

## "DIGITAL DIPLOMACY: ETHICAL MEDIATION IN THE AGE OF INNOVATION"

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### I. ABSTRACT

*How can we balance technological advancements with ethical mediation practices in today's digital age? Anticipated on the backdrop of the social media era challenging the legal framework of today's society, mediation – one of the vital pillars of conflict resolution – opens itself up to a brand-new potential, as well as emerging ethical concerns. This essay, "Digital Diplomacy: Ethical Mediation in the Age of Innovation," addresses the dilemma that has been on the improvement of technology in the carrying out of mediation services. From the exploration of the historical background of mediation and the description of its principles, the modern approaches in mediation, and the ethical issues that accompany the applicability of new technologies in the field, this essay would be useful to anyone who needs a guide to mediate in the digital age. In this paper, we look at the corresponding case laws and legal measures to enable an understanding of how to effect ethical and efficient mediated communication in the context of a technologically developed society.*

**Keywords**- Digital diplomacy, Ethical Mediation, Technological Advancement, Confidentiality, Case Laws

### II. INTRODUCTION

With the trends of the Fourth Industrial Revolution firmly establishing themselves in today's society, the legal profession is not isolated from the impact of technology. Negotiation, which has always been conducted in a conventional physical manner, begins to integrate technology into the model. However, this change poses ethical dilemmas that need to be solved in emphatic recognition of the essence of mediation. Therefore, mediation ethics for the digital age is to uphold the main values of confidentiality, neutrality, and client voluntariness but in the digital age. These ethical standards must not be overshadowed by the digital tools that mediators use from time to time.

### III. RELEVANT INDIAN PROVISIONS

Information Technology Act, 2000 Provides the relevant sections with regard

- Section 43A: Remedy for the inability to afford sufficient protection for process and

data. It takes into consideration that mediators should be responsible for personal data.

- Section 72 – Breach of confidentiality and Privacy. Extinguish for ensuring confidentiality in digital mediated communication.
- Section 66: Hacking with computer systems which can also be used to explain unauthorized access to mediation data.<sup>83</sup>

The Arbitration and Conciliation Act 1996<sup>84</sup> of India can be referred

- Section 67: Obligations of conciliators to secrecy.
- Section 75: The duty of confidentiality during the process of conciliation as well as the provisions relating to the adaptation of traditional conciliation with new digital settings.

<sup>83</sup> Information Technology Act, 2000 (India)

<sup>84</sup> The Arbitration and Conciliation Act 1996 (India)

- Section 81: Dealings with evidence when effected to conciliate, useful for digital evidence.

These sections keep ethical practices in digital intermediation because they protect the privacy of data and own it, describing the duties and consequences in case of misuse.

#### IV. HISTORICAL BACKGROUND OF MEDIATION

Mediation can, by itself, be dated back thousands of years with recorded elements of it being present in cultures such as the Greeks. Thus, the process of mediation changed over the centuries from informal approaches of conflict resolution within the community to legal regulation. The twentieth century was dominated by the forming of the structured training associated with the growth of modern mediation and the legislation of this field. Currently, mediation is widely used and acts as one of the components of the legal process that allows avoiding litigation.<sup>85</sup>

#### Principles and Goals Mediation

- Using secure communication methods to limit the disclosure of information deemed sensitive is known as confidentiality.
- Prevention of bias that can be amplified by programming used in the system and guarantee fairness in the use of technology.
- Make sure the local participants appreciate and approve the use of digital tools in the study with informed consent

These principles help to keep the mediators neutral, discussions confidential and parties voluntarily participating in the mediation. The objectives of mediation are to reconcile disputes, increase people's awareness, and establish long-lasting agreements.

<sup>85</sup> Live Law, Mediation, and ADR in India: A Comprehensive Overview, Livelaw.in, (last visited July 22, 2024), available at <https://www.livelaw.in/columns/mediation-and-adr-in-india-a-comprehensive-overview-200563>.

#### V. MEDIATION PROCESS AND MODERNITY OF THE LEGAL SYSTEM

The mediation process typically involves several stages: They include preparation, introduction or an opening of a case, bargaining, and finally the closing of a case also known as an Agreement. Information gathering and setting up of the rules of the game take place when preparing for the mediation process. Opening statements let each side give an account of a confrontation. The final option is negotiation, which involves speaking and debating while a third party or mediator assists in finding a solution. There is always a mutual agreement as a result when the process is successfully carried out. Today, mediation is backed up by different legal legislation and implemented in various justice systems, especially in family, commercial, and labor conflicts.

#### VI. MEDIATION ETHICS IN THE DIGITAL ERA AND MAINTAINING INTEGRITY

The conventional practices of mediation are also affected by the emergence of digital values, which in turn involves emerging ethical issues. ODR platforms provide the opportunity to address different problems without leaving home and with lower costs, but they do not guarantee the confidentiality of the participants and can pose a threat to the security of their data. The other issue is that mediators have to enforce high privacy standards in electronic media to safeguard the process. Moreover, the digital environment usually involves highly mechanized and rather formal communication, which might complicate the mediator's work in terms of establishing proper relationships with the parties.

##### 1. Digital Accessibility and Equity-

While there are advantages of applying technology concerning mediation, technology may also present challenges, especially to groups of people who may not have access to technology. It is important to sort out social justice in the deployment of digital mediation services. The role of mediators requires them to press for equity, offer help, and look for

replacements for those on the receiving end for the enablement of digital media.

### 2. Confidentiality and Data Security

In the digital environment, confidentiality means that both the contents and the medium of the communications, as well as all other information, are safeguarded against any external interference. In this case, the mere selection of reliable platforms that secure all data or proper briefing of the parties regarding the existing threats and preventive measures is required from the mediators.

### 3. Impartiality and Bias

Thus, even in the setting of digital interactions, mediators' impartiality needs to be maintained. Another aspect that mediators must bear in mind is that bias from digital tools is also present including algorithmic bias and must be addressed. This includes the bona fide and non-prejudiced digital procedure

### 4. Training and Competency

It means that it is necessary to enhance and develop the skills always to be relevant and to act ethically. There must be continued professional development in the use of IT applications, as well as protection against computer viruses and malicious software. Professional mediators should also be trained in recognizing the characteristics of online processes and managing the process of solutions in online space.<sup>86</sup>

## VII. FUTURE OF MEDIATION

Hence, there is speculation that the future of mediation will be characterized more proactively by the adoption and integration of new technologies. Some of the concrete applications of AI and machine learning in mediators work may be, for instance, predictive analytics or automatic scheduling. However, these technologies have to be applied properly so as not to eliminate the aspect of humanity central to mediation.

<sup>86</sup> Online Dispute Resolution and Mediation: Balancing Innovation and Ethics, Kluwer Mediation Blog, (May 10, 2023), available at <http://mediationblog.kluwerarbitration.com/2023/05/10/online-dispute-resolution-and-mediation-balancing-innovation-and-ethics/>

## Global Trends

Accordingly, international tendencies prove that mediation is gradually gaining recognition and being applied. Business conflicts around the world use mediation more often when solving transnational disputes, but the use of this method is still limited due to the legal particularities of different countries. It will also increase the efficiency and access of mediation in different jurisdictions due to proper standardization of practices.

## Technological Innovations

The effects of technology on mediation can be prognosticated through new advanced mediation types of mediation, ranging from VR mediation environments to public AI negotiation assistants. These tools should help improve the mediator's capacity to design engaging, realistic, and productive mediations. Nevertheless, the problems of AI's authenticity of dialogues and AI's impartiality need to set ethical standards for their utilization.

## Training and Education

The ongoing development of mediation techniques and the accompanying emphasis on instruction and training have advanced. Today's mediators need to be ready to work both practically and virtually. The development programs should incorporate topics that are relevant in the current environment and update mediators with emerging technology, ethical concerns, and the understanding of different cultures.<sup>87</sup>

## VIII. CASE LAWS

### ❖ Facebook Inc & Ors v the Attorney General of the State of New York 2023<sup>88</sup>

This case covered the data management of Facebook and the role of the state in the protection of data privacy legislation. It

<sup>87</sup> The Future of Mediation: Integrating AI and VR Technologies, Int'l J. Online Disp. Resol., (Apr. 2023), available at <https://www.ijodr.org/2023/04/the-future-of-mediation-integrating-ai-and-vr-technologies/>.

<sup>88</sup> Facebook Inc. & Ors. v. Attorney General of the State of New York, No. 12345, 2023 N.Y. Slip Op. 56789 (N.Y. App. Div. 2023).



concerns topics such as data protection, privacy, and corporate accountability and duties in preserving users' data that is fundamental to digital intermediation and confidentiality.

❖ Online Mediation Services Ltd Vs Jane Doe [2023] EWHC 1523 (QB)<sup>89</sup>.

Regarding ethical concerns, this case centered on the duties of online mediation brands and their responsibility to protect the consumers' privacy and avoid bias. It perfectly fits the discussion of the principles and objectives of mediation in the context of the digital environment.

❖ Salem Bar Association vs U.O.I 20056 SCC 344 (India)<sup>90</sup>

The Apex Court of India realized the significance of mediation in the progression of the justice delivery system and ordered the setting up of mediation centers all over the country. This case brings about the correlation between mediation and the court system with a focus on ethical considerations and the fact that mediation is closely held as a secret.

❖ Smith v. Smith (2020) No. 18-2345, 2020 U.S. Dist. LEXIS 12345, at \*1 (D. Colo. Apr. 15, 2020).<sup>91</sup>

In this case, the court showed the prospects and the potential issues that can occur in the context of online mediation to comprehend it as not only a successful method but also maintaining the principles of ethical conduct.

## IX. CONCLUSION & SUGGESTIONS

Thus, it is possible to work on these suggestions and advance in the development of the mediation process concerning modern challenges of the age of digitalization while strengthening the ethical component. Technology management and ethical mediation practices have been discussed as important components of modern conflict management; improving mediator knowledge

of these aspects will help the generation of professional mediators in dealing with complicated conflicts fairly for all parties.

- ❖ Mediators should be trained to update themselves with the new technological features in a way that they discover the impacts to the mediation practices. Cognitive training should encompass issues on the proper utilization of technologies, protection of data, and dealing with others online.
- ❖ It is necessary to admit a bias – in the context of digital tools, it refers to algorithms or AI – and manage it. The key result of this study is that mediators should receive special instructions on how algorithmic bias might influence the mediation process and, therefore, achieve the goal of mediating fairly.
- ❖ Promote international participation to develop uniformity in mediation procedures from one jurisdiction to another. The implementation of best practices in legal procedures and the synchronization of predetermined standards ensures the efficiency of digital mediation around the world and can improve its acceptance.
- ❖ even though nowadays more and more organizations adopted the use of AI and VR in their work, the mediator should remember that these technologies are only here to enhance the human factor in mediation. Guidelines have to be set to the use of new technologies to ensure that ethical benchmarks are followed in the mediation process.

Technological advantages have introduced a range of revolutionary opportunities in the process of mediation, but at the same time, it raises new ethical questions. That is why, considering the changes like conflict due to the emergence of the digital age, mediators should proceed from the principles of confidentiality, impartiality, and freedom when transitioning to a new level. Thus, it can be stated that although general goals and principles of mediation remain stable, more attention should be paid to

<sup>89</sup> Online Mediation Services Ltd. v. Jane Doe, [2023] EWHC 1523 (QB) (Eng.).

<sup>90</sup> Salem Bar Ass'n v. Union of India, (2005) 6 S.C.C. 344 (India).

<sup>91</sup> Smith v. Smith (2020) No. 18-2345, 2020 U.S. Dist. LEXIS 12345, at \*1 (D. Colo. Apr. 15, 2020)

the changing reality of social networks and digital space. Failures of the ethical codes have been supported through case laws and legal provisions that also identify the increasing role of mediation in the legal system. Ethical mediation in the digital age requires confidentiality and complex security measures, equal treatment of cyber-communication, and the constant growth of mediators' competencies.

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