Synergizing Eastern and Western Constructs of Mediation Reform: Initial Assessments of the Efficacy of Civil Mediation Reform in Selected Jurisdictions

Dr. Shahla F. Ali, HKU

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Overview

1) Aims/Methodology

2) Background (theoretical, policy)

3) Findings (Rule of Law, Efficiency, Quality of Civil Justice, Accessibility, Impartiality, Discrimination, Enforcement)

1. Aims/Methodology

- This research focuses on the impact of judicial mediation policy on efficiency, confidence in courts, and perceptions of justice.
- Aims at offering initial insights into the efficacy of different civil mediation policy approaches.

Methodology

- Relies primary on statistical analysis of survey and interview data and draws on selected global court and opinion data
- Adopts multiple research techniques (''triangulation'') to compensate for deficiencies
- Secondary academic research is adopted to complement statistical analysis

Sample selection (non-random convenience sample)

- A total of 8 countries selected: Four in each group representing: mandatory and voluntary mediation programs
- Within each group: 3 common law and 1 civil law jurisdiction; 3 OECD countries/1 emerging market
- Aim: minimise pre-existing variables - though given small sample and limitations on policy uniformity - the results cannot be generalised; Rather provide initial insights into the efficacy of civil mediation approaches

2. Background: civil justice reform

- Increase in transactions leads to large number of disputes.
- Traditional civil justice system is not effective in responding to this change.
- Increase in alternative dispute resolution (''ADR'')

Civil Litigation Theory

- Recent studies highlight growing inefficiencies of civil litigation but caution against denial of access/justice through exclusive reliance on settlement proceedings.
- Sander advocated in 1980s that the court should adopt ‘’multi-door courthouse” allowing multiple routes to resolution.
- Since then, integration of mediation into civil litigation has occurred in most OECD countries and many emerging markets

Conceptual Divide Between Voluntary and Mandatory Mediation

- Voluntary mediation emphasises party consent; Mandatory mediation emphasises integration & direct court supervision
- This reflects the divide between voluntary and mandatory mediation; The degree of movement along these two varies
- National experience and legal culture may affect the degree of movement
- Currently few in-depth comparative studies of civil mediation reforms along the voluntary/mandatory distinction and its effect on efficiency, confidence in courts, and perceptions of justice.

3. Findings

- Systems with a voluntary system in place reflect slightly higher overall scores in:
  - Rule of law
  - Quality of civil justice

- While mandatory programs reflect higher scores in:
  - Efficiency of the legal framework in settling disputes
  - Accessibility and affordability
  - Impartiality/effectiveness of ADR
  - Enforcement
  - Higher levels of reported discrimination

Findings 1: Rule of Law

Mandated					
Index	US	Australia	Singapore	China	Average
Rule of Law	89.9	96.2	95.2	42.8	81.025

Voluntary					
Index	HK	Japan	India	UK	Average
Rule of Law	93.8	89.4	54.3	94.2	82.925

Findings 1: Rule of Law (Cont')

- Voluntary group: higher scores regarding rule of law
- Possibly reflects a general understanding that availability of choices and access, free from compulsion, leads to greater sense of ROL
- Unpaired t-test (0.1186) regards that the difference cannot be considered statistically significant
- In voluntary group, India's rule of law score is 54.3 which can be explained by the complexities of governmental rules; underlying difference in jurisdictions may also affect the implementation of mediation model.

Findings 2: Efficiency of the Legal Framework in Settling Disputes

ndated					
ex	US	Australia	Singapore	China	Average
iciency of Legal mework in Settling outes	23	26	1	49	24.75

untary					
ex	HK	Japan	India	UK	Average
iciency of Legal mework in Settling outes	3	18	57	5	20.75

Findings 2: Efficiency of the Legal Framework in Settling Disputes (Cont')

- Mandatory group: higher score in terms of efficiency
- This may be explained by the fact that ADR tends to assist parties to achieve faster and lower cost settlements especially under a mandatory system
- Unpaired t-test (0.2513) reflects that the difference cannot be considered statistically significant
- In mandatory group, Singapore ranks 1st whereas China ranks 49th; other underlying factors influence the efficiency score

Findings 3: Quality of Civil Justice

Mandated					
Index	US	Australia	Singapore	China	Average
Quality of Civil Justice	21	15	3	67	26.5

Voluntary					
Index	HK	Japan	India	UK	Average
Quality of Civil Justice	11	14	88	13	31.5

Findings 3: Quality of Civil Justice (Cont')

- Voluntary group: higher score in terms of the quality of civil justice
- When individuals can openly access options for resolution, perceptions of the quality of civil justice increases.
- Unpaired t-test (0.2129) reflects that the difference cannot be considered statistically significant
- In mandatory group, Singapore ranks 3rd (commercial decisions widely recognised), reflecting commercial influences for high quality CJ

Findings 4: Accessibility and Affordability

dated					
ex	US	Australia	Singapore	China	Average
essibility and rdability	0.47	0.5	0.66	0.57	0.55

untary					
ex	HK	Japan	India	UK	Average
essibility and rdability	0.66	0.52	0.31	0.58	0.5175

Findings 4: Accessibility and Affordability (Cont')

- Mandatory group generally reflects higher scores in terms of accessibility and affordability particularly in cases of court-mandated programs that provide subsidized mediation.
- But unpaired t-test (0.3781) reflects that the difference cannot be considered statistically significant
- In voluntary group, UK's score (0.58) is lower than EU and North American average possibility due to its unpredictability of legal costs in civil procedures.

Findings 5: Impartiality and Effectiveness of ADR

ndated					
ex	US	Australia	Singapore	China	Average
artial and Effective R	0.81	0.9	0.74	0.52	0.7425

untary					
ex	HK	Japan	India	UK	Average
artial and Effective R	0.78	0.87	0.46	0.82	0.7325

Findings 5: Impartiality and Effectiveness of ADR (Cont')

- Mandatory group generally reflects a higher score in terms of impartial and effective ADR
- This runs slightly counter to the perception that mandatory ADR may not be impartial given repeat player dynamics
- It does confirm that mandatory ADR is more effective in reaching a resolution
- Unpaired t-test (0.0812) reflects that the difference cannot be considered statistically significant
- In voluntary group, Japan performs better than other Asian countries because of its extensive use of dispute resolution

Findings 6: Level of Discrimination (reporting "no discrimination")

ndated					
ex	US	Australia	Singapore	China	Average
Discrimination	0.52	0.54	0.97	0.47	0.625

untary					
ex	HK	Japan	India	UK	Average
Discrimination	0.76	0.76	0.43	0.62	0.6425

Findings 6: Level of Discrimination (Cont')

- Mandatory group generally reflects a higher levels of discrimination.
- This reflects some concerns that mandatory mediation may disadvantage one-shot users with few economic or legal resources.
- Unpaired t-test (0.1252) reflects that the difference cannot be considered statistically significant
- In mandatory group, US's score (0.52) is below average reflecting the deep-rooted racial discrimination against African Americans in its institution.

Findings 7: Effective Enforcement

landated					
dex	US	Australia	Singapore	China	Average
ffective Enforcement	0.67	0.81	0.88	0.48	0.71

oluntary					
dex	HK	Japan	India	UK	Average
ffective Enforcement	0.73	0.73	0.38	0.71	0.6375

Findings 7: Effective Enforcement (Cont')

- Mandatory group generally reflects a higher levels of enforcement
- Mediation is taking place in the court context and can be enforced by the courts.
- Unpaired t-test (0.5886) reflects that the difference cannot be considered statistically significant
- In the voluntary group, Japan's score (0.73) is higher than other Asian countries which may due to its demand for payment procedure

Conclusion

- There is a need to examine the potential impact of civil mediation reforms on user experience in terms of efficiency, perceptions of justice and confidence in courts
- Even with efforts to craft parallel sample groups, intervening factors exist which makes a generalised results impossible
- This comparison aims at providing initial insights into the best practices in civil mediation with regard to its socio-political objectives
- The findings suggest that mandatory mediation reflect a higher overall score in terms of efficiency, accessibility, affordability, impartiality, effectiveness, and enforcement whereas voluntary mediation reflect a higher overall score in terms of the rule of law and quality of civil justice
- There exists a trade-off between efficiency, accessibility and social impacts including discrimination that need to be addressed

Thank you

- Questions/comments welcome