplied by the amount claimed to determine the final award.

CHALLENGES IN ONLINE MEDIATION

Technological advancements have made online mediation increasingly popular. Business houses, consumer activists, government and international bodies are increasingly taking on to such technology-driven negotiations and mediation in settling commercial disputes. The benefits of online mediation such as flexibility and cost and time efficacy have thus far made this dispute resolution mechanism successful. Notwithstanding the need for online mediation in the cyber marketplace, the dispute resolution mechanism also has certain legal and technical disadvantages.

4.1. LEGAL CHALLENGES

- 1. Evidence of Agreement:** Participation in ODR is a purely voluntary act between parties to the dispute. However, in B2C transactions, clause relating to dispute resolution is dormant in the lengthy terms and conditions, which the consumer is forced to accept. In such circumstances, engaging in ODR on the part of consumer may be unfair and counter-productive.²⁰ Often, ODR providers also ignore to check if the consumer has made an informed choice by agreeing to the ODR. There are also no standard procedures or guidelines for ODR providers to evidence that the parties voluntarily submit to mediation. The impersonal nature of online mediation can throw up challenges to both validity and enforceability of settlements in consumer disputes.
- 2. Transparency:** Online mediation also suffers from lack of regulation on disclosure aspects on the part of online mediation service providers, which is an integral part in the conduct of ODR. ODR providers disclose sufficient information about the services they offer, but there are concerns about neutrality and fairness of ODR processes. There

²⁰ Rafal Morek, “*Regulation Of Online Dispute Resolution: Between Law And Technology*”, pp.66-67, (August 2005), available at www.odr.info/.../Regulation%20of%20ODR_Rafal%20Morek.doc, (last visited on April 20, 2015).

are no uniform standards with respect to disclosure of neutral third parties associated with the ODR and the extent of neutrality. Consumers International 2001 Report has found that most online ADR sites do not give adequate assurance of impartiality of their services.²¹ Where the business hires the service of an ODR provider for settlement of consumer dispute, it is quite possible that the ODR provider may be biased to the business than considering the interest of consumer. Adequate disclosure standards in terms of the structure of ODR provider, fee structures, associated neutral third parties, modalities of online mediation develops confidence among consumers and help them make informed choice of the proceeding.

- 3. Security and Confidentiality:** The use of cyberspace in online mediation raises important concerns about data security and confidentiality throughout the entire process of mediation and henceforth. Sensitive information exchanged between parties to mediation is highly susceptible to interception. Security in online mediation also depends on the extent of data protection law of the country from which the ODR provider operates. If the ODR provider is physically located in a country with inadequate data protection laws, both consumers and business may suffer. Uniform standards in encryption of electronic records and emails, password protocols, privacy policies, protection and disposal of archived electronic database and security of physical and cloud servers need to be set up to make online mediation a secured platform for dispute resolution. The ODR provider needs to ensure Confidentiality guarantee not only with respect to the mediation tool adopted but also the neutral third party who acts as a mediator through such ODR.

21 Consumers International “*Disputes in Cyberspace 2001: Update of Online Dispute Resolution for Consumers in Cross-Border Disputes*”, (2001) ; M. Conley Tyler and Di Bretherton “Seventy-six and Counting: An Analysis of ODR Sites”, (2003) Report of Research Conducted for the Department of Justice, Victoria, Australia, in Pablo Cortés, “Online Dispute Resolution Methods for Settling Business to Consumer Conflicts”, p.156, available at <http://www.mediate.com/pdf/cortes.pdf>, (last visited on April 20, 2015).

- 4. Consumer Education and Awareness:** Internet access has grown at an exponential rate in the recent years. A large segment of the consumers have become frequent users of the Information superhighway in their everyday transactions. But consumer awareness and education on online mediation is still at a nascent stage. It may also disadvantageous to consumers who are less familiar with computers and their use.

Education is integral to participation. The availability of online mediation as an alternate dispute resolution should be brought to the consumers' attention in an effective way. Businesses opting for such ODR could also provide for hyperlinks on their main page about the dispute resolution mechanism adopted.

4.2. TECHNICAL CHALLENGES

- 1. Capacity to handle extensive documentation:** With the growth in popularity of online mediation, ODR providers may face with the challenges of handling big data. Appropriate software tools and server space are a pre-requisite for the mechanism to handle large volumes of disputes. Existing ODR models such as Square Trade have demonstrated large number of consumer complaints filed each day. Unless the technological infrastructure is strong enough to handle and manage such big data, online mediation can result in failure.
- 2. Accessibility:** Challenges with respect to accessibility may be of two kinds – one internet accessibility to those consumers who purchase goods/services both in the online and offline transactions. Not all consumers who purchase through the conventional brick-and-mortar route may have accessibility to the internet to resolve disputes through online mediation. Secondly, continuous usage of internet through the entire dispute resolution process which may run for several hours or days can be another challenge to accessibility of technology in Online Mediation. Lack of audio or visual clarity also cause inconvenience to the parties and discourage them to resort to such techniques of dispute resolution.

- 3. Programme Errors:** Software programmes are not free of errors and bugs right from the time of its construction, which are often hidden in the programme. Failure of online mediation due to such errors can be another challenge to the online mediator. Often the software tool of the ODR provider is controlled and maintained with an outsourced entity. Hence, liability of ODR provider in case of such technical errors needs to be addressed.

ROLE OF UNIVERSITIES IN ONLINE MEDIATION:

The Mediation movement has developed from a mere private business to being an integral part of the judicial structure. While the judiciary has embraced the process of mediation through court-annexed and court-referred mediations, private mediations are largely held by business organisations, consumer associations, non-profit bodies, governmental agencies and international organisations. Law Schools across the world have also been active participants in supporting and encouraging mediation as an alternate to dispute resolution. Some of such programmes include certified training for lawyers, law students and non-lawyers on alternate dispute resolution, scholarly research in the field of mediation and other ADR, providing state-of-the-art infrastructure for the conduct of mediation and even mediation services through different forums.

The Programme of Negotiation²² (a university consortium of Harvard University, Massachusetts Institute of Technology and Tufts University), The Negotiation and Mediation Program of Gould Negotiation and Mediation Program, University of Stanford²³ and the UTS Dispute Resolution program, offered by Department of Technology, University of Sydney²⁴ are some of the training programmes conducted by Universities

22 Programme of Negotiation, available at <http://www.pon.harvard.edu/about/>, (last visited on May 02, 2015).

23 The Negotiation and Mediation Program of Gould Negotiation and Mediation Program, available at <http://www.law.stanford.edu/organizations/programs-and-centers/gould-negotiation-and-mediation-program>, (last visited on 02/05/2015).

24 UTS Dispute Resolution Program, available at <http://www.uts.edu.au/future-students/find-a-course/courses/c04145>, (last visited on May 1, 2015).

in a range of non-adversarial conflict resolutions including mediation and negotiation.

Oxford Mediation is a panel of experienced dispute resolution professionals who provide mediation services both nationally and internationally. The Mediation Centre comprises of accredited panellists with many years' experience of commercial, employment and workplace disputes.²⁵ The Lodestar Mediation Clinic, set up by the Sandra Day O' Connor College of Law, Arizona State University, is an integral component of the nationally recognized Lodestar Dispute Resolution Program. The Programme helps students gain expertise about the theory, strategy and skills involved in alternatives to litigation and gain practical experience about the mediation process. Practical assignments primarily are serving as a co-mediator in the County Justice Courts, observing professional mediations, or participating in other dispute resolution programs on and off campus.²⁶

The University of Hertfordshire, UK provides for hire a state-of-the art mediation centre, with fully equipped meeting rooms to host mediation.²⁷ The University also offers post-graduate programmes in the area of Mediation to be qualified Members of the Hertfordshire Mediation Centre's Civil Mediation Council Accredited panel of professional Mediators. The School also offers the necessary period of work experience to successful graduates, so as to enable them to become fully accredited members of the Civil Mediation Council.

The Mediation Clinic at the University of Houston provides trained student mediators to the Justice Courts in Harris County. Students mediate consumer issues, landlord/tenant disputes and breach of contract cases while developing their mediation and communication skills. Students also

25 Oxford Mediation, available at <http://www.oxford-mediation.com/>, (last visited on May 1, 2015).

26 The Lodestar Mediation Clinic, available at <https://www.law.asu.edu/clinics/theclinicalprogram/lodestarmediationclinic.aspx>, (last visited on April 29, 2015).

27 Mediation Centre at the University of Hertfordshire, available at <http://www.herts.ac.uk/apply/schools-of-study/law/hertfordshire-mediation-centre/costs-and-service-types>, (last visited on April 30, 2015).

serve as court-appointed mediators in small claims court or as mediators at the Greater Houston Better Business Bureau (BBB). In some of the cases, attorneys represent parties. Students are observed by a faculty member and given periodic feedback. The classroom component of the Mediation Clinic provides students with mediation training, scheduling into courts and the BBB, discussion of cases mediated and 40 hours of mediation certification training.²⁸

The George Washington University, Washington D.C was the first, and for 20 years the only, law school alternative dispute resolution clinic in Washington, D.C. The law school has a dedicated Consumer Mediation Clinic, where students act as neutral third-party mediators who assist local consumers and businesses in resolving disputes by negotiating mutually agreeable settlements. Students perform case intake, provide information and referrals, and mediate assigned cases involving a wide variety of consumer issues (debt collection, credit problems, defective goods and services, home improvement contracts, etc.). Students also develop and apply negotiation and mediation skills and learn about federal and local consumer laws.²⁹

Mediation Clinic at Canterbury Christ Church University, UK offers professional dispute resolution service to support local needs. The Mediation Clinic works in partnership with accredited mediators who have been trained by organisations recognised in the UK by the Law Society and Bar Council. The Mediation Clinic is a registered member of the Civil Mediation Council and the National Mediation Providers Association. The Mediation Clinic handles disputes arising from within the university, between students, staff and colleagues; commercial and business disputes; community based

28 Mediation Clinic at University of Houston, available at <https://www.law.uh.edu/clinic/mediate.asp>, (last visited on April 28, 2015).

29 Consumer Mediation Clinic , George Washington University, Washington D.C, available at http://www.law.gwu.edu/Academics/EL/clinics/Pages/Consumer_Mediation.aspx, (last visited on April 30, 2015).

disputes; family disputes and small claims disputes. Personal injury and clinical negligence is another area of mediator specialism.³⁰

Mediation in Singapore is largely institutionalised. The two main categories of mediation include court based mediation and private mediation. Court-based mediation takes place in the courts after parties have commenced litigation proceedings. This is mainly carried out by the Subordinate Courts and is coordinated by the e@dr centre, also known as the Primary Dispute Resolution Centre (PDRC). Private mediation is spearheaded and mainly carried out by the Singapore Mediation Centre (SMC), a non-profit company limited by guarantee of the Singapore Academy of Law.³¹ The Singapore Mediation Centre, in association with Singapore Academy of Law, provides for ADR services and ADR training. The Centre promotes Singapore as a centre for mediation and dispute resolution in Asia.³² The Academy has thus actively participated in the development of growth of ADR in Singapore.

The Indian Institute of Public Administration(IIPA), New Delhi is an organisation involved in research, training, advisory services and dissemination of information in the disciplines of political science, economics, administrative law, consumer law etc. The Centre for Consumer Studies³³ at IIPA is dedicated to research, advisory and consultative services, advocacy, networking and information exchange in the area of consumer protection and welfare. The National Consumer Helpline is a project of the Union Ministry of Consumer Affairs, Food & Public Distribution. The helpline operates from the Indian Institute of Public Administration (IIPA), as part of the Center for Consumer studies (CCS). The helpline provides

30 Mediation Clinic at Canterbury Christ Church University, UK, available at <http://www.canterbury.ac.uk/social-and-applied-sciences/law-criminal-justice-and-computing/mediation-clinic/docs/mediation-clinic-guide.pdf>, (last visited on April 25, 2015).

31 Singapore Mediation Centre, available at <http://www.singaporelaw.sg/sglaw/laws-of-singapore/overview/chapter-3>, (last visited on April 25, 2015).

32 Alternative Dispute Resolution and the Singapore Mediation Centre, available at http://www.sal.org.sg/content/LI_ADR_SMC.aspx, (last visited on April 28, 2015).

33 Centre for Consumer Studies, available at http://www.iipa.org.in/cen_consumer.html, (last visited on May 3, 2015).

for a Telephone Helpline to deal with multitude of problems arising in their day-to-day dealings with business and service providers. The helpline provides the following services:

- (a) Guiding consumers in finding solutions to problems related to Products & Services.
- (b) Providing information related to Companies and Regulatory Authorities.
- (c) Facilitating consumers in filing complaints against defaulting Service Providers
- (d) Empowerin consumers to use available Consumer Grievances Redressal Mechanisms, Educating Consumers about their Rights and Responsibilities.³⁴

Understanding the need for such non-adversarial conflict resolution in consumer disputes, the Chair on Consumer Law and Practice at National Law School of India University has disembarked on a mission of setting up an Online Consumer Mediation Centre. The initiative has been wholeheartedly supported by the Ministry of Consumer Affairs, Government of India, both in words and action. The Ministry has sanctioned an amount of Rs.1 crore for the purpose of setting up a State-of-the-Art Online Mediation Centre at the campus. The Mediation Centre is at a stage of developing technology and third-party infrastructure that ensures confidentiality and privacy at every stage of the online mediation. A dedicated website is being designed to provide a user-friendly, transparent and secure online mediation process. An advisory committee is being set up at the mediation centre to assist the Centre at every stage of development and appointment of expert mediators to the panel, from among those with professional and technical experience in different fields.

³⁴ National Consumer Helpline, available at <http://www.nationalconsumerhelpline.in/index.aspx>, (last visited on May 05, 2015).

All consumer cases fit for mediation, whether directly referred to mediation by private parties or disputed cases (referred by consumer dispute Redressal agencies) will be taken up by the Centre for mediation. As a pilot programme, the Centre proposes to start the mediation service to cater to a specific sector and steadily progress towards resolving consumer cases across various sectors.

CONCLUSION

To sum up, online mediation is a recent phenomenon and has great potential to gain momentum with the increase in tech-savvy citizens. The digital age promises digital empowerment not only in terms of high-speed internet access but also digital literacy. Traditional mediation methods supported by online technology can be cost and time effective in B2C transactions, especially where the consumer has to reach out to the business which is located at a far-off distance. The situation is more likely with the upsurge in online transactions.

An important advantage of online mediation is that since the parties bind themselves to resolve their dispute through agreement, the question of jurisdiction does not arise. The article also points to other benefits such as flexibility, confidentiality and cost and time effectiveness, which makes online mediation an ideal tool to consumer dispute resolution.

Albeit being beneficial, online mediation lacks uniform regulation in terms of a harmonised structure conducive to the practice of mediation at an international level. The article points that though existing laws governing Information Technology provides for a basic legal infrastructure in relation to validity of electronic contracts, electronic signatures, e-governance and data protection, there are no legislative instruments that address specific issues relating to online mediation such as evidencing of agreements between disputing parties, transparency and accountability of ODR providers, security regulations and the like. In the technical sense, online mediation can be ineffective and inconvenient to the parties to dispute if

the parties are not well-equipped with the necessary infrastructure such as high-speed internet to carry out the negotiation for long period of time. Insufficient security in the cyber space poses another challenge to consumer confidence in online mediation. Programme errors and other technical failures can be yet another hurdle in carrying out the dispute resolution process smoothly.

The article also focused on the role of law schools in contributing to the development and growth of online mediation. A study of the role and functioning of some of the university established mediation centres revealed that law schools have actively participated in a range of activities from conducting certified programmes for potential mediators, providing infrastructure to enable online mediation, mediation service clinics and student participations in court-enabled mediation. The authors are of the view that the unbiased character of universities as neutral third parties to conflict resolution is what makes it a judicious agency in carrying out online mediation.

Regulatory reforms in bringing out uniform standards of disclosure about the ODR provider and third-party neutrals, security and confidentiality guidelines, authentication of the procedure at every stage of the proceeding, standard schemes for setting up online mediation for different kinds of disputes, standardized code of conduct for the Online Mediators is the need of the hour. Universities conducting Mediation Training Programmes should work towards a common curriculum that meets the international standards in conflict resolution and civil justice. In conclusion, a well regulated and structured online mediation can be a smart tool to consumer dispute resolution in the internet-mediated world.