

## AI-Powered Mediation: Enhancing Access to Justice for Marginalized Communities

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### Introduction

In a world where justice often feels like a distant dream for marginalized communities, the promise of mediation and Alternative Dispute Resolution (ADR) shines as a beacon of hope. As per the latest statistics available on the National Judicial Data Grid, impending cases before the District & Taluka Courts stand at over 40 million, the backlog waiting to be heard at various High Courts is close to 5.9 million, and the pending case inventory before the Hon'ble Supreme Court of India totals approximately 71,000[i]. This shows the harsh realities of litigation in India where a case may take years to reach the court's doors. On the other hand, Mediation and other ADRs can help create an environment where open communications among the parties can lead to creative solutions tailored to the specific needs of the involved parties within a reasonable time and save a lot of costs. However, the current percentage of parties opting for mediation is very low as compared to litigation. This may be due to various reasons such as a lack of trust in the process itself as people still prefer litigation as they find the court's decision more valuable, scarcity of trained mediators in India, socioeconomic problems, limited awareness, and concerns about inconsistent mediators further demotivating people to opt for it. These issues require serious consideration, people should be aware of such alternatives that can increase the reach of justice to the marginalized communities.

Access to justice is a fundamental right that remains exclusive for many marginalized communities. To increase the accessibility of these mechanisms, integrating tools such as artificial intelligence (AI) can be beneficial. Many ADR professionals recognize the potential of AI to enhance decision-making processes during dispute settlements. Integrating AI in mediation services can result in significant cost and period reductions and address the issues of biases and cultural barriers ultimately achieving the goal of wider accessibility of justice.

### AI in Mediation: Enhancing Accessibility and Efficiency

Artificial Intelligence (AI) refers to the simulation of human intelligence processes by machines, particularly computer systems. These processes include learning, reasoning, problem-solving, perception, and language understanding.[ii] In the field of mediation and legal disputes, AI can help in analysing vast amounts of data, recognizing patterns, and providing insights that will eventually enhance decision-making processes. With advanced algorithms and machine learning techniques, it can help mediators in navigating complex disputes specific to the parties from a very neutral perspective which can eventually help in increasing the efficiency of the solutions and promoting equitable outcomes for the parties involved.

An experienced mediator, Myer Sankary, incorporated ChatGPT during a mediation involving a lease dispute where the landlord sought \$550,000, and the guarantor offered only \$120,000. When negotiations stalled, Sankary consulted ChatGPT, which recommended a settlement figure of \$275,000. This suggestion motivated the parties to resume negotiation, finally leading to an amicable solution[iii].

This highlights AI's role in facilitating an amicable settlement among the parties by providing a neutral stance which can create a win-win situation for the parties. Also, a study involving over 5,000 participants showed that an AI mediation program outperformed human mediators in helping groups reach consensus on divisive political issues. Here the AI integrated participants' opinions into a group statement that was acceptable for all,[iv] showcasing AI's potential in complex negotiation scenarios. This has not only enhanced the efficiency of the mediation but also has helped and empowered parties to engage more amicably in resolving their disputes by engaging each viewpoint. Numerous benefits of the integration between AI and mediation services can significantly enhance wider access as compared to traditional ones, the same has been reiterated by the research[v].

The mediation landscape has been continuously revolutionizing because of AI-powered platforms by democratizing access to dispute resolution services. These platforms utilize sophisticated algorithms and machine learning to facilitate mediation processes efficiently and effectively.[vi] For instance, systems like TheMediator.AI[vii] allow users to initiate mediation from anywhere, reducing the need for in-person meetings that can be intimidating or logistically challenging for marginalized communities. These sites have streamlined the process and provided real-time insights that help ensure that disputes are resolved quickly and fairly, significantly lowering costs and making mediation accessible to those who might otherwise be excluded from traditional methods. Other powerful AI solutions such as Chatbots and Virtual assistants can enhance the accessibility of legal guidance to individuals. These tools can help in providing quick responses to legal queries, helping parties to understand some legal concepts in their regional languages which will eventually lead to wider accessibility. The AI tool CoCounsel[viii], for example, was trained with OpenAI to analyze documents and complete other tasks for lawyers. It can save mediators and disputants time and money by quickly performing tasks that would take humans hours, days, or months to complete[ix].

The same has been reiterated by the study "Robots in the Middle: Evaluating Large Language Models in Dispute Resolution" which provides empirical evidence of the effectiveness of large language models (LLMs) like GPT-4 in mediation contexts[x]. The study involved 50 hypothetical dispute scenarios, where both AI and humans participated and were tasked with the selection of appropriate solutions to the disputes and drafting information for facilitating the settlement. The study says that Evaluators found LLM-generated messages clearer and smoother than the ones prepared by the human mediators, who frequently misunderstood the disputes or misinterpreted party intentions. This showcases the ability of AI to maintain consistency and clarity across disputes with few judgmental errors. Notably, LLMs achieved higher ratings than human responses in 60% of cases, indicating their potential to effectively select suitable mediation interventions and draft neutral communication. Importantly, no instances of harmful content or hallucinations were identified in the AI-generated messages, suggesting a level of reliability that supports the integration of AI into mediation practices.[xi]

There is one other benefit of integrating AI into mediation. It could theoretically make mediation more impartial by helping to correct the biases that affect human decision-making. As AI systems don't have any emotions or personal biases, they are less prone to subjective factors as compared to traditional mediation[xii]. While human mediators may be influenced by their emotions, personal biases, or some other external factors, AI works on data and algorithms, allowing them to provide objective disputes which is free from any personal biases and tailored to parties' needs which is also just and fair. This capability not only enhances the credibility of the mediation process but also fosters trust among the parties involved, as they can rely on an unbiased system to facilitate discussions.

### **Navigating the Challenges of Integrating AI into Mediation**

While AI has the potential to achieve a lot, it's still not free from all challenges and some of them need to be looked upon to realize its true worth. A lack of trust in the ability of algorithms to make fair and unbiased decisions not only by the people but by professionals as well. Experts in dispute resolution, note that while AI can enhance fairness through objective data analysis, there is apprehension regarding the transparency of AI systems and how decisions are made, which could impact trust in the process. This can hinder the use of AI by the mediators and the parties due to the concern regarding the impartiality of AI in decision-making. This may also give people a reason to dishonor the settlement as they may argue that the algorithms are unfair, etc. Currently, there are no such regulations to look after the rules and procedures of AI mediation services. This may also lead to malpractices by the professionals because of a lack of framework and can compromise the integrity and trust of the parties. The need for a proper framework should be realized as it also provides information about the expectations, working, duties, etc, which may give a clear idea to the parties which is an essential part of any amicable settlement.

Further, the ethical concerns of AI technologies can be serious and can't be ignored while dreaming of AI success in Mediation. We have all heard about lawyers using chat-based tools to augment their writings and including 'hallucinations' such as made-up case citations," writes Christopher K. Poole, CEO of JAMS[xiii]. This highlights a serious concern over AI use in mediation which can lead to the generation of wrong outputs which might end up creating more problems rather than solving them. The mediators need to critically evaluate those outputs and verify all the information before putting it to any use, which emphasizes that AI should serve as an enhancement tool rather than a replacement for human expertise in the legal field. To maintain fair and impartial outcomes and harness the full benefits of AI in mediation, rigorous implementation testing and validation processes will help minimize biases. There should be a prioritization of transparency and accountability in algorithm development, this will foster trust among users who may be wary of technology.

There are also significant privacy and confidentiality concerns, mainly because of the sensitive nature of the information shared during processes. Mediation also relies on the trust of the parties so that they can share their issues and problems openly without any hesitation. To maintain this trust even when these services are provided with AI, these systems should incorporate data protection measures, ensuring that personal information is securely managed and anonymized where it should be. There should be a 'confidentiality by design' approach that should be adopted by the Developers, which will include privacy safeguards in the system from the onset. This will develop trust and encourage participation from the parties. There is also a need to conduct regular audits of AI systems which will help to identify and rectify biases. Also, engagement with diverse stakeholders in the development can help ensure that multiple viewpoints are involved and considered leading to more equitable outcomes. We can enhance the integrity of mediation processes and promote social justice for marginalized communities if we actively address these biases in the AI system.

India is a country of diverse cultures and traditions, and one uniform tactic for dispute resolution won't work here. Even AI needs to assimilate this diversity to provide effective solutions, ignoring these differences might hurt the sentiment of the communities, especially marginalized communities, they usually have different customs, rules, etc, that need to be considered while assisting them, otherwise, even these services will ignore their specific needs. There's a need for a multifaceted approach such as AI tools should be trained to learn the various cultures and expectations of the communities. This can be done by providing various datasets, research analysis, etc so AI can learn how to respond differently to parties. Additionally, we can engage sociologists, anthropologists, and various community leaders to understand the needs and expectations of people from the grassroots level. AI should have a continuous learning mechanism that will help it to continuously learn from the environment and incorporate it into its database. It will help AI to keep its database up to date as per the changing demands and values of society.

Lastly, there's a want for skilled professionals, who can make effective use of such tools while incorporating them into decision-making. Though times have changed, and various technological acceptances are happening even in India, people are still depending on manual procedures. The Indian Judicial system is also keeping up with the technologies and tried to make various procedures online. But still, due to lack of expertise, people are unable to take benefit out of it. Parties are still traveling longer distances for the physical hearings even though there's an option for virtual hearings. One lady said, no one knows in my house how to use video calls that's why I travel from Chandigarh to Delhi every time, I have hearing here. This shows the problem that persists even after making the processes hybrid. This shows the gap that can also hinder AI incorporation in mediation services. To make its use effective, there should be a development of clear strategies by the stakeholders that will outline how these technologies can assist the traditional methods and help people to understand the working. There should be a collusive environment where human mediators can work along with AI tools to enhance its correctness as well as tailor it to the needs of diverse communities. To help mediators effectively use the AI tools in their assistance so that they can learn it while keeping in mind their core responsibilities, there should be training programs. Easy guidelines in local languages should also be available for the people so that they can learn how to use AI in their matters effectively while maintaining accuracy as well. The government or non-profit organizations should allocate some funds for the accessibility of various technological devices in remote areas as well.

Further, the involvement of policymakers can help in the formulation of some uniform regulations and policies that will promote the ethical use of AI in Alternative Dispute Resolution (ADR). They should focus on transparency, accountability, and fairness while providing guidelines for data protection and privacy. The grants from governmental organizations, partnerships with non-profits focused on social justice, and private sector investments can help in creating affordable mediation services for all while ensuring that marginalized communities can benefit from innovative dispute resolution methods without facing prohibitive costs.

### **Conclusion**

The engagement of AI in mediation presents a golden opportunity that can enhance access to justice for marginalized communities. AI can help streamline mediation processes, an alternative to litigation. The latest advancement in the field of AI can assist in providing analysis of past data, automate administrative tasks, and facilitate effective communication and solutions in a short period with more equitable outcomes for all the concerned parties without compromising anyone's interest.

AI can help realize the needs of the masses and provide wider accessibility, but it can in no way completely replace the traditional mechanism. As Kolin rightly pointed out, "I agree that the small cases (as e-commerce has aptly demonstrated) can utilize this technology for efficiency and likely with success, but for a death, defamation, IP infringement or multiparty construction case it is less certain. It could assist in the generation of ideas for deal parameters or the breaking of an impasse"[xiv]. So, AI can cater to the needs of the masses, but it cannot replace human intelligence anytime soon. Also, people in the end will prefer to trust people more easily than a machine. Therefore, there should be constant collaboration and harmonious relations between humans and AI to provide effective dispute mechanisms for needy people. Human mediators also need to assist AI in learning the cultural sentiments and how these values, languages, etc. play an important role in any decision concerning them because AI suggestions might be neutral and more practical, but they might hurt the sentiments of the parties which is very core to them. Therefore, there is a need for not only practical and just solutions but cater to the needs, holding the values of parties while coming to such an amicable solution in the end. To make its accessibility wider, there's also a need for government support, otherwise, people will start privatizing it and sell it at higher prices which will again undermine the very idea of social justice. The government needs to step in and provide these services at affordable prices, keeping in check the businesses that are providing such services and maintaining the policy standards. As stakeholders across sectors collaborate to harness this potential, we move closer to realizing a legal framework that serves all individuals equitably, paving the way for a future where justice is truly accessible for everyone.

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#### About the Author

*I'm Nida Ghaffar, a 2nd-year law student at O.P. Jindal Global University, driven by a passion for learning and a deep commitment to my career aspirations. My primary interest lies in dispute resolution, and I'm eager to collaborate with experts to gain practical insights and expand my understanding of this dynamic field. I value meaningful conversations and believe they foster growth and innovation. With an open mind and a friendly, approachable demeanor, I enjoy connecting with people and exchanging ideas that inspire mutual learning. For me, every challenge is an opportunity to grow, and I strive to stay curious and adaptable. As I navigate my academic journey, I am focused on building the skills and knowledge that will enable me to make a meaningful contribution to the legal profession while continuing to explore and embrace new opportunities.*

