



THE ROLE OF MEDIATION IN RESOLVING COMMERCIAL DISPUTES IN INDIA. AN ANALYSIS OF THE PRE-INSTITUTION MEDIATION RULES 2018

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ABSTRACT:

Resolution of commercial disputes is a primary driver of the business environment and overall national economic growth. In India, litigation has historically been characterized by delay, costliness, and procedural complexity that act to discourage parties from seeking early resolution¹. To help solve such problems, Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018² have come into operation under the Commercial Courts Act, 2015³, which made pre-institution mediation compulsory prior to filing certain commercial cases. The procedure is intended to encourage alternative dispute resolution (ADR) methods, clear out courts, and facilitate parties to reconcile amicably⁴.

This article analysis the contribution of mediation in resolving commercial disputes in light of the Pre-Institution Mediation Rules, 2018. It analysis why they were brought into being, assesses their practical effectiveness, and discovers whether they have managed to deliver the promised Cheap and Speedy Justice. Drawing from a survey of statutory law, judicial oversight, and prevailing data, the research concludes both the plus and minus of the existing mechanism.

The research also takes into account the global best practices and comparative analysis of India's regime of mediation with other jurisdictions to ascertain if it is competitive or not. It identifies similarities of ignorance, infrastructure issues, and parties' refusal to mediate. Last but not least, the paper proposes reforms to enhance the mediation process such as institutional support, mediation training, and enforcement of mediation agreements. In doing so, it aims to illustrate how pre-institution mediation can be the cornerstone for effective resolution of commercial disputes and a spur to India's ease of doing business.

Keywords: Mediation, Commercial Disputes, Alternative Dispute Resolution (ADR), Pre-Institution Mediation Rules 2018, Commercial Courts Act 2015, Dispute Settlement in India, Judicial Burden, Consensual Resolution.

Introduction:

Conflict resolution has been at the heart of the world's justice systems. Conflict resolution is crucial in business today as it impacts directly on business confidence, compliance with contracts, and economic stability. The conflict resolution system in the country is likely to reflect the resilience of the country's institutions and the health of the country in the matter of law. Where grievances are addressed promptly and fairly, trade thrives⁵; where they build up and uncertainly, trade stagnates. Where the usual process of grievances redress—judicial decision by courts—is everywhere condemned in Indian society to be time-consuming, costly, and rule-bound. Constitutionally guaranteeing access to justice⁶ despite everything, the horrendously enormous pendency of pendency cases delivers another blow to people's faith in the judicial process. To business groups valuing speed of determination and enforceability of contract, inefficiency in adjudication is a powerful deterrent. Infinite hearings not only exact their own cost at more than in dishonorable cost but also erode business partners' confidence⁷ and deter foreign investment. The unpleasant reality of a backlog of millions of cases

¹ Law Commission of India, *Report No. 253 on Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (January 2015), p. 6.

² Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, notified vide GSR 1111(E), Ministry of Law and Justice, 3 July 2018.

³ The Commercial Courts Act, 2015 (Act No. 4 of 2016), ss. 12A–12C.

⁴ Susmita Mandal, "Is Mandatory Mediation the Future of Dispute Resolution in India?" SSRN Preprint (25 March 2022), p. 3.

⁵ A. S. Yelurkar et al., "Effectiveness of Mediation in Resolving Commercial Disputes," *International Journal of Emerging Technologies and Innovative Research (IJETIR)*, August 2023, pp. 210–212.

⁶ S.S. Rana, "Pre-Institution Mediation – An Inescapable Mandate or Just a Volition," S.S. Rana & Co. Legal Update (14 December 2023).

⁷ Nishith Desai Associates, *Mediation of Commercial Disputes in India* (Winter 2021), p. 9.

pending in the judiciary is the necessity for something different from formal judicial process to assist in contributing, if not replacing and supplementing, formal judicial process. It is here that **Alternative Dispute Resolution (ADR)** comes into play.

ADR was not unfamiliar to India before. There were voluntary forms of settlement centuries old in the form of village panchayats⁸ and community settlements. Institution-building for ADR happened only in the latter half of the twentieth century when arbitration and conciliation received statutory status. The Indian judiciary and parliament have, through practice, learned that ADR is not an alternative but a process that in most cases is better except possibly a few, as it is primarily commercial cases. Among all the ADR processes—arbitration, conciliation, mediation, and negotiation—**mediation** has been realized as an offensive process because it is more communicative, cooperative, and solution-focused. Mediation is unique in shifting focus from rights-disputes adversarially settled to cooperative problem-solving. Rule by a judge or arbitrator is replaced by parties making decisions in their interests, advised by an impartial third party. Maintaining business relations, cost-effectiveness, and confidentiality—privileges greatly sought after in business—are promoted by the process. Profits from the fruits thereof, other countries have integrated mediation into their conflict-resolution mechanisms. India itself took the lead in achieving it by enacting the **Commercial Courts Act, 2015**, and above all else, the **Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018**. Mediation was made institutional as a prerequisite prior to filing certain commercial suits in 2018 Rules.

This innovation was legislatively nudged: to alleviate pressure from the increasing case load of commercial courts and provide parties to cases an opportunity to settle amicably at an early stage. The scheme encourages parties to attempt mediation prior to named officials before formal proceedings are issued. Litigation becomes a last, rather than first, resort. Pre-institutionalization of mediation was a revolutionary strategy, yet the process of implementing it never remained smooth. The initial experience shows that while there is record-breaking potential in the facility, it has faced the issues of non-availability of awareness on the part of litigants, non-co-operation of the parties, non-availability of trained mediators, and dismal infrastructure to conduct effective mediation hearings. Mediation has even been considered at times as a ritual and not as a real possibility of settlement. Secondly, the unenforceability of mediation-based agreements and absence of sufficient strong institutional support have dissuaded it from making headway. These are a sign of an intent-reality gap in legislation. Thus, in this manner, the judiciary itself has assisted in reaffirming the importance of mediation. Judges have made a serious effort to ensure that it is very clearly stated that mediation is not a procedural courtesy but an integral part of the judicial system. Judicial pressure and legislative drive can make attitudes change and in the long run generate a culture of mediation in India. Systemic reform must be implemented so that the mechanism can be able to fulfill its desired purpose. Comparative strategy lends more specificity to such analysis. In Singaporean regimes of law, the US, and in the UK, mediation is most traditionally used as an immediate remedy for commercial conflict. In them, regimes of state mediation are supplemented by professional regimes of accreditation, specialist centers of mediation, and strict regimes of enforcement of agreement. What their experience shall provide is the most honest accounts of how institutional facilitation supported by assistance at a cultural level can motivate mediation change to the center of the conflict resolution process and not the periphery regions. India's experimentation of mainstreaming pre-institutional mediation thus has to be experimented and tested both at a domestic as well as an international scale. The focus of the current study lies in situating pre-institution mediation within the overall Indian process of commercial dispute redressal. It attempts to examine if the 2018 Rules have been able to achieve their objectives of judicial backlog management, cost-efficient disposal, and inculcating a culture of consensual resolution. It attempts to discover the weaknesses and strengths of the system, where it currently is vis-a-vis international best practice, and to recommend reforms that will shore up its pillars of institutions into an even stronger version. Lastly, it insists that institution before mediation is cause and cure.

While its realism accurately pinpoints most of India's deficiencies, it also sows the seed for re-engineering India's conflict resolution culture. Within institutional backstopping, trainer mediation, social campaign, and open lines of enforcement, mediation could be integrated into India's texture of commercial delivery of justice. This would not only de-fog the courts but investor sentiment, ease of doing business rank, and transform India into a competitive cross-border trade hub.

Objectives:

1. To research the history and place of mediation in solving commercial disputes in India.
2. To examine the legislative intent and working reality of the Pre-Institution Mediation Rules, 2018.
3. To ascertain the strengths, weaknesses, and challenges in the implementation of pre-institution mediation.
4. To assess the efficaciousness of mediation in curtailing commercial court caseloads.
5. To suggest reforms and recommendations for the strengthening of mediation as a preferred ADR technique in India.

Research Methodology:

- Nature of study: Doctrinal and qualitative research with ingredients of empirical analysis.
- Data collection:
- Primary sources: commercial courts act, 2015, pre -institution mediation rules, 2018, judicial precedents, government notification.
- Secondary sources: Books, academic journals, reports, of the ministry of law and justice, articles, and online database.
- Analytical Framework: Comparative analysis with international mediation practices, assessment of reported cases and settlement rates.
- Approach: Critical and descriptive, aided by case study method wherever possible.

Research Questions:

1. What is the implication of mediation as a mechanism for alternative dispute resolution (ADR) in India's commercial dispute system?

⁸ P.C. Rao & William Sheffield, *Alternative Dispute Resolution: What It Is and How It Works in India* (Universal Law Publishing, 1999), p. 12.

2. How have the Pre-Institution Mediation Rules, 2018 influenced commercial dispute settlement?
3. What are the challenges and limitations encountered in their implementation?
4. To what extent have the rules minimized the workload of commercial courts and encouraged quick dispute resolution?
5. What reforms can be proposed to enhance the structure of pre-institution mediation in India?

Literature Review:

1. Susmita Mandal, "Is Mandatory Mediation the Future of Dispute Resolution in India?" SSRN preprint, 25 March 2022

Susmita Mandal (2022) in her article "Is Mandatory Mediation the Future of Dispute Resolution in India?"⁹ (SSRN Preprint, 25 March 2022) presents the increasing controversy regarding the Indian legal system's use of mandatory mediation. She believes that while mediation has many benefits like lower judicial backlog, time and cost savings, and inculcating a culture of amicable resolution, it must be made obligatory judiciously¹⁰. Relying on global practices in the UK and the US, Mandal is of the opinion that a well-designed framework-with trained mediators, binding settlement contracts, and insurance opt-out-could consolidate India's dispute resolution framework¹¹. In the process, she also points out its disadvantages, such as the potential of coercion, disparity in quality of mediation services, and lack of robust empirical evidence regarding its effectiveness¹² in India.

Her work adds to the literature through policy-recommendatory suggestions, but it is more conceptual than empirical, and it is stated that further study and pilot studies have to be undertaken to determine the workability of compulsory mediation in India.

2. "Effectiveness of Mediation in Resolving Commercial Disputes" by A. S. Yelurkar et al., IJETIR, August 2023 A. S. Yelurkar et al. (2023), their "Effectiveness of Mediation in Resolving Commercial Disputes"¹³ in International Journal of Emerging Technologies and Innovative Research (IJETIR), August 2023, write about how mediation is a substitute for litigation in commercial disputes. The authors' opinion is that mediation greatly lightens the court workload through simple and affordable settlements and maintaining business relationships¹⁴ because of being consensus-oriented and confidential. The scholars highlight that mediation improves party satisfaction since it provides more control over results in contrast to adversarial litigation. The report further identifies areas of concern like unawareness of business stakeholders, few trained mediators, and enforceability of mediated agreements¹⁵.

Yelurkar et al. conclude that while the success of mediation as a means of resolving commercial disputes cannot be doubted, its success in India will hinge upon more robust institutional settings, appropriate training of mediators, and higher acceptance among legal professionals and litigants¹⁶.

3. "Mediation of Commercial Disputes in India", Nishith Desai Associates, Winter 2021 Nishith Desai Associates' "Mediation of Commercial Disputes in India" (Winter 2021)¹⁷ says the growing significance of mediation as a cost- and time-saving device for the resolution of commercial disputes. The authors enumerate its strengths of keeping business relationships intact and lightening litigation burdens but also enumerate challenges like non-uniform enforcement, confidentiality problems, and non-uniform accreditation of mediators. The research observes the role of international instruments like the Singapore Convention on Mediation¹⁸ in obtaining strengthenability but marks that India still did not have more robust statutory support at that point.

In total, the article offers a practical and doctrinal perspective, pointing out both the promise and the barriers of mediation in the commercial dispute resolution scenario of India.

4. "Pre-Institution Mediation – An Inescapable Mandate or Just a Volition", S.S. Rana article, 14 December 2023 S.S. Rana's article "Pre-Institution Mediation – An Inescapable Mandate or Just a Volition"¹⁹ (14 December 2023) reflects on the necessity of mandatory mediation under Section 12A of the Commercial Courts Act²⁰. It clarifies that although the provision was passed to de-congest courts and allow early settlement, its mandatory character has threatened to clip mediation's voluntary aspect. The article recognizes judicial discord on the "urgent interim relief" exception and risk of abuse threat by parties to avoid mediation.

It underscores the tension between policy aspirations and practical reality, asking for more unequivocal legislative and judicial guidance to reconcile efficiency with the consensual nature of mediation.

5. "Pre-Litigation Mediation in India — Should it be Mandated?", SSRN paper, 15 December 2023 Whether pre litigation mediation must be made compulsory in India or not is a point that has been intensely debated in recent times. Mandatory mediation is said to cut down judicial backlog, save time and money, maintain business and personal relationships, and enable congenial resolution of disputes. Amendments like Section 12A of the Commercial Courts Act, 2015, and the Mediation Act, 2023, are attempts at institutionalizing pre litigation mediation, although the latter makes it obligatory only partially outside of cases where other legislations do the same. But experts warn that compulsion could mar the voluntary nature of mediation, cause delay in the event of failed mediation, and be controversial due to poor availability of mediators, variation in quality, and illiteracy among litigants.

The literature also tends to highlight that while pre litigation mediation is a useful tool, success with it in India would be contingent upon proper design, appropriate infrastructure, and increased legal stakeholders' acceptability.

⁹ Susmita Mandal, *Is Mandatory Mediation the Future of Dispute Resolution in India?*, SSRN Preprint, 25 March 2022, p. 1.

¹⁰ *Ibid.*, p. 3.

¹¹ *Ibid.*, pp. 4–5.

¹² *Ibid.*, p. 6.

¹³ *Ibid.*, p. 8.

¹⁴ A.S. Yelurkar, D. Patil & S. Suryawanshi, *Effectiveness of Mediation in Resolving Commercial Disputes*, IJETIR, Vol. 10, Issue 8 (August 2023), p. 209.

¹⁵ *Ibid.*, p. 214.

¹⁶ *Ibid.*, p. 216.

¹⁷ Nishith Desai Associates, *Mediation of Commercial Disputes in India* (Winter 2021), p. 3.

¹⁸ *United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation)*, 2019.

¹⁹ S.S. Rana, *Pre-Institution Mediation – An Inescapable Mandate or Just a Volition*, Legal Update (14 December 2023), p. 2.

²⁰ Commercial Courts Act, 2015, s. 12A.

Chapterization:

1. Introduction to Mediation in Commercial Disputes
2. Legislative Framework: Commercial Courts Act, 2015 and Pre-Institution Mediation Rules, 2018
3. Implementation and Effectiveness of Pre-Institution Mediation in India
4. Comparative Perspectives: International Best Practices in Mediation
5. Challenges and Limitations of India's Mediation Framework
6. Reforms and Recommendations for Strengthening Commercial Mediation in India

Chapter 1 – Introduction to Mediation in Commercial Disputes and Pre-Institution Mediation Rules, 2018**1.1 Background and Rationale**

Disputes at the business level are unavoidable in business and are created by all forms of issues such as defaults of payments, breaches of contracts, arising disputes between partnerships, company management disputes, and intellectual property rights disputes. Indian courts have been the strongest institution to resolve such disputes for a very long period of time. India's courts are, nonetheless, clogged: There are in excess of 5 crore pending cases in Indian courts as of 2024, with commercial cases representing a significant proportion of them. Protracted litigation not only does business a disservice economically but also deters foreign investment and scares away ease of doing business.

In such a scenario, Alternative Dispute Resolution (ADR) mechanisms, i.e., mediation, have been given the spotlight. ADR mechanisms offer a substitute, less adversarial and collaborative process of conflict resolution.

1.2 Defining Mediation

Mediation is an interest-based, informal, voluntary negotiating process, assisted by a third-party neutral facilitator, i.e., a mediator who guides parties to a mutually acceptable solution. Unlike arbitration, the mediator does not render a binding solution; the solution is consensual.

Fundamental principles of mediation:

- Voluntariness – Voluntarily approached by parties.
- Confidentiality – Disclosures and hearings are confidential.
- Neutrality – Mediator is not personally interested.
- Self-determination – Party will-based choice.

1.3 Commercial Dispute Mediation Functions

- Efficiency in time: Commercial mediation is completed in 30–60 days, but litigation is completed in courts within 3–5 years.
- Cost economy: Mediation cost is comparatively low compared with court and arbitration cost.

1.4 Comparison of Others with ADR Processes

- Litigation: Hostile, waiting, Public and time-consuming
- Arbitration: Binding and quicker than courts but hostile and costly
- Mediation: confidential, adaptable, and low cost

1.5 Research Objectives

The study proposes to:

1. Describe the Indian law of mediation, comprising the Commercial Courts Act, 2015 and Pre-Institution Mediation Rules, 2018.
2. Examine the demand and effectiveness of pre-institution mediation.
3. Compare the Indian system with best practice abroad.
4. Find challenges and weaknesses in the system currently.
5. Provide reforms and suggestions to improve India's mediation system.

Chapter 2 - Legislative Framework: Commercial Courts Act, 2015 and Pre-Institution Mediation Rules, 2018**2.1 Evolution of Commercial Dispute Resolution in India**

When the complexity in business transactions grew, India's thriving economy required a proper and expert legal system for settling its disputes. Prior to 2015, commercial disputes used to be decided under the conventional civil procedure of the Code of Civil Procedure, 1908 (CPC), which had primarily been responsible for outrageously tardy dispute determination.

The issues to be done away with by the act called the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (also the Commercial Courts Act, 2015) made into a law. The act created a new specialist courts of commerce system with the short proceedings. Apart from this, it provided pre-institution mediation (PIM), a completely new method for settlements being reached prior to court, as a service of law.

2.2 Commercial Courts Act, 2015 – key provision:

commercial court act 2015 facilitated:

- Setting up exclusive commercial courts at district level.
- bildung of Commercial Divisions and Commercial Appellate Divisions in High Courts with original jurisdiction.
- Wide definition of "commercial disputes" involving disputes over: corporate matters
 - o of Contracts, documents of mercantile character, joint ventures, partnerships.
 - o of Intellectual property rights.
 - o of Infrastructure contracts.
 - o of Finance and insurance.
- Rapid resolution of disputes within timeframes.

Amendments (2018 and 2022):

- Lowered pecuniary jurisdiction to ₹3 lakhs to enhance accessibility.
- Mandatory pre-institution mediation under Section 12A of the Act, except in cases of urgent interim relief being sought.

2.3 Section 12A – Mandatory Pre-Institution Mediation

Pre-Institution Mediation under Section 12A became obligatory as a prerequisite to the filing of a commercial suit with the following characteristics:

1. 1.Compulsory Mediation: Except in cases where immediate interim relief is being sought, parties are first mandated to try mediation.
2. 2.Authority through whom the mediation is done: Mediation is done under the direction of authorities as per the instructions of the Central Government, usually in the form of Legal Services Authorities (LSAs).
3. 3.Period: The process is intended to take usual not more than three months and extendable by another two months by agreement.
4. 4.Memorandum of Settlement: In case of successful mediation, the settlement is binding and enforceable as a decree of court.
5. Failure of Mediation: In case of no settlement, the mediator prepares a "non-settlement report" so that the parties can then approach the court.

2.4 Pre-Institution Mediation Rules, 2018 (PIM Rules)

For giving practical effect to Section 12A, the Ministry of Law and Justice published the Pre-Institution Mediation and Settlement Rules, 2018.

Key Provisions:

- Initiation: For launching the process of mediation before filing a commercial suit, a party has to make the move to the respective authority.
- Appointment of Mediator: The mediators to be appointed should be from the panel being retained by the State Legal Services Authorities.
- Procedure:

The counterparty is notified by service of a notice.

Confidentiality is kept paramount in mediation proceedings.

They may also be represented by individuals possessing settlement powers of authority.

Time limit: 3 months, extendable for an additional 2 months.

Upon success, the settlement would have the same force as a decree by a court of law under the CPC.

2.5 Judicial Acceptance and Case Referrals

Through interpretation and expanding the pre-institution mediation mandate, the judiciary has been the central driver of the change.

1. Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. (2022) 10 SCC 1

- o The Supreme Court ruled that Section 12A is mandatory.
- o A commercial suit filed without having previously tried mediation (except in matters of urgency for interim relief) is likely to be dismissed.
- o The Court clarified that the end of mediation could not be a "mere formality" but a part of the process of resolution of disputes.

Significance: The judgment gave impetus to Section 12A in that parties are required to try mediation seriously and not use it as a cop-out.

2. Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd. (2023, Calcutta HC)

The High Court again reminded that commercial courts must require pre-institution mediation before taking the cases on board for hearing.

Mediation being a speedy method of resolving the dispute without damaging the relationship, fits well with India's desire to improve its Ease of Doing Business ranking, which the Court emphasized.

3. Deepak Raheja v. Ganga Taro Vazirani (2019, Bombay HC)

The court explained that the Section 12A mediation process cannot be used as a precedent in future litigations by the parties.

Significance: This decision strengthens the element of confidentiality in mediation and hence the trust of the parties.

2.6 Practical Example of Application

- Example (Contractual Dispute)1: A manufacturer and a supplier were engaged in a battle over 50 lakh rupees delayed payments. They chose to settle through pre-institution mediation under the 2018 Rules instead of going to court. The mediator resolved the dispute within 45 days where the manufacturer paid 35 lakh upfront and postponed the remaining 15 lakh within three months. Time and cost were saved by avoiding litigation.
- Example 2 (Intellectual Property Conflict): The dispute of similarity in trademarks between two companies was resolved by the PIM mediation. The agreement of coexistence (e.g., differentiated branding and distribution zones) was signed by the parties. This enabled both companies to proceed with their operations without fear of losing the case.

2.7 Importance of the Legislative Framework

The commercial courts act, 2015 and PIM rules, 2018 collectively are a major legal step ahead of India's regime of commercial dispute resolution. They are important because:

- Decrease in Judicial Backlog: By diverting cases from the courts to mediation.
- Strengthening Business Confidence: Resolution of disputes within a speedy timeframe is a welcome feature for India as an investment destination.
- Compliance with international standards: A requirement of mediation before litigation is the case in most countries; India is no exception.
- Enforcement of Settlements: The legislation is quite specific in that mediated agreements are given the status of a decree thus ensuring juridical certainty.

Chapter 3 – Implementation and Effectiveness of Pre-Institution Mediation in India

3.1 Introduction

Although the Commercial Courts Act, 2015 and Pre-Institution Mediation Rules, 2018 constitute a sound legal provision, the test lies in its implementation. Realization in India has progressed in phases, with mixed success based on awareness, institutional setup, and willingness of parties to resolve disputes amicably. The chapter critically analysis the extent to which PIM has been implemented and whether it has succeeded in achieving what it was meant to achieve.

3.2 Institutional Implementation

1. Mediation Authorities:

The National Legal Services Authorities (NALSA) and State Legal Services Authorities (SLASAs) are mainly tasked with providing pre-institution mediation.

panels of trained mediators are kept, typically comprising retired judges, senior counsels, and credentialed persons.

2. Geographic Spread:

Implementation is more effective in big cities such as Delhi, Mumbai, Chennai, and Bengaluru because of improved institutional capacity.

In rural belts and small towns, the mediation centers are evolving, resulting in unequal access.

3. Statistics (as per NALSA, 2022):

- a. Around 25,000+ pre-institution mediation applications were made since 2018.
- b. Of these, almost 45–50% resolved through settlement, a good success rate.
- c. Settlements are more in partnership and contractual cases, and intellectual property and large corporate cases have mixed results.

3.3 Judicial Sanction of Implementation

1. Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. (2022, Supreme Court)

Deemed that mediation under Section 12A is obligatory.

Courts should dismiss proceedings that bypass mediation unless in exceptional situations where urgent interim relief is required. Enforced the principle that mediation is not a "mere procedural formality" but a material step.

2. Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd. (2023, Calcutta HC)

The High Court instructed parties to approach mediation first before resorting to court jurisdiction.

Emphasized that mediation saves judicial time as well as business goodwill.

3. M/s DLF Ltd. v. Rajapura Homes Pvt. Ltd. (2023, Delhi HC)

The court noted that commercial mediation infrastructure is a key pillar of India's Ease of Doing Business policy.

Emphasized that parties cannot avoid statutory mandates of mediation by intentionally evading them.

4. Deepak Raheja v. Ganga Taro Vazirani (2019, Bombay HC)

Reaffirmed that mediation statements are kept confidential and would not cause a party prejudice in case of a failure in mediation.

Helped Instill confidence in firms to be honest in disclosing information during the process of mediation.

3.4 Effectiveness Analysis

Advantages realized on the ground:

- Time Saving: Time utilized in mediated disputes stands at about 30–60 days compared to years of litigation.
- Cost Effectiveness: Mediation charges are negligible in relation to lengthy legal procedures.
- Retention of Business Relationship: A majority of the cases lead to re-negotiated terms rather than canceled contracts.
- Judicial Relief: The courts have experienced a decrease in commercial filings after Section 12A became mandatory.

Limitations noted:

- Awareness Gap: Most of the small and medium enterprises (SMEs) are unaware of pre-institution mediation.
- Non-Cooperation: Certain parties come to mediation just for the sake of "meeting the formality" and still go on to litigation.
- Capacity Issues: Lack of trained mediators in small jurisdictions.
- Enforcement Issues: While settlements are enforceable, enforcement in cross-border disputes is still a problem.

3.5 Practice Success Stories

1. Contract Dispute (Success Story in Practice):

CASE: Manufacturing firm sued logistics firm for non-payment of ₹1 crore.

MEDIATION OUTCOME: Sides agreed within 40 days to reschedule payment into instalments with partial waiver of late charges.

IMPACT: Avoidance of litigation; business relationship intact.

2. Intellectual Property Dispute:

CASE: Two start-ups had disintegrated over similar trademarks in the food sector.

Mediation Outcome: They signed a coexistence agreement—each business had rights in north India, the other in south India.

Impact: Both retained brand identity, saving years of litigation under the Trade Marks Act.

3. Real Estate Dispute:

Case: Buyer and developer battled delays in taking possession of a ₹15 crore project.

Mediation Outcome: Mediator facilitated resolution with changed possession timetables and partial refund.

Impact: Buyer prevented long consumer litigation; developer maintained reputation and business operation.

3.6 Determinants of Effectiveness

- Dispute Nature: Mediation is more effective in relationship-oriented disputes (e.g., partnerships, joint ventures, contracts). It is less effective in highly confrontational disputes.
- Attitude of Parties: An amicable attitude raises settlement chances. Where punitive results are wanted by the parties, mediation does not work.
- Mediator's Skill: Knowledgeable mediators with business understanding tend to give more success rates.
- Judicial Pressure: Courts exerting pressure on mediation compliance (like in Patil Automation) raises efficiency.

3.7 Overall Assessment

Pre-institution mediation has been successively but moderately effective in India. Although settlement percentages are promising, issues still exist on the awareness, uniformity, and quality fronts. With adequate judicial endorsement, institutionalized mediator training, and application of technology, India can attain higher percentage settlements. Success with PIM also largely hinges on India's desire to become a global hub for trade and investment because successful dispute resolution increases investor confidence.

Chapter 4 – Comparative Perspectives: International Best Practices in Mediation

4.1 Introduction

Mediation is now one of the finest options to settle commercial conflicts. All super countries such as the United Kingdom, United States, Singapore, and Hong Kong have incorporated mediation as a central component of conflict resolution, making it part of legal mechanisms as well as commercial environments. India's Pre-Institution Mediation system, though promising, remains still to take shape. Through the lessons it draws from comparative practices, and more particularly from the UK experience, India can also refine its model of mediation so that it is cost-effective, enforceable, and investor-friendly worldwide.

4.2 Mediation in the United Kingdom: A Model for India

The UK has taken the initiative in mainstreaming mediation as part of commercial dispute resolution procedure. Mediation is encouraged by the courts and institutions, often refusal to mediate being an unreasonable method of handling litigation.

4.2.1 Institutional and Legislative Framework

1. Civil Procedure Rules (CPR), 1999 – require courts to actively encourage parties to use Alternative Dispute Resolution (ADR), such as mediation.
2. The Centre for Effective Dispute Resolution (CEDR) – established 1990, one of the world's most prestigious centers for mediation, resolving thousands of commercial disputes annually.
3. Judicial Encouragement: UK courts expect parties to mediate robustly and may have cost sanctions applied to those who fail to mediate reasonably.

4.2.2 Landmark UK Case References

1. Halsey v. Milton Keynes General NHS Trust (2004)

o Principle: Court of Appeal ruled that while the courts cannot compel parties to mediate, they may compel a party who pre judiciously declines to mediate to face cost sanctions.

o Impact: Set the precedent that failure to mediate has cost consequences, further setting the importance of mediation in commercial cases.

2. Dunnett v. Railtrack plc (2002)

o Principle: Court of Appeal approved Railtrack for refusal to mediate, yet ultimately successful in the case.

No Impact: Issued a clear message that litigants may face cost sanctions in resisting ADR, even where winning in court.

3. PGF II SA v. OMFS Company 1 Ltd (2013)

No Principle: Passive refusal to mediate was held to amount to unreasonable behaviour.

No Impact: Concluded that there is an expectation by courts of a positive response to invitations for ADR.

4. Cable & Wireless Plc v. IBM UK Ltd (2002)

No Principle: Created a contractual term to attempt ADR prior to litigation.

Impact: Had the impact of court approval of mediation clauses in agreements and thus their enforceability.

4.2.3 Efficiency of Mediation in the UK

• After CEDR's 2022 Mediation Audit:

There were over 17,000 mediations conducted in one year.

Closed 72% of the cases on the day, and additional 21% shortly thereafter, rendering mediation over 90% effective.

Timeframe: 1–2 days versus years of legal process.

• Used extensively in cases of banking, construction, insurance, intellectual property, and international trade.

4.3 Comparative Insights of Other Jurisdiction

4.3.1 Singapore

• Singapore Mediation Act, 2017 provides enforceability to mediated settlement agreement.

• Singapore International Mediation Centre (SIMC) collaborates with the Singapore International Arbitration Centre (SIAC), creating a "Arb-Med-Arb" model whereby mediation and arbitration complement each other.

• Lesson for India: The statutory recognition of mediation outcome on a par with arbitral awards.

4.3.2 United States

• Court-annexed mediation is prevalent, especially in commercial cases.

• Pre-trial mediation is mandated by the Federal and State courts in the majority of the jurisdictions.

• Lesson for India: Mandatory court-annexed mediation systems more robust to lower backlog.

4.3.3 Hong Kong

• Practice Direction 31 (2009) obliges parties to attempt mediation before trial.

• Courts impose negative cost orders on unreasonable refusal to mediate.

• Lesson for India: Use judicial sanctions to discourage parties from refusing mediation.

4.4 Lessons for India from the UK Experience

1. Cost Sanctions as a Deterrent:

India can apply the Halsey principle by empowering courts to levy cost sanctions upon parties who do not mediate in a reasonable spirit.

This will prevent parties from treating mediation as a mere ritual.

2. Institutional Strengthening:

India must establish specialist commercial mediation institutions such as CEDR of the UK and SIMC of Singapore.

Current overdependence on LSAs is not sufficient to resolve complex corporate conflicts.

3. Enforcement of Mediation Settlements

o In view of Cable & Wireless v. IBM, India must ensure contractual enforceability of mediation clauses in business contracts more strongly.

Mediation agreements must be ordered to be enforced in an attempt to reduce enforcement delays.

4. Training and Accreditation of Mediators:

UK mediators are completely accredited and trained through CEDR.

India must have a national accreditation body of mediators to ascertain quality and consistency.

5. Data and Transparency:

o UK publishes Mediation Audit Reports, building trust and credibility.

n India must create a national mediation stat database to support research and policy.

6. Litigation Mindset Cultural Shift:

UK parties are convinced to view mediation as not a weakness but business acumen.

India must facilitate this shift in culture through campaigns and judicial advocacy.

4.5 Conclusion

The mediation system of the UK illustrates that judicial support, enforceability, and institutional competence are necessary to turn mediation into a pervasive commercial dispute resolution instrument. India's Pre-Institution Mediation scheme introduced under the Commercial Courts Act, 2015 is in the right direction but an infant step. Following the UK experience of cost sanctions for non-compliance, contractual recognition, more powerful institutions, and accrediting mediators will enable India to transform its mediation system into a strong, credible, and internationally accredited system.

Chapter 5 – Challenges and Limitations of India's Mediation Framework

5.1 Introduction

Even though there was legislative effort through the Commercial Courts Act, 2015 and Pre-Institution Mediation Rules, 2018, mediation in India is confronted with various structural, cultural, and institutional challenges. Although judicial encouragement has added momentum to mediation, functional roadblocks persist. Grasping these constraints is important to devise reforms that make mediation a predictable, accessible, and functional method of commercial dispute resolution.

5.2 Major Challenges

5.2.1 Resistance to Change and Lack of Awareness

- Several business stakeholders, especially small and medium enterprises (SMEs), are unaware of the pre-institution mediation as compulsory or view it as an attempt to delay litigation.
- Indian business culture has historically been lawsuit-focussed, where parties consider heading to court as exercising their rights.
- In contrast to the UK or Singapore, compromise or weakness is perceived in taking up mediation, which results in opposition.

Example: In a payment dispute between a supplier and retailer, the retailer demanded litigation even though the supplier was ready for mediation, arguing that "settling" would lower bargaining strength. The dispute lasted for five years, incurring in excess of the initial claim.

5.2.2 Institutional Capacity Asymmetry

- Pre-institution mediation is mostly controlled by Legal Services Authorities (LSAs), which have no specialized commercial expertise.
- There are hardly any trained mediators with expertise in complicated corporate disputes such as intellectual property, cross-border agreements, or shareholder disputes in smaller districts.
- Infrastructure for mediation is centered in metros such as Delhi, Mumbai, and Bengaluru, whereas tier-2 and tier-3 cities have problems with institutional assistance.

Case Reference: In *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* (2022, SC), the Supreme Court mandated mediation but also recognized that India's institutional capacity has to be enhanced to ensure it is actually effective.

5.2.3 Attitude of Parties – Mediation a Mere Formality

- Various parties go through mediation merely to comply with Section 12A necessities prior to instituting a suit.
- Parties have been known to sit in sessions without any intention of negotiating in good faith, report mediators.
- This attitude deflates the culture of mediation and results in procedural time-wasting delays.

Example: In a ₹20 crore IT service dispute, the defendant sat through three mediation sessions but rejected all offers of settlement, saying they were "waiting for the court process." Eventually, the mediation broke down, wasting months of time.

5.2.4 Confidentiality Concerns

- Though mediation is a confidential process by law, most companies apprehend that commercial information shared in mediation could later be turned against them during legal proceedings.
- This apprehension dissuades free disclosure, which is essential for effective settlements.

Case Reference: *Deepak Raheja v. Ganga Taro Vazirani* (2019, Bombay HC) ruled in favor of confidentiality in mediation, holding that what is said cannot prejudice the parties during future litigation. Nevertheless, concerns continue to arise in practice.

5.2.5 Enforcement Challenges

- PIM settlement agreements are binding but in practice get delayed by parties.
- While arbitration awards (being decrees in the eyes of law) are enforceable directly, mediated settlements often need extra legal procedures for enforcement.
- Enforcement across borders is particularly feeble, as India has not yet signed international instruments such as the Singapore Convention on Mediation (2019).

5.2.6 Lack of Competent Mediators

- Most mediators are retired lawyers or judges with limited knowledge of business.
- India does not have a national system of accreditation like Singapore or the UK to guarantee mediator quality.
- Subject-matter experts are needed to handle complex disputes (such as technology licensing or international trade contracts), which India still doesn't have.

5.2.7 Delay in Process and Judicial Backlog

- Paradoxically, pre-institution mediation, which aims to minimize backlog, at times creates delays.
- In case of failure through mediation, the dispute enters litigation, thus the process adds 3–6 months extra.
- Courts also give too many exemptions at times, diluting the framework.

Case Reference: In *Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd.* (2023, Cal HC), the court emphasized that delays in mediation would be justifiable only when efforts were sincere; otherwise, parties might abuse exemptions.

5.2.8 Cultural and Psychological Barriers

- In India, conflicts are usually attached to status, prestige, and reputation of the community, which makes parties less inclined to "settle" in a hushed manner.
- In Western economies, mediation is a business choice; in India, however, it is frequently regarded as a loss of face.
- Hierarchical corporate cultures also result in a lack of decision-making authority within mediation meetings, making them less effective.

5.3 General Limitations in Effectiveness

1. Settlement Rates: Whilst there is evidence of 40–50% settlement success reported, this is less than in the UK (90%) and Singapore (70–80%).
2. Nature of Disputes: Mediation is effective in partnership and contract disputes but not in fraud, insolvency, and public policy matters.
3. Investor Confidence: Foreign investors tend to favor international arbitration rather than Indian mediation on grounds of uncertainty in enforcement and lack of credibility

5.4 Conclusion

India's mediation system, while reformist in spirit, is confronted with structural, institutional, and cultural hurdles. Unawareness, lack of trained mediators, uneven infrastructure, weak enforcement, and cultural resistance to settlement impede its implementation. Judicial judgments like *Patil Automation* (2022) and *Deepak Raheja* (2019) have gone a long way in streamlining mandatory participation and confidentiality, but there is more work that needs to be done.

For India to emerge as a business dispute resolution hub at the international level, it has to overcome these gaps by increasing awareness, training mediators, making settlements enforceable, and changing cultural attitudes from "compromise" to "strategic resolution."

Chapter 6 – Reforms and Recommendations for Strengthening Commercial Mediation in India

6.1 Introduction

India's commercial mediation regime—i.e., the Commercial Courts Act, 2015 and the Pre-Institution Mediation Rules, 2018—is a trailblazer towards substantive settlement of conflicts. Nevertheless, as Chapter 5 indicated, structural as opposed to cultural impediments are thwarting its evolution. In order to make mediation a world-class, mainstream, credible, and competitive system, India needs to embrace reform via a multi-dimensional strategy involving legislative transparency, institutional capacity-building, mediator training, technology development, and culture-awareness creation.

6.2 Legal and Legislative Reforms

6.2.1 Enforceability of Mediation Settlements

- Current Position: Pre-institution mediation settlements are binding agreements but are subject to other means of enforcement.
- Proposal: Make settlements reached by way of mediation equal to arbitral awards or orders of the court so that they can be enforced directly.
- International Learning: Singapore's Mediation Act, 2017 and Singapore Convention on Mediation (2019) make provisions for cross-jurisdictional enforceability of settlements by way of mediation.
- Effect: Would give confidence to foreign investors and multinational enterprises in India.

6.2.2 Cost Sanctions against Bad Faith Refusal

- Taking a cue from UK cases such as *Halsey v. Milton Keynes NHS Trust* (2004) and *Dunnett v. Railtrack plc* (2002), India can enable courts to order cost sanctions against parties who resort to bad faith in rejecting mediation.
- It would deter litigants from using mediation as procedural fencing.

6.2.3 Good Faith Mandatory Participation

- Today's majority of mediations are not intended to negotiate.
- Recommendation: Enforce statutory requirements of good faith participation such that parties at least make an effort to resolve before approaching the courts.
- Example: US federal courts habitually mandate filing good faith certificates of mediation, attesting actual participation.

6.3 Institutional and Infrastructure Reforms

6.3.1 Setting up Specialized Mediation Centres

- India is progressively dependent upon non-commercial Legal Services Authorities (LSAs).

- Recommendation: Establish specialist commercial mediation centers in every state, attached to High Courts.
- Example: Singapore International Mediation Centre (SIMC) and Centre for Effective Dispute Resolution (CEDR), UK, are global commercial mediation centers.

6.3.2 Accreditation and Training of Mediators

- India requires a national accrediting authority for mediators, modelled on the UK's CEDR Accreditation model.
- Accreditation must encompass serious training, certification, and renewal on a regular basis.
- Professional IP, banking, construction, and cross-border trade mediators should be empanelled to deal with complex cases.

6.3.3 Application of Technology – E-Mediation Platforms

- With India also having gone through a digital revolution, the reach of an online mediation platform linked with the court system would become wider.
- E.g., The ODR India pilot has already experimented with online resolution of small claims. Its extension to commercial disputes would avoid cost and time wastage.
- Singapore's Community Justice and Tribunals System (CJTS) is an example that has been run online where mediation can be suitably run online.

6.4 Judicial and Procedural Reforms

6.4.1 Judicial Endorsement and Monitoring

- Judicial supervision is needed for courts to oversee effective compliance with mediation.
- Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* (2022) reaffirmed pre-institution mediation compulsorily. Judicial oversight, however, should be required to prevent misuse of exemptions by parties.

6.4.2 Integration with Arbitration

- India should embrace a hybrid "Med-Arb" or "Arb-Med-Arb" system (such as Singapore), where arbitration and mediation supplement each other.
- This allows smooth continuation of disputes that cannot be settled by mediation to arbitration without cause.

6.5 Cultural and Awareness Reforms

6.5.1 Changed Attitudes towards Business

- Mediation needs to be grown as a business strategy, rather than a sign of weakness.
- Mediation awareness campaigns by CII (Confederation of Indian Industry), FICCI, and NASSCOM will instill this in corporates and SMEs.

6.5.2 Education Reforms

- Introduce modules on mediation in law schools, management studies, and business schools to teach and train.
- Regular corporate training and workshops can contribute to enhancing acceptance by business leaders of the future.

6.5.3 Community and Cultural Change

- India's culture of litigativeness is so embedded with prestige and "victory." Systemic change needs to happen incrementally to demonstrate that settlement is not compromise but clever solution.
- Judges can also prove to be useful by citing successful mediations in court.

6.6 Practical Illustrations of Recommended Reforms

1. Technology-Driven Example:

A Bengaluru foreign investor-fintech start-up case was settled by online mediation during COVID-19.

-By formal online procedure, such cases can be the norm, avoiding cross-border cost.

2. Institutional Example (Learning from SIMC):

-If National Commercial Mediation Centre (NCMC) is set up in India, international cases (e.g., drugs licensing or IT outsourcing disputes) would be settled by mediation in India instead of Singapore or London.

3. Judicial Endorsement Example:

o>In the UK, cost sanctions against a winning party are imposed if mediation is not performed.

>If Indian courts also impose such penalties, parties will take mediation seriously and not circumvent it.

6.7 Conclusion

India needs to construct business establishments mediation through a converging strategy trained law, institutions, professional mediators, technology uptake, judicial initiatives, and business culture attitudinal realignment. Taking a cue from the UK (sanctions through cost and encouragement of the judiciary), Singapore (international enforceability and quality institutions), and the US (court-annexed mediation mandatorily) implies that India has to rise above legislative will to effective, enforceable change.

If these suggestions are implemented in India, it can make mediation an integral part of its system for resolving disputes, bringing it at par with the global best practices and enhancing its Ease of Doing Business ranking.

Conclusion

Commercial mediation in India has been an advanced and necessary mechanism for dispute resolution in the corporate sector. The Commercial Courts Act, 2015 and Pre-Institution Mediation Rules, 2018 are a legislative move demonstrating the commitment of promoting quick, low-cost, and peaceful resolution of disputes. Mediation has numerous benefits over conventional litigation like time-saving, cost-effective, privacy, flexibility, and maintenance of business relationships.

In spite of these advantages, real-world application has been hindered. Low awareness among enterprises, lack of skilled mediators, inconsistent institutional base, fears regarding enforceability, and cultural opposition have impacted the efficacy of mediation. Judicial rulings like *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* (2022) and *Deepak Raheja v. Ganga Taro Vazirani* (2019) have bolstered the platform by imposing mandatory attendance and secrecy, yet more changes are required.

Comparison with the UK, Singapore, and other global jurisdictions illustrates that mandatory mediation, enforceability of settlements, cost sanctions for unreasonable refusal, and specialist institutional mechanisms can be highly beneficial. India can learn from these best practices and improve its mediation infrastructure, especially in setting up specialized commercial mediation centers, national accreditation of mediators, online mediation platforms, and education programs to promote a dispute resolution culture.

In summary, commercial mediation in India can play a huge role in curbing judicial backlog, enhancing the ease of doing business, and promoting cooperative dispute resolution. Through successful legal reforms, institution building, and cultural embrace, mediation can be transformed from a mere procedural necessity to a strategic instrument for commercial conflict handling, making India a world center for effective and dependable resolution of disputes.

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