

ONLINE MEDIATION IN FAMILY DISPUTES: REIMAGINING ACCESS TO JUSTICE IN INDIA

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Abstract

In the context of the evolving family justice system in India, online mediation is becoming an integral part of the dispute resolution mechanism, especially following the explicit recognition of technology based mediation in the Mediation Act, 2023. This article considers whether online mediation will be meaningful in enhancing justice access in family conflict without sacrificing voluntariness, confidentiality, informed consent, procedural justice and protection of vulnerable parties. It compares and contrasts the Mediation Act, 2023, various judicial pronouncements, the NITI Aayog ODR Policy Plan, and a select body of international scholarship. The article concludes that the use of online mediation can help eliminate geographical, financial and procedural obstacles, but can also foster digital exclusion, privacy concerns, technological disparities and coerce power dynamics. It thus offers a rights-based, technology-sensitive model, one that is based on suitability screening, secure platforms, informed digital consent, assisted-digital access, specialized training for mediators and legal assistance, and flexible participation online, at a location, or both.

Keywords: Online Mediation; Family Disputes; Access to Justice; Digital Justice; Mediation Act, 2023.

Introduction

Family conflicts cannot be easily categorized. They are also, often, an issue of ongoing relationships and care, of living place, of economic reliance, of parenting, of dignity, of personal safety—but, of course, they are also legal disputes. Judicial determination of rights does not necessarily resolve the actual arrangements for separated family members to interact. That's why mediation is an increasingly significant aspect of modern family law. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, the Supreme Court held that consensual procedures, especially mediation, may be appropriate for matrimonial and other types of disputes based on relationships, depending on the circumstances.¹

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1 *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 S.C.C. 24, 28 (India).

The introduction of digital dispute resolution has presented a new opportunity: a mediation process where part – or all – of the communication takes place electronically. Online mediation is conducted via video or audio conferencing, secure digital rooms, exchange of documents online and, in appropriate cases, asynchronously. Its value is more than just to recreate a physical mediation session on a screen. Digital procedure may result in the parties to the process changing, the frequency in which they are able to participate, the way in which private caucuses are carried out, and the technological environment in which consent is given. In the wider context of ODR, as Rabinovich-Einy says, the real issue is procedural design – the technology can facilitate access and efficiency, but that efficiency and access will depend on the values embedded in the system.² India has an express statutory system for online mediation. The Mediation Act, 2023 envisages online mediation, such as pre-litigation mediation, with the consent of the parties in writing and provides for electronic mail, encrypted, secured chat rooms and audio and video conferencing. It also provides for the integrity and confidentiality of the process. Enactment is however different from commencement, and sections 22 and 30 are not in effect as of the notification date of 9 October 2023. The discussion below is thus of these provisions as they are now in effect as a mechanism for implementation, not as a set of rules applicable to all mediations. While it is significant that the legislature has recognized this, it is not enough to resolve the particular questions that may arise in family conflicts.³ The main thesis of this paper is that online family mediation ought to be thought of as a justice-design problem, not a straightforward technology transfer of traditional mediation. It can actually shorten the distance, cost and delay. And the danger of digital exclusion, surveillance, privacy violations, inequality in technological ability and hidden pressure. Convenience, speed, and cheapness cannot be called improved access to justice if there is safety concern or if there is incomprehension or if it is forced. Therefore, there is a need for safeguards to ensure meaningful, informed and safe participation in online family mediation, to ensure its legitimacy.

2 Orna Rabinovich-Einy, *The Past, Present, and Future of Online Dispute Resolution*, 74 CURRENT LEGAL PROBS. 125, 148 (2021).

3 Mediation Act, No. 32 of 2023, § 30, INDIA CODE (2023); Ministry of Law & Justice, Notification S.O. 4384(E), GAZETTE OF INDIA, EXTRAORDINARY, pt. II, sec. 3(ii) (Oct. 9, 2023). Sections 22 and 30 are not among the provisions listed in that notification. Section 30's examples of permissible technology are non-exhaustive.

The research problem is a discrepancy between the general statutory recognition of online mediation and the more rigorous requirements of family justice. The Mediation Act, 2023 provides a wide-ranging legal structure, and the NITI Aayog ODR Policy Plan provides some useful principles for the design of the system.⁴ However, a general ODR model is not sufficient to address vulnerabilities associated with family disputes, such as domestic abuse, coercive control, economic dependence, child-related issues, and lack of private physical space. The paper pursues three objectives. First, it evaluates whether online mediation can improve substantive access to family justice rather than merely reducing transactional inconvenience. Second, it identifies the principal legal and ethical risks associated with remote family mediation, particularly voluntariness, confidentiality, privacy, technological inequality and power imbalance. Third, it develops a rights-based and technology-sensitive framework for implementation in India. The study uses a doctrinal and comparative methodology. It analyses the Mediation Act, 2023, relevant Indian judicial decisions, the Digital Personal Data Protection Act, 2023, the NITI Aayog ODR Policy Plan and selected international and comparative materials. It also engages with scholarship on online family mediation, intimate partner violence screening and ODR design. Comparative materials are used functionally rather than transplantatively: the purpose is to identify safeguards capable of adaptation to Indian institutional conditions. Mediation is often attractive in family disputes because it allows parties to discuss interests that a court may not be institutionally positioned to negotiate in detail. Parenting schedules, modes of communication, relocation arrangements, division of household responsibilities and phased financial arrangements may require flexible solutions. The Supreme Court's discussion in *Afcons* placed matrimonial and family disputes among categories ordinarily suited to ADR, reflecting the continuing-relational character of these conflicts.⁵ Yet the suitability of family disputes for mediation should never become a presumption that settlement is inherently superior to adjudication. Family conflict can occur as a consequence of differential access to resources, fear or dependency. A weaker party may agree just because it is tiring to continue negotiations, or because it seems un-safe not to agree. It is therefore less important that there is agreement, and more important that there is agreement under certain conditions. These concerns are heightened in situations of intimate partner violence or

4 NITI AAYOG, DESIGNING THE FUTURE OF DISPUTE RESOLUTION: THE ODR POLICY PLAN FOR INDIA 88–98 (2021), <https://www.niti.gov.in/sites/default/files/2023-02/odr-report-29-11-2021.pdf>.

5 *Afcons Infrastructure Ltd.*, (2010) 8 S.C.C. 24, 28 (India).

coercive control. Family mediation research has focused on the importance of screening, not just assessing that there is overt physical violence. Rossi and colleagues highlight the need for mediation staff to have tools that allow them to identify IPPV, and then make informed decisions about going forward with mediation or denying it.⁶ Mediation online can sometimes minimize face-to-face confrontation, yet at the same time, it can also mask the setting where a participant is speaking. There is a sense of caution in the literature which is fitting. Rossi et al. suggest that mediation through shuttle or online may have advantages, but need to be taken into account for couples reporting intimate partner violence or abuse.⁷ This is a less extreme stance than either technological optimism or outright rejection. Physical separation via video conferencing can sometimes decrease intimidation; sometimes the vindictive person is closer and might be able to access the device or leave messages outside the mediator's vision.

Confidentiality is likewise a fundamental value. In *Perry Kansagra v Smriti Madan Kansagra*, the Supreme Court acknowledged the value of the confidentiality of mediation, but allowed the consideration of "counsellor material" regarding children to be considered in a specific statutory context: custody adjudication. It is not to be interpreted as a blanket permission to release parties' settlement discussions.⁸ The take home message for online mediation is that it is important to maintain confidentiality in accordance with the relevant legal parameters, including those in relation to child protection. The Mediation Act, 2023 expressly addresses online mediation in its enacted text. Section 30(1) envisages its use at any stage of mediation, including pre-litigation mediation, with written consent. Its examples include encrypted electronic mail, secure chat rooms and video or audio conferencing, but the list is not exhaustive. Section 30(3) provides for circumstances preserving the integrity and confidentiality of proceedings, while section 30(4) reiterates confidentiality for mediation communications. These provisions must be read with the Act's commencement mechanism, rather than treated as automatically

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- 6 Fernanda S. Rossi et al., *Screening for Intimate Partner Violence in Family Mediation: An Examination of Multiple Methodological Approaches Using Item Response Theory*, 29 ASSESSMENT 1641, 1641 (2022). IPV screening informs suitability and protective adaptations; it is not an adjudication of criminal responsibility.
 - 7 Fernanda S. Rossi et al., *Shuttle and Online Mediation: A Review of Available Research and Implications for Separating Couples Reporting Intimate Partner Violence or Abuse*, 55 FAM. CT. REV. 390, 399–400 (2017).
 - 8 *Perry Kansagra v. Smriti Madan Kansagra*, (2019) 20 S.C.C. 753, 28–32 (India). The confidentiality question arose within the statutory framework for child custody and counsellor assistance; the decision does not establish an unrestricted exception for all family disputes.

operative upon enactment.⁹ The enacted general confidentiality provision is even more specific. Section 22 provides for protection of mediation communications and a prohibition on audio or video recording by the parties, participants, mediator or mediation service provider, whether the mediation is conducted physically or online.¹⁰ This is particularly important in family disputes, where recorded conversations may contain intimate personal information, allegations of abuse, financial details or information concerning children. The statutory scheme, however, leaves significant questions to institutional design. Written consent does not necessarily establish that consent is free, informed and technologically meaningful. Nor does a prohibition on recording prevent covert screen capture, a second device in the room, compromised accounts or unauthorised listeners. Section 30 therefore should be understood as an enacted enabling provision whose integrity depends upon procedural standards developed by mediation institutions, service providers and regulators.

The NITI Aayog ODR Policy Plan offers a useful systems perspective. It treats ODR as an ecosystem involving technology platforms, neutrals and institutions and proposes principles that include accessibility, fairness, security, privacy and accountability.¹¹ For family mediation, this is preferable to a platform-centric approach. A secure application cannot compensate for a mediator who fails to screen for coercion; a skilled mediator cannot compensate for a platform that exposes confidential data; and neither can compensate for an institution that offers no alternative when a participant lacks private digital access. The greatest benefit of online family mediation is that it helps to lower barriers to participation. Parties can reside in various districts, States or countries. Repeated physical attendance can be cumbersome due to employment, disability, caregiving, illness or financial considerations. Costs of travel, lost work hours and scheduling conflicts can be decreased with remote sessions. They may also allow lawyers, interpreters, counsellors or support persons to be in attendance without having to have all of them physically present.

9 Mediation Act, No. 32 of 2023, § 30(1), (3)–(4), INDIA CODE (2023); Ministry of Law & Justice, Notification S.O. 4384(E), GAZETTE OF INDIA, EXTRAORDINARY, pt. II, sec. 3(ii) (Oct. 9, 2023).

10 Mediation Act, No. 32 of 2023, § 22(1)–(3), INDIA CODE (2023). Section 22(2) expressly extends the contemplated recording prohibition to both physical and online mediation; commencement remains distinct from enactment.

11 NITI AAYOG, *supra* note 4, at 88–98. The report distinguishes design principles for platforms from principles for institutions and neutrals.

This is relevant in a nation where geographic and institutional factors drive the cost of engaging in legal processes. Technology has been identified as a way to expand access to ODR services and to cut costs and delays, in the ODR Policy Plan.¹² In Rule, ODR is set against a background of the broader trend of applying technology to the dispute resolution process in ways that will make it faster and more accessible, but at the same time pose new risks of unfairness and abuse.¹³

Online mediation can also decrease the emotional price of engaging in mediation. Someone who is uncomfortable in a shared mediation room might be more able to express himself or herself from another area. Digital breakout rooms can help conduct caucuses without having to physically move between rooms. Shorter sessions can be arranged around child care or work responsibilities. For families that live across the border or inter-State, online communication could make more than one session possible, if that would have been too much if it had been done through physical mediation. Having access to a platform does not mean having access to justice. The question is whether the process can be understood, private communication can be made, and advice can be sought, proposals can be considered and decisions made without improper pressure being exerted. It is a difference that matters. Digitalisation can have a negative impact on one barrier and a positive impact on another. A participant might choose not to make the 6 hour trip, but might have to deal with sharing the phone with other people in a home. Measure of effective access will thus be not only the number of people who can log in but the quality of their participation.

A mediated settlement depends upon the parties' consent, although a court's referral to mediation need not always depend upon prior consent. Online mediation adds a distinct question of consent to the mode of participation.¹⁴ The written-consent requirement envisaged by section 30 is valuable, but a signed form should be the beginning rather than the end of the inquiry. In relationships marked by coercive control, a person may formally agree while lacking a realistic capacity to refuse. A robust system should therefore require confidential pre-mediation screening with each party separately. Screening should consider physical violence, threats, stalking, coercive control, financial dependence, digital surveillance, significant communication barriers and risks to children. The aim is not

12 *Id.* at 13–15.

13 Colin Rule, *Online Dispute Resolution and the Future of Justice*, 16ANN. REV. L. & SOC. SCI. 277, 278, 289–90 (2020).

14 *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 S.C.C. 24, ¶ 36 (India); Mediation Act, No. 32 of 2023, § 30(1), INDIA CODE (2023).

to disqualify every high-conflict case. It is to decide whether mediation is appropriate, whether procedural adaptations can make it safe, or whether the matter should proceed through adjudicatory or protective mechanisms. Rossi and colleagues' study supports using structured IPV screening to inform decisions about safety accommodations and the conduct of mediation.¹⁵

Digital procedure introduces distinctive warning signs. A participant may repeatedly look away because someone else is in the room. They may receive instructions through another messaging application. A shared email account may allow the other party to read confidential communications. Location-sharing or device monitoring may expose participation. Mediators conducting family cases online therefore need competence in recognising digital manifestations of coercion, not merely traditional mediation skills.

The process should also permit procedural asymmetry where necessary for substantive fairness. One party may participate from home while another uses a private room at a mediation centre. Shuttle mediation, separate virtual rooms, staggered participation, interpreters and support persons may be appropriate. Rossi and colleagues show why online and shuttle formats require careful consideration in IPV cases rather than a one-size-fits-all rule.¹⁶ Equality of process does not require identical conditions when the parties' circumstances are materially different.

Mediator training is consequently central. Applegate and colleagues, writing about mediators handling cases reporting high intimate partner violence, emphasise structured training, manuals and continuing consultation.¹⁷ Although that research arises from a particular empirical setting, its institutional lesson is relevant: specialised risk cannot be managed by merely adding a video-conferencing link to ordinary mediation practice.

Online mediation converts confidentiality from a primarily professional obligation into a combined professional and technological problem. A physical mediation room can be controlled to a significant degree by the mediator and institution. A remote mediation session extends

15 Rossi et al., *supra* note 6, at 1641.

16 Rossi et al., *supra* note 7, at 399–400. Separate rooms, shuttle formats and different modes of participation may help differently situated parties participate meaningfully.

17 Amy G. Applegate et al., *Preparing Mediators to Mediate Cases Reporting High IPV in a Randomized Controlled Trial: The Importance of a Mediation Manual, Training, and Consultation*, 59 FAM. CT. REV. 725, 725–26 (2021).

across devices, networks, software providers and private spaces that the institution does not fully control. The first requirement is therefore platform governance. Family mediation should not depend on whichever consumer application happens to be convenient. Recognised institutions should approve platforms against minimum requirements for authentication, access control, secure transmission, waiting-room functions, host control, document permissions and data retention. Recording functions should be disabled by default, in line with the safeguard envisaged by section 22 of the Mediation Act.¹⁸ Participants should receive a plain-language confidentiality and digital-security protocol before the first session.

The second requirement is data minimisation. Online family mediation may involve identity documents, financial statements, health information, children's records, photographs, addresses and intimate communications. The Digital Personal Data Protection Act, 2023 establishes an enacted framework for processing digital personal data, including provisions on consent, security safeguards and erasure. Its implementation is phased: the November 2025 commencement notification postpones the principal processing obligations for eighteen months from publication. Accordingly, these provisions should inform institutional preparation without being represented as already fully operative.¹⁹ Mediation providers should not collect or retain sensitive material merely because digital systems make storage inexpensive.

Third, institutions need incident-response rules. A confidentiality policy is incomplete if it says nothing about a compromised meeting link, unauthorised recording, account takeover or accidental disclosure. Parties should know whom to contact, what steps will be taken and whether the mediation will be suspended. Cybersecurity is not external to procedural fairness where a breach may expose the very information that parties were encouraged to disclose candidly.

18 Mediation Act, No. 32 of 2023, § 22(2), INDIA CODE (2023); NITI AAYOG, *supra* note 4, at 88–92.

19 Digital Personal Data Protection Act, No. 22 of 2023, §§ 6, 8, INDIA CODE (2023); Ministry of Elecs. & Info. Tech., Notification G.S.R. 843(E), cl. (c), GAZETTE OF INDIA, EXTRAORDINARY, pt. II, sec. 3(i) (Nov. 13, 2025). The Act's application to a provider depends on its role, the processing concerned and the provisions in force.

Finally, confidentiality must have intelligible limits. Parties should be told at the outset that mediation confidentiality operates within the governing law and does not convert the process into an absolute zone of secrecy. Clear boundaries are particularly important where there are threats to safety or concerns affecting children.²⁰

India's rapid expansion of digital infrastructure should not be equated with uniform digital capacity. Access to devices, connectivity, digital literacy and private digital spaces remains uneven, and these inequalities may acquire particular significance in family disputes. Official data also reveal a gendered dimension to digital access. The National Family Health Survey-5 (2019–21), for instance, reported that only 54 per cent of women aged 15–49 had a mobile phone that they themselves used, with a substantial rural–urban difference.²¹ Such disparities are especially relevant to online family mediation because access to a household device does not necessarily imply independent control over that device, a secure account, or a private space in which a party can participate confidentially.

A fair model should therefore adopt a principle of digital choice rather than digital compulsion. Online mediation should be available where it improves participation, but parties should be able to request physical or hybrid mediation where technology creates disadvantage. The objective is not to maximise the number of online cases. It is to select the mode that best supports fair participation.

Assisted-digital facilities can bridge this gap. Court-annexed mediation centres, legal services institutions and recognised mediation service providers could offer private rooms, secure devices, reliable connectivity, scanning facilities and basic technical assistance. Such facilities would preserve the advantages of remote participation—for example, where the other party or mediator is elsewhere—without making ownership of suitable technology a condition of access.

Accessibility must also include disability and language. Platforms should support captioning where feasible, accessible interfaces and interpreter participation. Instructions should be available in languages understood by the parties. A mediator must be prepared to adjourn or change the mode where a technical problem has ceased to be a mere inconvenience and has become a procedural disadvantage.

20 Mediation Act, No. 32 of 2023, §§ 22–23, INDIA CODE (2023); Perry Kansagra v. Smriti Madan Kansagra, (2019) 20 S.C.C. 753, 28–32 (India).

21 MINISTRY OF HEALTH & FAM. WELFARE, NATIONAL FAMILY HEALTH SURVEY (NFHS-5), 2019–21: INDIA FACT SHEET, indicator 123 (2021).

The international ODR literature is useful primarily for principles of design. UNCITRAL's Technical Notes on Online Dispute Resolution, adopted in 2016, are descriptive and non-binding and were developed for disputes arising from cross-border low-value sales and services contracts. They emphasise fairness, transparency, due process and accountability.²² Those principles cannot simply be imported as family-law rules, but they provide a useful reminder that online procedure should be judged by procedural values rather than by technological novelty.

The scholarly evolution of ODR makes the same point. Rabinovich-Einy traces the movement from early e-commerce ODR to systems that increasingly redesign procedure around user needs and institutional problems.²³ Rule similarly argues that ODR has moved into courts and public justice systems, making questions of fairness and ethical design unavoidable.²⁴ Family mediation is a particularly demanding test of this transition because the dispute is both legally consequential and relationally sensitive.

Specialised family-mediation scholarship reinforces the need for tailored standards. Lavi argues for an improved model of e-mediation in divorce disputes that includes training, certification, regulation and supervision.²⁵ Melamed asks whether established family-mediation ethical standards require updating for online practice and identifies technology-specific concerns.²⁶ These contributions help to form a regulatory framework where online family mediation is recognised as a unique professional context, instead of just another communication channel. However, care should be taken in the use of comparative material. There are significant differences in social circumstances of digital access, family law, legal aid and mediation institutions across the jurisdictions.²⁷

22 U.N. COMM'N ON INT'L TRADE L., UNCITRAL TECHNICAL NOTES ON ONLINE DISPUTE RESOLUTION 1-7 (2017), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf. The Notes were adopted in 2016 and published in this booklet in 2017; they are non-binding and are used here only for general procedural-design principles.

23 Rabinovich-Einy, *supra* note 2, at 148.

24 Rule, *supra* note 13, at 283, 289-90.

25 Dafna Lavi, *No More Click? Click in Here: E-Mediation in Divorce Disputes—The Reality and the Desirable*, 16 CARDOZO J. CONFLICT RESOL. 479, 479 (2015).

26 James C. Melamed, *Establishing Ethical Standards for Online Family Mediation*, 59 FAM. CT. REV. 244, 244 (2021).

27 See Lavi, *supra* note 25, at 479; Melamed, *supra* note 26, at 244. The comparative literature identifies recurring professional concerns without establishing that foreign family-mediation rules are directly transferable to India.

Principles such as screening, informed consent, data security, competency of mediators and procedural flexibility, should be adopted in the Indian framework, but not simply because they are found in other jurisdictions.

A workable Indian framework should begin with suitability assessment. Before the first substantive session, the mediation service provider should assess the nature of the dispute, urgency, safety, technological capacity, privacy, language, disability and need for legal or psychosocial support. The outcome should be a reasoned procedural choice among online, physical and hybrid formats, not an automatic preference for any one mode.

First, digital consent should be informed, specific and continuing. Parties should receive information about the platform, confidentiality, recording restrictions, data handling, technical failure, private caucuses and the right to request a different mode. Consent should be revisited if circumstances materially change.

Second, family cases should be subject to confidential vulnerability screening. Where there is domestic abuse or coercive control, the mediator should decide whether adaptations can create a safe process. High-risk cases should not be retained in mediation merely to improve settlement rates. A mature mediation system must be able to identify disputes that should not be mediated.

Third, recognised mediation institutions should follow minimum cybersecurity and data-governance standards. These should address approved platforms, authentication, encryption where appropriate, document access, recording, retention, deletion, breach response and third-party service providers. The standards should be understandable to mediators and parties, not confined to technical documentation.

Fourth, assisted-digital participation should be embedded in the justice system. Legal services institutions and mediation centres can provide secure access points for parties who benefit from remote mediation but lack suitable private technology. This is essential if online mediation is to reduce rather than reproduce inequality.

Fifth, mediator accreditation should include digital competence and family-specific risk management. Training should cover online communication, digital caucusing, hidden participants, coercive control, cybersecurity basics, disability access and child-sensitive practice. Melamed is persuasive in treating online family mediation as requiring explicit ethical attention rather than assuming traditional standards automatically answer technology-specific questions.²⁸

28 Melamed, *supra* note 26, at 244.

Sixth, access to independent legal advice should remain available. The mediator's neutrality is not a substitute for legal advice, particularly where settlements concern maintenance, residence, custody, property or waiver of claims. Digital systems should make it easy to pause mediation so that a party can obtain advice rather than treating rapid settlement as the principal measure of success.

Seventh, settlement documentation should be designed for comprehension. Electronic circulation and signatures can improve efficiency, but parties should have a meaningful opportunity to read the final terms, ask questions, obtain advice and confirm consent. Where children are affected, the welfare dimension cannot be reduced to the preferences of the adults.

Finally, institutions should collect carefully anonymised process data to evaluate accessibility problems, mode changes, completion rates, complaints and reasons for termination. Such evaluation must respect mediation confidentiality. Evidence-based review is especially important because digital dispute-resolution practices will continue to evolve.²⁹

The Mediation Act's online-mediation framework should be supplemented by a dedicated protocol for family disputes. The protocol should require separate pre-mediation screening, distinguish consent to mediation from consent to the online mode, and provide a clear route for switching to physical or hybrid mediation. It should identify minimum safeguards for confidentiality, recording, platform security and data retention. Recognised mediation service providers should maintain assisted-digital facilities and publish simple guidance for parties. Mediator training should include domestic abuse, coercive control, child-sensitive practice, online safety and accessibility. Institutions should also establish referral pathways to legal aid, counselling, protection services and courts where mediation becomes inappropriate or unsafe. Policy should not include setting levels of retention that create an incentive to keep "unfit" cases. The quality of consent and participation is more important than the number of mediated settlements. Procedural fairness, accessibility and user safety should also form a part of the evaluation process; not only settlement rate should be considered a measure of success.

Implementation should also be done incrementally and not in a sudden and massive system-wide change. In the first stage, court-annexed mediation centres and recognised mediation service providers should

29 Anonymised evaluation should exclude information capable, directly or indirectly, of identifying parties or reconstructing confidential mediation communications. See Mediation Act, No. 32 of 2023, §§ 22–23, INDIA CODE (2023).

have a standard online family mediation protocol that includes identity verification, private participation, vulnerability screening, informed digital consent, platform security, emergency interruption, confidentiality, record retention and mode-switching. As to the substantive mediation, the protocol should be conveyed in plain words before the beginning of substantive mediation. Institutions should also have a basic checklist for mediators to document the availability of both parties having appropriate devices, reliable access to Internet, a separate room and access to legal counsel. Such documentation should be done for the purpose of procedural accountability, rather than a detailed record of confidential negotiations.

Capacity and inclusion should be the second stage. Assisted-digital rooms can be set up in State and District Legal Services Authorities, family courts and mediation centres for persons who cannot participate safely and effectively from home. This type of facility would be especially useful if a party does not have independent control of the device, has a language barrier, or has a disability, or if a party seeks confidentiality. Institutional training should also, similarly, separate the technical competency as such from the digital competency of the family. Mediators should be familiar not just with the operation of a platform, but also with the ways in which the platform might be used in a way that is secretive, in an attempt to monitor or intimidate with coercive messages, and in ways that are otherwise technologically intimidating. A third phase should be review on a regular basis. Institutions should review the anonymised details of adjournments due to technology, mode of mediation change requests, complaints regarding privacy, withdrawal requests, and accessibility issues. Assessment of success should not be limited to settlement rates. Any settlement obtained that occurs even though a person is not technically disadvantaged, or the pressure is hidden, cannot be considered a successful result just because the case has been settled. The better test would be whether the process allowed for an informed, voluntary and reasonably equal participation. This step by step strategy would enable online family mediation to grow based on evidence and lessons learned from the process, not on the idea that online mediation is always faster, cheaper, or fairer.

While the convenience of online mediation is a real possibility for making family justice more accessible, it is not the end goal. While the Mediation Act, 2023 offers a substantial body of legislation, it specifically mentions online mediation and its connection to consent, integrity and confidentiality. Implementation needs both the necessary laws and institutional protection: the necessary procedures that can meet the reality of family conflict.

The paper has called for an expanded and conditional online family mediation. It shouldn't be used as a substitute for a physical institution or as a convenient way to speed up docket clearance. It should function as a part of a flexible mediation process in which the parties can be safely and effectively engaged. Not only are informed consent, vulnerability screening, privacy, data governance, technological equality, and competent mediators and access to legal advice peripheral protections, they are conditions of legitimacy.

Online mediation can eliminate geographical distance when built into implementation, without increasing vulnerability, and procedural burden without diminishing rights. Its most important contribution, then, would not be the idea that technology is replacing the human process, but the concept of using technology to make a well-guarded human process more attainable.