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MANDATORY MEDIATION BEFORE LITIGATION: PROMISE OR PROCEDURAL HURDLE

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ABSTRACT

The introduction of mandatory pre-litigation mediation marks a significant shift in India's approach to commercial dispute resolution, reflecting a broader global trend toward consensual and efficient mechanisms. Envisaged under the Commercial Courts Act, 2015, compulsory mediation seeks to reduce judicial backlog, promote early settlement, and preserve commercial relationships. However, its practical implementation raises important questions regarding its effectiveness and procedural implications. This study critically examines whether mandatory mediation serves as a genuine opportunity for dispute resolution or merely operates as an additional procedural hurdle before accessing courts. It analyses the legislative framework, judicial interpretations, and emerging practices in India, with particular attention to timelines, enforceability of settlements, and parties' willingness to engage in good faith. The research also explores comparative perspectives to evaluate how similar mechanisms function in other jurisdictions. While mandatory mediation holds promise in enhancing efficiency and reducing litigation costs, concerns persist regarding its potential misuse as a delaying tactic, lack of institutional infrastructure, and uneven quality of mediators. The paper argues that the success of compulsory mediation depends on its implementation, institutional support, and alignment with principles of access to justice. It concludes by suggesting reforms to strike a balance between procedural efficiency and substantive fairness in commercial dispute resolution.

Keywords: *pre-litigation mediation, Commercial Courts, efficiency, substantive fairness, dispute resolution*

I. INTRODUCTION

One quiet change in India's business courts wasn't just about faster trials or new courtrooms. What matters more? Stopping fights before they reach a courtroom at all. Back in 2018, a legal update quietly slipped in something different - Section 12A. Suddenly, trying mediation became a required step if you wanted to sue. That small addition nudged the entire mindset forward - not forcing outcomes, but encouraging talks. Instead of only battles in front of judges, space opened up for dialogue. The law now leans less on winning, more on working things out together. Now comes the requirement to try mediation before filing suit - born out of how often past efforts failed when left optional. Even though courts already had power under Section 89 to send cases to settlement talks, hardly anyone used it. Lawyers here long preferred going straight to trial, treating any offer to mediate like surrender, almost shameful. Because that mindset stuck so firmly, skipping court felt risky. So lawmakers changed the rules: now you must pause and attempt resolution first. That small shift in order wiped away old judgments about strength or doubt. Suddenly, talking instead of fighting stopped being seen as retreat. Now mediation isn't a favor. It's simply required. Courts needed breathing room - so lawmakers pushed early

talks to clear minor fights before trial. A sudden flood of cases loomed after the threshold dropped to ₹3 Lakhs. Handling small claims outside court became the shield stopping chaos. Survival shaped the rule. Not goodwill.

A. Section 12A Commercial Courts Act

One thing stands clear. Under Section 12A of the Commercial Courts Act, how pre-institution mediation works - its reach, function, and legal weight - is fully written into law. Backed by the detailed rules from 2018, it sets firm deadlines. Because of these, compliance isn't optional. The system pushes parties toward real resolution. No delay. The force behind the rule makes sure time spent mediating counts. It shapes outcomes instead of just filling a box. The urgent interim relief exception applies narrowly Starting off, Section 12A opens by saying something is not allowed. When no quick court order is needed under this law, filing a case comes only after trying mediation first. That rule applies almost everywhere, as long as the dispute hits the "Specified Value" mark. But there's one clear escape route built into the law. If someone needs fast temporary help from the courts, then waiting for mediation doesn't apply. The moment urgency shows up, the requirement steps aside.

II. THE PROCESS AND INSTITUTIONAL FRAMEWORK

Because consistency matters, lawmakers chose a structured path instead of letting people hunt for private help on their own. Under section 12A(2), the Central Government must appoint groups formed under the 1987 Legal Services Authorities Act to run mediations before court steps in. So now agencies like DLSA and SLSA act as go-to centers where these sessions take place. Their role? Making sure things move without long waits or uneven handling across cases.

A deadline-driven path unfolds under the 2018 Rules. Starting it all, someone aiming to file moves first by sending Form-1 to the proper legal aid office. From there, that body alerts the other person involved - inviting them to show up and agree to try mediation. When one side won't take part, skips meetings after several reminders, or when talks collapse with nothing settled, the legal body marks it as a failed attempt. This marker counts as meeting what Section 12A demands by law, clearing the way ahead. Only then can the person bringing the case step into the Commercial Court to begin proceedings. The path opens once the record shows the effort was made yet went nowhere.

III. JUDICIAL INTERPRETATION AND ENFORCEMENT

Right off, though the goal of Section 12A seemed clear on paper, lawyers pushed back hard once it took effect. Used to fighting cases in court, plenty saw early mediation less as help - more like an added step they didn't need. Because of that shift, rulings split widely among High Courts after 2018, each interpreting Section 12A their own way. At the heart of the legal discussion sat one basic issue about how laws should be understood. Did courts have to reject cases unless mediation happened first, or was it just a suggestion? Some High Courts treated the rule lightly. Even if parties skipped early talks, those courts allowed lawsuits to go forward anyway - then told them to mediate later. That flexibility might have looked practical at first glance. Yet, over time, it weakened the law's intent so much that things slid backward.

A The Landmark Ruling: Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.

Nowhere else had the legal confusion been settled so clearly than by India's top court in 2022. That year, a ruling quietly reshaped how business disputes are handled through mediation. The case - Patil Automation Pvt. Ltd. versus Rakheja Engineers Pvt. Ltd. - didn't just clarify the law; it transformed one rule completely. Before, Section 12A felt like optional advice. Afterward, it became something courts could not ignore. Suddenly, skipping mediation wasn't a loophole anymore. Instead, access to justice required taking that step first. A quiet shift, yet massive in effect.

Nowhere did the plaintiff wait for mediation before filing a business dispute, claiming the rule didn't bind them strictly and insisting that requiring it would block their path to court. That move got shot down at the trial level, so they fought back - appealing through every stage until reaching the highest bench. What landed on the Supreme Court's desk? A puzzle: untangling what lawmakers truly meant when they shaped the 2018 change. The Supreme Court Explains Its Thinking - The way the justices saw it, words on paper carry weight when a law says something cannot happen. That phrase - 'shall not be instituted' - stood out because of how firmly it shuts down possibility. Instead of softening the rule by treating 'shall' as optional, they took it at face value. Seeing room for choice there would mean going against what lawmakers clearly intended. Their take? When language blocks an action flatly, hesitation has no place. Right away, the Supreme Court took on the constitutional concern without delay. Not at all wavering, judges dismissed the idea that forced mediation blocks someone's path to fair treatment under law. Instead, they explained how Section 12A doesn't erase the ability to file suit - just reshapes timing by adding a short-lived option prior to trial access. Because talks can run only three months, stretch once by sixty days, and because deadlines freeze while discussions happen, actual rights stay untouched. Only after this window closes do normal procedures restart.

B. Order VII Rule 11 as strict gatekeeping measure

What stands out in the Patil Automation ruling is how strictly it treats rule-breaking. If parties skip mandatory mediation before filing a commercial case - and aren't asking for emergency orders - the court won't just note a mistake. Filing anyway blocks the lawsuit completely from being accepted. This isn't something fixed later with corrections. It kills the case at the start. What happens when rules get too strict shows up in ways you might not expect. Layers of consequence pile on without warning. Effects ripple through different areas at once a fresh turn in courtroom culture begins here. This ruling shakes up the usual advice from business lawyers. Instead of rushing to sue, another path opens first. Mediation steps into view - required before any trial talk grows loud. Counsel now move toward talks, not papers. A new step enters their playbook early. Disputes start differently now.

Now that skipping mediation hinges on claiming urgent help, some people stretch the truth just to reach court fast. After the ruling in Patil Automation, high courts look much closer at early claims of emergency. Should a judge see through such claims - spotting them as mere wording tricks aimed at dodging Section 12A - then aid gets blocked without delay. Rejection follows swiftly, shutting down attempts to undermine mandatory mediation. The system pushes back, quietly holding its line.

IV. STRENGTHS AND WEAKNESSES OF PRACTICAL IMPLEMENTATION

Though the Patil Automation ruling confirmed Section 12A as legally binding, how well such rules work depends on those tasked with enforcing them. Across India, efforts to enforce mandatory mediation before filing suit show mixed results - certain frameworks function effectively, but broader success falters due to weak infrastructure, too few trained mediators, along with routine adherence without genuine engagement.

A Institutional Strengths In Legal Services Authority Selection

One key advantage of Section 12A lies in how lawmakers tied mediation to existing legal structures - specifically DLSAs and SLSAs - instead of depending on scattered, loosely governed private services. Thanks to this choice, the state sidestepped the burden of creating an entirely fresh bureaucratic system across the country. What made it work was using institutions already present in every district. Without that foundation, launching such a program would have taken far longer. These authorities' reach provided instant access

nationwide. Harder paths were avoided by working through what was already there.

Standardization comes from how institutions shape the system. Though located far apart, every business faces identical procedural frameworks when resolving disputes. What helps here is easier reach and lower expense. Cost blocks many from private talks meant to settle conflicts. Those options usually serve only big firms. Using existing local structures changes that reality. After the 2018 change reduced financial barriers to ₹3 Lakhs, smaller enterprises gained entry. Now, MSMEs can seek resolution through mediation without facing overwhelming charges.

B Limited capacity and narrow domain knowledge

Yet mediators within DLSAs now face strains when handling intricate business disputes. These bodies originally focused on offering legal help to underrepresented groups. While setting up community-based Lok Adalats was part of their role, those dealt mainly with small-scale issues like domestic quarrels or minor lawsuits.

What holds back progress most severely is the shortage of skilled professionals in commercial mediation. This field requires more than general knowledge - it thrives on precision. While emotions drive many personal disagreements, business conflicts depend on technical clarity. To navigate issues like software rights or shipping arrangements, a neutral party needs a grasp of financial structures. Industry practices matter just as much as legal frameworks when shaping practical outcomes. Without familiarity with how markets operate, suggestions risk becoming irrelevant.

It happens too often that DLSAs choose former judges or routine civil lawyers to handle commercial mediations. Though skilled in courtroom battles, such figures rarely grasp current market dynamics. Instead of guiding dialogue, they slip into playing part-time judges - rushing to weigh legal strengths and nudging both sides toward settling on cash alone. This shift sidelines creative outcomes rooted in real business needs: long-term partnerships, operational adjustments, shared resources. A mediator unfamiliar with industry-specific challenges quickly loses credibility. Trust fades fast when executives sense misunderstanding about what truly drives their company's decisions.

V. HOW DIFFERENT COUNTRIES HANDLE MEDIATION

Far from being a standalone reform, India's move toward mandatory pre-filing mediation fits within a worldwide rethinking of how business conflicts are settled. Rather than treating negotiation through mediators as just one option among many, countries now often see it as the first necessary step. Looking ahead, the development of Section 12A gains clarity when measured beside key global standards. The United Nations treaty on cross-border mediated deals - commonly called the Singapore Convention - offers one such reference point. Equally relevant is the European Union's legal guidance on encouraging out-of-court settlements across member states. Through these frameworks emerges a clearer picture of where India stands - and might go - in reshaping commercial justice.

A The Singapore Convention on Mediation 2018

Long before global standards evolved, dispute resolution through mediation faced deep systemic hurdles next to arbitration. Because arbitral decisions could cross borders almost everywhere thanks to the 1958 New York Convention, they held strong legal weight abroad. In contrast, deals sealed via mediation counted mostly as informal private pacts without automatic recognition overseas. When someone walked away from such an agreement across jurisdictions, enforcement meant starting over - filing a new lawsuit grounded in contract law within another country's courts. This uphill battle often erased what little advantage came from choosing dialogue over litigation.

Backed by the UN since 2018, the Singapore Convention on Mediation tackles weak cross-border enforcement head-on. Thanks to its unified rules, court systems in member countries must honor mediated deals made elsewhere under the treaty - no fresh litigation required. A deal shaped at the table gains weight abroad simply because trust is built into the system. Borders blur when agreements travel smoothly between jurisdictions.

B The European Union Mediation Directive 2008 52 EC

A different angle emerges when looking at the EU Mediation Directive - not through policy alone, but via its quiet push against long-standing courtroom preferences. Though designed to smooth out international civil and business conflicts, it quietly required each member country to adjust legal frameworks blocking mediation access. Where courts traditionally held sway, this measure slipped in room for dialogue instead. Laws once rigid now had to allow space for negotiated outcomes. Resistance faded as rules shifted beneath them.

One key similarity links the EU Directive and India's Section 12A. While Article 8 stops time on legal deadlines when mediation begins, Indian law mirrors this move through suspension of limitation periods before court filing becomes possible. Though differing in structure, both systems protect access to courts despite procedural pauses. Another alignment point appears where enforcement is concerned. Where Article 6 demands that Member States enable court recognition of mediated outcomes, India sidesteps complex implementation by assigning such agreements the status of arbitral awards via statute. Despite separate paths, each framework ensures settlement durability without extra steps for validation.

Still, what matters most for India lies in how each EU country applied the rule on whether mediation had to be compulsory. Although the EU law officially supports choosing mediation freely, real-world results soon showed that such voluntary systems across Europe - similar to India's Section 89 and Order 11 under the CPC - barely got used because lawyers often opposed them and people simply did not know about them.

C Synthesis And Lessons For India

Looking at how laws compare across nations, India's approach through Section 12A stands out as up to date and well put together. Because legal action now must follow an earlier structured step - similar to what happens in Italy - the system creates order before court involvement. Swift enforcement, much like under the Singapore Convention, adds strength to decisions made within this setup. On paper, such choices form a high-performing model recognized internationally. The structure holds firm when measured against global benchmarks.

Yet India struggles most precisely where broader frameworks point: weak institutional reputation and shallow skill development. Driven forward by top-tier bodies such as the Singapore International Mediation Centre (SIMC), that city-state thrives through expert mediators known worldwide. In contrast, across Europe, strict preparation routines define who may practice - quality control shapes outcomes. Without deeper reform, mandatory mediation in India risks remaining a disliked formality rather than becoming real dispute resolution. Moving past legal wording becomes essential for meaningful change. Upgrading district-level support systems cannot wait; expertise lags behind need. Specialized professionals, trained within economic sectors, must emerge quickly. Meeting global expectations demands structural ambition matching foreign benchmarks.

VII. CONCLUSION

Mandatory pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 represents one of the most ambitious procedural shifts in India's commercial justice system. It attempts not merely to reduce judicial

backlog, but to fundamentally reorder how commercial disputes are approached—placing dialogue before adjudication. The Supreme Court's ruling in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* firmly established the mandatory nature of this requirement, transforming what was once perceived as a procedural formality into a jurisdictional precondition for instituting suits.

Yet, the success of this reform lies less in its statutory strength and more in its practical execution. While the framework demonstrates clear advantages—such as institutional accessibility through Legal Services Authorities, cost-effectiveness, and the potential to preserve commercial relationships—its implementation reveals significant structural and cultural challenges. The prevalence of a "check-box" approach, lack of specialized mediators, infrastructural limitations, and resistance from the legal community continue to undermine its intended purpose. Moreover, concerns relating to power imbalances, lack of informed participation, and delays in enforcement highlight deeper systemic issues that cannot be resolved through legislative mandates alone. Comparative insights from jurisdictions such as Singapore and the European Union illustrate that while mandatory mediation can be effective, its success is contingent upon strong institutional credibility, professional expertise, and a cultural shift toward genuine engagement in dispute resolution. India's model, though well-designed on paper and aligned with global standards, remains in a transitional phase where its outcomes are uneven and evolving.

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