



MANDATORY PRE-LITIGATION UNDER MEDIATION ACT 2023: CAN IT REDUCE JUDICIAL BACKLOGS?

INTRODUCTION

Mediation has become one of the most important forms of Alternative Dispute Resolution (ADR) mechanism in the evolving Indian judicial system. Owing to a huge number of pending cases, approximately 4.9 million cases before district and subordinate courts in India.¹ Delays in the administration of justice have become a more serious concern. Consequently, the need for alternative mechanisms of resolving disputes has grown, which has led to the rise of mediation. As per the NALSA report, Mediation has settled 98406 cases in the year 2024-25.²

Mediation takes place when parties in a legal dispute utilize a neutral third party to assist them in negotiating an agreement. Mediation is more collaborative than litigation and typically results in quicker and more satisfactory resolutions than litigation. Mediation's relevance is most evident when addressing family-related issues, business, contracts, etc.

The Mediation Act of 2023 has created an additional milestone in the growth of mediation as an institution. First, it will legally enforce all agreements reached through mediation under Section 27 of the Mediation Act, 2023.³ Second, it represents the increased legislative emphasis on implementing mandatory pre litigation mediation in many different sectors, such as the

¹ Nat'l Judicial Data Grid, e-Comm. Sup. Ct. of India, <https://ecommitteesci.gov.in/service/national-judicial-data-grid/> (last visited 15 June 2026).

² Nat'l Legal Servs. Auth., ADR and Mediation Statistical Information (Apr. 2024 - Mar. 2025), 202511021883015027.pdf <https://share.google/aeAdzExMwG2JqiVp4>, (last visited 15 June 2025).

³ The Mediation Act, No.32 of 2023, § 27.

requirement for pre litigation mediation outlined under Section 12A of the Commercial Courts Act of 2015.⁴ Thus, a legitimate question exists as to whether mandatory pre-litigation mediation will help ease the backlog in the Indian courts?

BACKGROUND AND LEGISLATIVE EVOLUTION

Pre-litigation Mediation (PLM) is the process through which disputes are settled via mediation prior to the start of any legal action.⁵ Advocates suggest using PLM is an effective method of resolving disputes, reducing litigation costs, and reducing the burden on the courts. In India, PLM legislation was passed with section 12A of the Commercial Courts Act of 2015,⁶ which requires that certain commercial disputes be mediated before filing a suit (relief is available for urgent interim relief). The Mediation Act (2023) further enhanced the use of PLM by establishing a comprehensive judicial framework for mediating and enforcing settlement agreements. The move from voluntary PLM to compulsory PLM has produced considerable debate regarding its effectiveness and practicality.

SIGNIFICANCE IN REDUCING JUDICIAL BACKLOGS

Pre-litigation mediation is important since it attempts to resolve disputes before they are brought before the courts. In comparison to litigation where a court must intervene at every stage of the matter, mediation allows for parties to negotiate their own resolution to a dispute. By keeping disputes out of the court system, there is a reduction in the burden on courts and therefore, more time for judges to concentrate on complex cases.

The effectiveness of pre-litigation mediation can be seen in the practical application of Section 12A of The Commercial Courts Act of 2015 which requires pre-institution mediation for certain classes of commercial disputes. Reports show nearly 643 cases pertaining to commercial disputes

⁴ The Commercial Courts Act, No.16 of 2016, § 12A.

⁵ Navratan Fateh, *Pre-litigation Mediation in India: A Viable Alternative for Avoiding Expensive & Long drawn Litigation*, Fateh Law Corporation (Sept. 11 2025), <https://navratanfateh.com/pre-litigation-mediation-in-india-alternative-to-litigation/>

⁶ Commercial Courts Act, 2015, § 12A.

are settled between January 2025- September 2025⁷, highlighting the necessity and significance of prelitigation mediation. In *Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.*,⁸ the Supreme Court recognized the mandatory nature of Section 12A and the legislative intention behind this law.

In addition, Section 27 of the Mediation Act 2023 supports mediation by making mediated settlement agreements comparable and enforceable like a civil court judgement. This reduces the need for long drawn-out litigation and gives the parties involved certainty. Mandatory mediation before litigation promotes cost-effective, time-efficient, and relationship-preserving ways to solve disputes, especially in commercial and civil matters. As such, it has the possibility of not only decreasing new case filings, but also supporting a widespread move away from litigation-based justice towards creating a culture of amicable settlement and reducing judicial backlogs.

CRITICISMS AND CHALLENGES

The 2023 Mediation Act was intended to be an explicit resolution to India's case backlogs; However, an examination of the legislation suggests a disconnect between the intent and practical application of this legislation. The new 2023 Act largely hinges upon section 27, which grants a mediated settlement agreement (MSA) the same status as civil court decrees.

An issue arises based on a time frameset of 180-day limitation referring to mediation mentioned in Section 18 of the Mediation Act (2023).⁹ Although this limitation is intended to expedite the resolution of disputes through mediation and make them final, it could lead to an increase in backlogged cases if there is not enough infrastructure for mediation. If mediation takes too long due to a lack of infrastructure, parties may seek to resolve their disputes hurriedly through mediation and eventually end up back in the court.

⁷ Press Information Bureau, Cases resolved through alternative dispute resolution mechanisms, <https://share.google/o8xgVChxiyvS4XED>

⁸ *Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1.

⁹ The Mediation Act, No.32 of 2023, § 18.

Another potential problem relates to the enforceability of mediated settlement agreements. In accordance with Section 27 of the Mediation Act (2023), a mediated settlement agreement essentially has the same effect as a judgment from a civil court; therefore, there is no need for the courts to determine whether the agreement is enforceable. However, if parties are not satisfied with the mediation, they could still seek to enforce their agreements through litigation, this would also result in additional burden on the courts. Alongside these concerns, Section 12A of Commercial Courts Act 2015, would become a procedural hurdle rather than genuine settlement, if parties only seek for non-settlement agreement reports before filing a suit.

CONCLUSION

Ultimately Pre litigation mediation has emerged as a better alternative to reduce the compounding pile of judicial backlogs. However, its long-term capacity to visibly diminish the backlog depends entirely on structural execution. Therefore, to succeed Indian judiciary must encourage pre litigation mediation, trained mediators, public awareness and also include state disputes under its purview.