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“PRE-LITIGATION ALTERNATIVE DISPUTE RESOLUTION IN INDIA: VALIDITY, NECESSITY, AND THE LIMITS OF ARBITRATION”

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ABSTRACT

The situation in India has been dealing with a massive judicial backlog in terms of cases instituted before the courts and the number of judges available to it. This has resulted in a staggering 50 million pending cases, ranging from the top court to the district court level judiciary, as per the data available on the National Judicial Data Grid. A large number of cases are of a very trivial nature, which do not require litigation.

In this context, this paper tries to analyze the relevance of pre-litigation alternative dispute resolution mechanisms and their validity, necessity, and scope in the Indian context. Although after the Commercial Courts Act of 2015 and the 2018 amendment, which introduced section 12A, pre-litigation mediation in commercial disputes has been made mandatory, the same has not yet applied to other disputes. Therefore, this paper tries to analyze the relevance of pre-litigation ADR and its applicability to other disputes, apart from the commercial ones, and how the concept of ADR enables the speedy disposal of justice and is cost-effective in nature, which is in line with the Indian constitutional ethos of providing justice, dignity, and equality.

The paper also highlights the limitations of various alternative dispute resolution mechanisms in India, such as Arbitration, Mediation, conciliation, Lok Adalats, etc. The end of the paper provides examples of global best practices of alternative dispute resolution and pre-litigation mediation and their successes in nations, and how India could adopt them in its current ADR framework, which would help it to unburden the Indian judiciary from frequent and trivial litigation.

KEYWORDS

- Pre-Litigation Alternative Dispute Resolution (ADR), Mandatory Pre-Institution Mediation, Judicial Pendency in India, Commercial Courts Act, 2015, Section 12A Pre-Litigation Mediation

RESEARCH GAP

Although the validity of mandatory commercial mediation is established, the research indicates gaps in non-commercial pre-litigation ADR mandates, the high rate of arbitration challenges, and the lack of widespread adoption of best practices worldwide, all of which hinder the effectiveness of ADR.¹

RESEARCH OBJECTIVES

- Assess the validity and potential for expansion of compulsory pre-litigation ADR beyond commercial disputes in India.²
- Examine the success rates of arbitration awards, with emphasis on the frequency of challenges to awards at the high courts under Sections 34/37.³
- Determine best practices worldwide to reduce judicial intervention and improve ADR enforceability⁴

RESEARCH QUESTION

To what extent should pre-litigation ADR be made mandatory in India, in light of the rates of failure of ADR in India due to court challenges, and how can best practices from around the world help lower these rates to improve judicial pendency?

¹ **IndiaCorpLaw**, *Arbitration Realities: Patterns of Challenges and Judicial Responses*, <https://indiacorplaw.in/2024/05/23/arbitration-realities-patterns-of-challenges-and-judicial-responses/> (last visited, 2025).

² **Pleaders**, *An Analysis of Mandatory and Voluntary ADR Systems*, <https://blog.ipleaders.in/an-analysis-of-mandatory-and-voluntary-adr-systems/> (last visited, 2025).

³ **O.P. Jindal Global Univ.**, *Pre-Litigation Mediation Model in India*, <https://jgu.edu.in/mappingADR/pre-litigation-mediation-model-in-india/> (last visited, 2025).

⁴ **O.P. Jindal Global Univ.**, *Evaluating Mandatory Pre-Litigation Mediation under the Commercial Courts Act in India*, <https://pure.jgu.edu.in/id/eprint/10040/1/Evaluating%20Mandatory%20Pre-litigation%20Mediation%20under%20the%20Commercial%20Courts%20Act%20in%20India.pdf> (last visited, 2025).

INTRODUCTION

As of July 2025, approximately 50 million cases are pending in Indian courts, with around 82,216 cases awaiting resolution in the Supreme Court of India. The judge-to-population ratio is 21 judges for every million people. This data is sourced from the National Judicial Data Grid.⁵

There are many disadvantages to conventional litigation, such as high costs, lengthy proceedings, and time delays.

The mandatory pre-litigation mediation was acknowledged in India by the Commercial Courts Act of 2015. Section 12A was added through an amendment in 2018, which required the parties to exhaust the procedures of mediation before filing a suit with respect to any commercial dispute, except in the case of urgent interim relief. The section further provided that the time period for the disposal of the case should not exceed three months, which could be extended by two months. This was further reaffirmed in the case of *Patil Automation Private Limited & Ors. vs. Rakheja Engineers Private Limited*^{6, 7}

This initiative aims to enhance the ease of doing business in India, as pre-litigation mediation facilitates the swift resolution of commercial cases, thereby avoiding the lengthy and cumbersome court process.

However, other ADR mechanisms, such as mediation, arbitration, conciliation, negotiation, and other methods, such as Lok Adalats, are voluntary and not mandatory, some of which are non-binding in nature. Therefore, there is a need for ADR growth with better enforcement and formalization of these mechanisms. It is also pertinent to note that the current ADR mechanism also faces multiple challenges, such as impartiality, fearing bias or weak enforceability, lack of awareness, etc.^{8,9}

⁵ *JLRJS*, *How Is the Indian Judiciary Tackling Case Backlogs?*, <https://jlrjs.com/how-is-the-indian-judiciary-tackling-case-backlogs/> (last visited July, 2025).

⁶ *Commercial Courts Act, 2015*, § 12A, No. 4, Acts of Parliament, 2016 (India) (as amended in 2018).

⁷ *Cyril Amarchand Mangaldas Blog*, *Compulsory Pre-Litigation Mediation for Commercial Suits: A Boon or a Bane?*, <https://corporate.cyrilamarchandblogs.com/2022/10/compulsory-pre-litigation-mediation-for-commercial-suits-a-boon-or-a-bane/> (last visited, 2025).

⁸ *ForumIAS*, *Alternative Dispute Resolution in India: Significance and Challenges Explained Pointwise*, <https://forumias.com/blog/alternative-dispute-resolution-in-india-significance-and-challenges-explained-pointwise/> (last visited __ __, 2025).

⁹ *De Facto Law Journal*, *Alternative Dispute Resolution in India: Effectiveness, Challenges and the Road Ahead*, <https://defactolawjournal.org/papers/alternative-dispute-resolution-in-india-effectiveness-challenges-and-the->

As per the NITI Aayog 2022 report, only 1% of civil cases were actually resolved through mediation. In the Delhi Hazari Mediation Centre, almost 33-36% of the cases escalated to litigation.¹⁰

Arbitration faces challenges like judicial interference, as several cases eventually end up in the usual courts under sections 34-37 of the Arbitration and Conciliation Act. Dissatisfied parties often go to courts in cases of decisions given by Lok Adalats. All this adds up backlog of judicial pendency in India.¹¹

Therefore, there is a need to strengthen ADR mechanisms in India by adopting better practices and standards from global laws.

RESEARCH METHODOLOGY

This paper relies on **qualitative doctrinal methodology**, focusing on India's existing legal frameworks and study of statutes such as the Arbitration and Conciliation Act, 1996, the Mediation Act 2023, the Commercial Courts Act 2015, and the 2018 amendment adding section 12A, analysis of case laws, law journals, academic articles, and website legal commentaries, government reports of institutions such as PIB, Niti Aayog, National Judicial Data Grid and data from international institute such as The Singapore International Arbitration Centre.

This paper also adopts a **comparative analysis** of international models of alternative dispute resolution of countries such as Singapore, Italy, U.S.A to understand their framework and how India could adopt them.

LIMITATIONS

The research primarily relies on **secondary data** and **doctrinal analysis** and does not include **empirical data** and analysis of **primary data**, such as interviews, surveys, etc., of cases of ADR centres or courts. This limits the research from actual ground-level data and challenges.

[road-ahead/](#) (last visited , 2025).

¹⁰ **Shashwat Gupta**, *Effectiveness of ADR in Reducing Judicial Backlog in India*, *INT'L J. FOR MULTIDISC. RES.* (2025), <https://www.ijfmr.com/papers/2025/4/50912.pdf> (last visited , 2025).

¹¹ **Shubhang Gomasta & Sushmita Das**, *Alternative Dispute Resolution in India and the Crisis of Justice Delivery: Institutional Design, Power Asymmetry, and the Limits of Consensual Justice*, *12 INT'L J. L.* 12, 12–15 (2026), <https://www.lawjournals.org/assets/archives/2026/vol12issue1/11329.pdf> (last visited , 2025).

The comparative analysis of models such as Singapore, Italy, or the United States might not fully cater to the unique socio-legal, cultural, and infrastructural intricacies of India.

LITERATURE REVIEW

Scholarly literature has focused on Alternative Dispute Resolution in India in light of the huge judicial pendency and the inefficiencies of adversarial litigation. The National Judicial Data Grid showed that an immense backlog of cases is pending in Indian courts, which are of minimal complexity, and could otherwise be resolved through mediations and mutual agreement. This has led scholars to view ADR not as an alternative method of adjudication but as part of India's constitutional commitment to providing speedy and cost-effective justice under Article 21 and 39A.

A significant amount of literature is devoted to examining pre-litigation mediation under section 12A of the Commercial Courts Act and how it prevents premature litigation, enabling the settlement of disputes through mediation itself. The position of pre-litigation mediation was reaffirmed by the Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.* However, scholars have highlighted weaknesses in Indian ADR mechanisms as well as infrastructural capabilities.

India faces several challenges, such as weaker enforcement mechanisms of orders similar to those of civil decrees, the voluntary nature of forums leading to superficial participation or parties opting out in between, a lack of trained mediators, etc. arbitration focused literature delve deeply into weakness of section 34 and 37 of the governing Act leading to excessive judicial interference which defeats the purpose of the legislation.

Studies highlight the statutory legitimacy of Lok Adalats and Mediation; however, there are critiques regarding their accessibility, the lack of awareness among people about their functionality, and weaker enforcement leading to a return to courts.

Comparative Studies on international models and global best practices of ADR of nations such as Italy, Singapore, Australia, and the United States highlight that mandatory pre-litigation ADR coupled with strict timelines and infrastructure can lead to better settlement outputs and higher public trust for dispute resolution, therefore resulting in less burdening of courts.

EVOLUTION OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN INDIA

Pre-litigation ADR (Alternative Dispute Resolution) is the process by which disputes are directed to alternative resolution forums instead of the courts. This approach allows conflicts to be resolved amicably between parties, helping to avoid the formal and often lengthy court procedures, as well as reducing litigation costs. ADR encompasses a variety of disputes, including civil, commercial, matrimonial, and land disputes, but it excludes criminal matters and certain tax-related issues. The purpose of ADR is not to bypass courts but to prevent unnecessary litigation and reduce the overburdening of cases, which could otherwise be resolved alternatively between the parties.

1. Arbitration and Conciliation Act, 1996

Arbitration was introduced in India with the Bengal Resolution Act of 1772, allowing parties to submit disputes to a binding arbitrator. The Civil Procedure of 1859 included provisions for both in-court and out-of-court arbitration, though these were post-litigation. The Code of Civil Procedure 1908 required disputes to be referred to ADR first. India, as a signatory to the Geneva Convention (1927) and the Protocol on Arbitration Clauses (1923), enacted the Arbitration (Protocol and Convention) Act, 1937, which was replaced by the landmark Arbitration and Conciliation Act of 1996, based on the UNCITRAL Model.^{12 13}

2. Lok Adalat and Legal Services Authorities Act, 1987

Lok Adalats were established as statutory forums for resolving disputes before litigation and also pending cases. Typically, they are used in cases of motor vehicle claims, land disputes, and minor civil matters. Their decisions are binding in nature and enforceable just as a civil decree. The parties, however, if dissatisfied with the decisions, can approach the courts.

¹² *Evolution and Codification of ADR Mechanism in India*, VIA Mediation Centre (May 29, 2020), <https://viamediationcentre.org/readnews/MzEx/Evolution-and-Codification-of-ADR-mechanism-in-India> (last visited, 2025)

¹³ Annika Khurana, *Evolution of Alternate Dispute Resolution: Indian Perspective*, *Khurana & Khurana* (Feb. 27, 2024), <https://www.khuranaandkhurana.com/2024/02/27/evolution-of-alternate-dispute-resolution-indian-perspective> (last visited, 2025)

3. Commercial Courts Act and pre-institution mediation (2015, amended 2018)

The Commercial Courts Act under section 12A and Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 mandates parties to mandatorily opt for mediation before instituting a case regarding a commercial dispute covered in the act. This was one of the first pieces of legislation that made pre-litigation mediation binding on parties.¹⁴¹⁵

4. Mediation Act, 2023

This act provides a framework for voluntary pre-litigation mediation with a time-bound settlement period of 180 days. It institutionalizes mediation through the establishment of the Mediation Council of India, which involves expert mediators in the mediation process. Any agreement reached in mediation is binding on the parties involved.¹⁶¹⁷

VALIDITY OF PRE-LITIGATION MEDIATION

Mediation has always been a part of India's ancient village jurisprudence, where disputes were resolved amicably in the presence of village elders. Justice Kurian Joseph stated that almost 50% of the civil cases before the Supreme Court could be resolved through mediation. The case of Australia is pertinent, where data shows almost an 80% success rate in disputes referred to mandatory mediation (eg. Retail tenure disputes). In the case of *K. Srinivas Rao v. D.A. Deepa*, the court highlighted that mediation helps in preventing the escalation of familial disputes, thereby strengthening bonds.¹⁸

The Preamble of the Indian Constitution highlights justice as an essential ingredient of the rights of citizens. This is reflected in Article 39A, which strives to deliver justice by providing equal opportunities and free legal aid. Alternative Dispute Resolution (ADR) is an enabling tool in this regard, especially helpful to the disadvantaged section by minimizing the costs involved in legal proceedings and documentation. Forums like Lok Adalats are people-friendly

¹⁴ *O.P. Jindal Global Univ., Pre-Litigation Mediation Model in India*, <https://jgu.edu.in/mappingADR/pre-litigation-mediation-model-in-india/> (last visited, 2025)

¹⁵ *iPleaders, Status of Pre-Litigation Mediation in India*, <https://blog.ipleaders.in/status-pre-litigation-mediation-india/> Commercial Courts Act, 2015, § 12A, No. 4, Acts of Parliament, 2016 (India).

¹⁶ Annika Khurana, *Evolution of Alternate Dispute Resolution: Indian Perspective*, KHURANA & KHURANA (Feb. 27, 2024), <https://www.khuranaandkhurana.com/2024/02/27/evolution-of-alternate-dispute-resolution-indian-perspective>

¹⁷ Vijayalakshmi R, *The Evolution of Mediation in Indian Jurisprudence: A Doctrinal Perspective*, 6 INT'L J. RSCH. PUB. & REV. 2568, 2568-2581 (2025), <https://ijrpr.com/uploads/V6ISSUE11/IJRPR55271.pdf>

¹⁸ Kirti Arora, *Pre-Litigation Mediation: The Road Ahead in India*, at 12-13, 15 (SSRN, Feb. 22, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4918448.

and informal, with minimal outlays for accessing justice.

Article 21 deals with the right to life and liberty of a person. The Supreme Court in the case of *Hussainara Khatoon I vs. Home Secretary, Bihar*¹⁹, stated that the right to a speedy trial is also a part of an individual's right to life²⁰.

Critique

However, there are certain cons attached to it as well. Mandating pre-litigation mediation can act against party autonomy and can lead the parties to superficially participate rather than voluntarily. It can also lead to forced settlements against weaker parties due to its forced nature. Questions related to mediators' neutrality always arise, especially in disputes involving close-knit relations, unlike the lesser bias in a conventional court.

Data suggest that voluntary mediation enjoys a much higher 60% success rate as compared to mandatory mediation having a rate of 40%. This could be the result of the voluntary nature of the parties involved. However, only 8.3% of the cases go for voluntary mediation.²¹

FAILURE OF ADR IN PRACTICE

The purpose of Alternative Dispute Resolution (ADR) is to deliver swift and efficient justice through mutual agreement. However, it has notable shortcomings. For instance, Section 34 of the Arbitration and Conciliation Act is often used as a tactic for delays, rather than being invoked on legitimate grounds such as party incapacity or public policy issues.^{22 23}

Many set-aside appeals are filed for ultra-technical grounds just to avoid compliance. The clause regarding patent illegality is used for merit review, ultimately defeating the purpose of legislation.²⁴

¹⁹ *Hussainara Khatoon (I) v. State of Bihar*, (1980) 1 SCC 81.

²⁰ Karan Sangani, *Legal & Constitutional Provisions Regarding ADR*, IPLEADERS BLOG (Aug. 16, 2020), <https://blog.ipleaders.in/legal-constitutional-provisions-regarding-adr/>

²¹ Anushka S. & Fiza G., *An Analysis of Mandatory and Voluntary ADR Systems*, IPLEADERS BLOG (Dec. 19, 2023), <https://blog.ipleaders.in/an-analysis-of-mandatory-and-voluntary-adr-systems/>

²²

²³ Aishwarya Padmanabhan, *Analysis of Section 34 of the Arbitration and Conciliation Act – Setting Aside of Arbitral Award and Courts' Interference: An Evaluation with Case Laws*, Manupatra (last visited Feb. 1, 2026), <https://manupatra.com/roundup/326/articles/arbitration.pdf>

²⁴ Kunal Mehta & Mayank Makhija, *Determining the 'Lakshman Rekha' of Section 34 of the Arbitration and Conciliation Act*, Cyril Amarchand Mangaldas Blogs: Dispute Resolution (July 18, 2023), <https://disputeresolution.cyrilamarchandblogs.com/2023/07/determining-the-lakshman-rekha-of-section-34-of-the-arbitration-and-conciliation-act/>.

The law does not permit modifications to an award; however, the Supreme Court has altered awards, citing its authority under Article 142.²⁵ In practice, the same issues are frequently reargued on appeal, adding another layer of review without truly expanding the legal grounds, which causes delays in enforcement. Section 37 is not designed as a merits review procedure; therefore, courts cannot reevaluate evidence or substitute their own assessment of the case facts or law²⁶.

Data suggest that the section 34 challenge takes about an additional 3.6 years, roughly, and section 37 takes about 5.8 years, defeating the very purpose of granting a speedy trial.²⁷

However, Lok Adalats face some challenges, which include a lack of awareness among the rural population, the unavailability of benches, and irregular timings. This has proven to be a major hindrance in the timely dispensation of justice. Additionally, enforcement is also a challenge, as many orders are not followed, causing disgruntled parties to approach the courts again.²⁸

In mediation and conciliation cases, the voluntary nature of these processes makes many disputing parties reluctant to take part in these processes, even when the disputes are trivial and can be settled by the consent of the parties. Consequently, these processes may still be ineffective, mainly because the disputing parties can opt out of the process at any time. Moreover, the decisions made in these processes are not automatically enforceable unless they are converted into a court decree.

The challenges that may hamper the full potential of ADR processes in India include the voluntary nature of participation, lack of infrastructure, lack of expertise among mediators, issues with the neutrality of third parties, lack of awareness, and issues with enforcement and

²⁵ *The Indecision in Modification of Awards Under Section 34 and 37 of the Arbitration and Conciliation Act*, SKV Law Offices (last visited Feb. 1, 2026), <https://skvlawoffices.com/the-indecision-in-modification-of-awards-under-section-34-and-37-of-the-arbitration-and-conciliation-act/>.

²⁶ Suruchi Goyal, *Supreme Court: Powers of Court Under Section 37 of Arbitration Act is Strictly Limited to the Grounds Available Under Section 34*, IBC Law (Oct. 4, 2024), <https://ibclaw.in/supreme-court-powers-of-court-under-section-37-of-arbitration-act-is-strictly-limited-to-the-grounds-available-under-section-34/>.

²⁷ Rishab Gupta & Sarthak Wadhwa, *Recourse to Section 34(4) of the Arbitration Act: An Unreasonably Constricted Approach?*, INDIA CORP. L. (Apr. 23, 2024), <https://indiacorplaw.in/2024/04/23/recourse-to-section-344-of-the-arbitration-act-an-unreasonably-constricted-approach/>.

²⁸ Mahesh Dashrath Sugdhare et al., *The Effectiveness of Lok Adalats in Resolving Disputes in India*, in 3 *Proceedings of the International Conference on Interdisciplinary Systems and Engineering Sciences (ICISSET) 1* (2024), <https://iciset.in/Paper2758.pdf>.

compliance in mediation and conciliation cases.

SUGGESTIONS

Italy passed a decree as per the E.U. Directive on Mediation in 2010, mandating pre-litigation mediation in many civil cases. The Italian model, though opted for by fewer people, has shown a significant rate of success for those who resort to it in several cases, such as neighbourhood disputes, property disputes, lease rights, etc. India could adopt such a model and should expand mandatory pre-litigation mediation beyond cases of commercial disputes. This could help reduce the mammoth judicial backlog that Indian courts face.²⁹

Singapore is another example that showcases the success of the ADR mechanism. The Singapore International Arbitration Centre data showed that over 90% of the cases that were instituted before it were resolved within a year. This has become possible due to ADR friendly courts, where the population shows a high level of trust, leading to higher success rates and lower risk.³⁰

In most states in the U.S.A., mandatory mediation is required by courts after filing a case, with strict timelines for resolution. Failure to participate in bad faith may result in costs and adverse sanctions. The Indian laws should define the nature of disputes that can be referred to Alternative Dispute Resolution (ADR), making sure the list is comprehensive and does not include criminality. The laws should also provide strict timelines for pre-trial mediation to avoid being used as a delaying tactic.³¹

Many courts incorporate ADR forums within the district or civil courts, thus removing the issue of additional infrastructure. However, the government needs to provide additional funding to enhance the existing infrastructure of the courts, as the infrastructure of Indian courts is very poor.³²

²⁹ Mohit Mokal, *Pre-litigation Mediation Model in India*, JGU MAPPING ADR (last visited Feb. 1, 2026), <https://jgu.edu.in/mappingADR/pre-litigation-mediation-model-in-india>

³⁰ Statistics, HONG KONG INT'L ARB. CTR., <https://hkiac.org/about-us/statistics/> (last visited Feb. 1, 2026)

³¹ Soumen Mohanty & Piyush Kumar Ray, *From Litigation to Dialogue: The Role of Pre-institution Mediation in a Changing Commercial Dispute Resolution Scenario in India*, INT'L BAR ASS'N (Oct. 29, 2025), <https://www.ibanet.org/from-litigation-to-dialogue-pre-institution-mediation-in-india>.

³² Press Release, Ministry of Law and Justice, *Government Takes Several Initiatives to Improve Legal System*, Press Information Bureau (Feb. 2024), <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2084219®=3&lang=2>

India needs to adopt the best practices of accredited training for mediators and follow international ethics to enhance professionalism, confidentiality, and neutrality. The Indian government needs to launch awareness programs in association with lawyers and students to spread the awareness of Alternative Dispute Resolution (ADR) among the rural population. Moreover, India needs to adopt Online Dispute Resolution (ODR) for cross-border jurisdiction cases and civil cases, enabling the parties to opt for mediation in a cost-effective and timely manner.³³

CONCLUSION

In conclusion, pre-litigation alternative dispute resolution (ADR) is an effective solution to ease the burden on the Indian judiciary and unlock the full potential of ADR mechanisms and ensure speedy justice, which is the aim of ADR. It is imperative that our existing framework be greatly revamped by adopting best practices from international models. The voluntary and non-binding nature of many ADR practices has been shown to limit their effectiveness in realizing their full potential.

It has been seen in the case of Italy and Australia that mandatory pre-litigation mediation in a certain category of disputes has provided better and speedier disposal of justice, and that amicably. The Singapore model of arbitration has provided with immense success in early disposal of cases, building public trust in opting for such mechanisms.

India must hence implement such reforms of expanding mandatory pre-litigation mediation beyond the scope of commercial disputes, provide strict timelines of disposal to prevent delay, accredited mediator training institutes, attaching costs to willful non-participation or revenge litigation, increasing public awareness in rural parts of India, and promoting Online Dispute Resolution (ODR) to improve accessibility and efficiency of justice.

³³ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (Mar. 2023), <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf>