ROLE OF PRE-INSTITUTION MEDIATION IN SETTLING COMMERCIAL DISPUTES VIS-À-VIS THE AVOIDANCE OF DOCKET EXPLOSION

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ABSTRACT

The increasing volume of commercial litigation has contributed significantly to delay in the disposal of cases and the growing burden on the Indian judicial system. Pre-Institution Mediation has emerged as an important mechanism for resolving commercial disputes before they enter the formal process of adjudication. This study examines the role of Pre-Institution Mediation in facilitating early settlement of commercial disputes and in preventing docket explosion. It analyses the statutory and constitutional framework governing Pre-Institution Mediation in India. The study further examines the role of Legal Services Authorities and the principles underlying the mediation process. Judicial interpretation is analysed to understand the mandatory nature of Pre-Institution Mediation and the urgent interim relief exception. The study identifies legal and institutional challenges and proposes measures to strengthen Pre-Institution Mediation as an effective mechanism for speedy, cost-effective and consensual resolution of commercial disputes.

Keywords: Pre-Institution Mediation; Commercial Disputes; Section 12A; Commercial Courts; Mediation; Alternative Dispute Resolution; Docket Explosion; Access to Justice; Commercial Litigation; Dispute Resolution.

1. INTRODUCTION:

The judiciary occupies a fundamental position in the administration of justice and plays an indispensable role in protecting the rights and interests of individuals, businesses and institutions. In India, the increasing number and complexity of disputes have placed considerable pressure on the existing judicial infrastructure. One of the significant challenges confronting modern judicial systems is the problem of delay in the disposal of disputes.

The accumulation of cases within the judicial system results in what is commonly described as **"**docket explosion**"**, it means number of pending cases increases faster than the capacity of courts to dispose of them[1]. Such accumulation not only burdens judges and court personnel but also affects litigants who are compelled to spend considerable time and resources pursuing their claims. Delay in commercial disputes can affect business relationships, investment decisions, contractual performance, cash flow and the overall commercial environment. A highly adversarial litigation process may damage such relationships, whereas mediation can facilitate communication and enable parties to arrive at a mutually acceptable settlement. The consensual nature of mediation also gives parties greater control over the outcome. Instead of surrendering the decision-making process entirely to a court, the parties themselves participate in developing the terms of settlement.

Against this background, the concept of pre-litigation or pre-institution mediation has emerged as an important development in modern dispute-resolution policy. Unlike court-referred mediation, which takes place after litigation has already commenced, pre-litigation mediation attempts to resolve the dispute before the formal institution of a suit. Its principal objective is therefore not merely to settle an existing case but to prevent avoidable disputes from entering the judicial docket in the first place.[2]

This study examines the role of pre-institution mediation in settling commercial disputes vis-à-vis the avoidance of docket explosion, with particular emphasis on the concept of mediation, the statutory framework governing pre-institution mediation, judicial

[1] Law Comm'n of India, Report No. 245, Arrears and Backlog: Creating Additional Judicial (wo)manpower (2014).

[2] UNCITRAL, Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (2018).

interpretation, its effectiveness in resolving commercial disputes, challenges in implementation and its potential to strengthen the overall justice delivery system.

2. **PRE-INSTITUTION MEDIATION AND ITS NEED IN COMMERCIAL DISPUTES:**

Mediation

"Mediation refers to a process in which parties attempt to reach an amicable settlement of their dispute with the assistance of a mediator, who facilitates communication and negotiation between the parties but does not have the authority to impose a settlement upon them".[3]

Pre-Institution Mediation

Pre-Institution Mediation (PIM) refers to a structured process of mediation undertaken before the institution of a commercial suit before a competent court. In India, the statutory foundation for pre-institution mediation in commercial disputes is found in Section 12A of the "Commercial Courts Act, 2015,"[4] which was introduced through "the Commercial Courts (Amendment) Act, 2018".[5] Section 12A provides that

"*a commercial suit which does not contemplate urgent interim relief shall not be instituted unless the plaintiff first exhausts the remedy of pre-institution mediation in the prescribed manner."*[6]

The expression "pre-institution" is significant because the mediation takes place before the dispute enters the formal judicial process. Unlike conventional litigation, where the court becomes the primary forum for adjudication, PIM seeks to create an opportunity for the parties to settle their dispute at the threshold.[7]

Commercial Disputes

The "Commercial Courts Act, 2015" provides a statutory understanding of the expression "commercial dispute." Section 2(1)(c) includes disputes arising out of ordinary

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[3] The Mediation Act, No. 32 of 2023, § 3(h), India Code (2023).
[4] The Commercial Courts Act, 2015, § 12A, No. 4 of 2016, Acts of Parliament, 2016 (India).
[5] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (India).
[6] The Commercial Courts Act, No. 4 of 2016, § 12A, India Code (2015), *amended by* The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, No. 28 of 2018, § 6.
[7] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, rr. 3–9 (India).

transactions of merchants, bankers, financiers and traders, agreements relating to the provision of goods or services, partnership agreements, intellectual property rights, insurance, distribution and licensing agreements, joint venture agreements and other specified commercial relationships.[8]A commercial dispute generally refers to a disagreement arising out of commercial transactions, business relationships or activities undertaken for commercial purposes.

Need for Pre-Institution Mediation in Commercial Disputes

The expansion of domestic and international trade, corporate activities, banking, infrastructure, technology and e-commerce has resulted in an increasing number of commercial relationships and, consequently, commercial disputes.[9] When such disputes are brought before courts, they contribute to the existing judicial workload. The need for an efficient mechanism for resolving commercial disputes therefore became an important consideration behind the establishment of specialised Commercial Courts.

Conventional litigation may involve lengthy pleadings, procedural applications, evidence, hearings, adjournments and appeals. Prolonged litigation can increase legal expenditure and may adversely affect business operations and commercial relationships.The limitations of conventional litigation have encouraged the greater use of Alternative Dispute Resolution mechanisms such as arbitration, mediation, conciliation and negotiation.

The introduction of "Section 12A of the Commercial Courts Act, 2015"[10] represents a significant development because mediation is placed before the institution of the commercial suit for applicable disputes that do not contemplate urgent interim relief.[11] The provision therefore provides an opportunity for parties to resolve their dispute before it enters the judicial system. Successful settlement at this stage not only benefits the parties but also prevents the settled dispute from becoming an additional case on the court's docket.

[8] The Commercial Courts Act, No. 4 of 2016, § 2(1)(c) (India).
[9] Law Comm'n of India, Report No. 253, Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015 (2015).
[10] The Commercial Courts Act, No. 4 of 2016, § 12A (India).
[11] The Commercial Courts Act, No. 4 of 2016, § 12A (India).

3. LEGAL STUDY ON PRE-INSTITUTIONAL MEDIATION IN COMMERCIAL DISPUTES:

3.1 Constitutional Provisions

The Constitution of India does not expressly use the expression "pre-institution mediation". However, the constitutional foundation for mediation can be derived from the broader principles of access to justice, equality, fair procedure and effective dispute resolution.

Fundamental Rights

"*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" [12]

Article 21 does not expressly mention "a right to speedy justice", the Supreme Court has expanded its interpretation to include the requirement that legal procedures must be fair, just and reasonable.[13] Although commercial disputes primarily concern private economic rights, unnecessary delay in their resolution can seriously affect businesses, contractual rights and economic interests. PIM provides an opportunity for early resolution and thereby supports the broader constitutional objective of effective and timely justice.

Directive Principles of State Policy

"*The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*"[14] Article 39A denotes that the "*State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity"*[15].

Although Article 39A does not expressly refer to mediation, its constitutional objective supports the development of alternative mechanisms that make dispute resolution more accessible, economical and effective. Pre-institution mediation provides parties with an

[12] India Const. art. 21.
[13] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).
[14] India Const. art. 39A.
[15] India Const. art. 39A.

opportunity to settle their disputes without immediately undertaking lengthy judicial proceedings.[16]

3.2 **The Commercial Courts Act**

The "Commercial Courts Act, 2015"[17] is the principal legislation governing the adjudication of specified commercial disputes in India.

The Act was enacted with the objective of providing a specialised mechanism for the speedy disposal of commercial disputes.

Section 12A: Pre-Institution Mediation and Settlement

Section 12A (1) provides that "*a commercial suit which does not contemplate any urgent interim relief shall not be instituted unless the plaintiff first exhausts the remedy of pre-institution mediation in accordance with the prescribed procedure*."[18] Therefore, where a commercial dispute falls within the scope of Section 12A and does not involve urgent interim relief, mediation becomes a condition precedent to the institution of the suit.

The mandatory nature of this provision was conclusively established by the Supreme Court in "*Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*"[19] The Court held that Section 12A is mandatory and that a suit instituted in violation of the provision is liable to rejection under Order VII Rule 11 of the Code of Civil Procedure, 1908.[20] The Court also directed that this declaration would operate prospectively from 20 August 2022.

Under Section 12A(2), the Central Government may, by notification, authorise authorities constituted under the "Legal Services Authorities Act, 1987"[21] to conduct pre-institution mediation. This provision establishes the institutional connection between the "Commercial Courts Act" and the legal services framework.[22]

[16] *Salem Advoc. Bar Assn's, T.N. v. Union of India*, (2005) 6 S.C.C. 344 (India).
[17] The Commercial Courts Act, No. 4 of 2016, § 12A (1) (India).
[18] The Commercial Courts Act, No. 4 of 2016, § 12A (1) (India).
[19] *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 S.C.C. 1 (India).
[20] Code Civ. Proc., No. 5 of 1908, O. VII, r. 11, India Code (1908).
[21] The Legal Services Authorities Act, No. 39 of 1987, India Code (1987).
[22] The Commercial Courts Act, No. 4 of 2016, § 12A (2), India Code (2015).

Section 12A (3) requires the authorised mediation authority *to complete the mediation process within three months from the date of the application made by the plaintiff*. This statutory time limit reflects the commercial nature of the disputes and the need for expeditious dispute resolution.[23] The provision further allows the mediation period to be extended for an additional two months with the consent of the parties.

Where the parties successfully resolve their commercial dispute, Section 12A(4) requires the settlement to be reduced into writing and signed by both the parties and the mediator. This requirement gives formal legal recognition to the settlement reached through the mediation process.[24] The written form of settlement also provides certainty concerning the rights and obligations accepted by the parties and reduces the possibility of subsequent disputes regarding the terms of settlement.

One of the most important provisions is Section 12A (5).[25] It provides that a "*settlement reached through pre-institution mediation shall have the same status and effect as an arbitral award on agreed terms"* under Section 30(4) of the "Arbitration and Conciliation Act, 1996."[26]

This provision gives substantial legal force to mediated settlements. Consequently, PIM is not merely an informal negotiation process. A successful settlement produces a legally recognised outcome capable of enforcement in accordance with the applicable law.

The 2018 Amendment also has significance from the perspective of access to justice. Mediation allows parties to attempt settlement without immediately entering the adversarial court process. The process can potentially save time, legal expenses and business resources.

3.3 **The Mediation Act**

Section 5 is the principal provision of the Mediation Act expressly states that "*pre-litigation mediation in commercial disputes of specified value shall be undertaken in accordance with Section 12A of the Commercial Courts Act, 2015 and the rules made thereunder."*[27] Therefore, "the Mediation Act" does not replace Section 12A for specified-

[23] The Commercial Courts Act, No. 4 of 2016, § 12A (3), India Code (2015).
[24] The Commercial Courts Act, No. 4 of 2016, § 12A (4), India Code (2015).
[25] The Commercial Courts Act, No. 4 of 2016, § 12A (5), India Code (2015).
[26] The Arbitration and Conciliation Act, No. 26 of 1996, § 30(4), India Code (1996).
[27] The Mediation Act, 2023, § 5(1) (India).

value commercial disputes. Instead, it recognises and preserves the special statutory regime applicable to such disputes.

Relationship Between Section 5 of the Mediation Act and Section 12A of the Commercial Courts Act

The relationship between the two provisions is fundamental to understanding the present legal framework. Section 5 establishes a general framework for pre-litigation mediation, which is ordinarily voluntary and based on mutual consent. However, the proviso creates a specific exception for commercial disputes of specified value. Such disputes continue to be governed by "Section 12A of the Commercial Courts Act, 2015,"[28] under which pre-institution mediation is mandatory where the suit does not contemplate urgent interim relief.[29] Consequently, the "Mediation Act, 2023" [30]should not be interpreted as making PIM optional in specified-value commercial disputes governed by Section 12A.

Disputes or Matters Not Fit for Mediation

Section 6 provides for disputes or matters that are not considered fit for mediation and refers to matters specified in the First Schedule to the Act.[31] This provision recognises that mediation is not appropriate for every category of dispute.

3.4 **Code of Civil Procedure**

The specific mandatory requirement of PIM in commercial disputes is contained in "Section 12A of the Commercial Courts Act, 2015,"[32] while the CPC becomes particularly relevant when a commercial suit is instituted and when non-compliance with Section 12A has to be addressed by the court.[33]

Settlement of Disputes Outside the Court

"Section 89 of the CPC" is the principal provision dealing with settlement of disputes through alternative dispute-resolution mechanisms. It provides that where the court finds that

[28] The Commercial Courts Act, 2015, § 12A (India).
[29] The Commercial Courts Act, 2015, § 12A (India).
[30] The Mediation Act, 2023 (India).
[31] The Mediation Act, 2023, § 6 (India).
[32]The Commercial Courts Act, 2015, § 12A (India).
[33] Code Civ. Proc. §§ 89, 16 (India) *read with* The Commercial Courts Act, 2015 (India).

elements of settlement exist, it may refer the dispute to arbitration, conciliation, judicial settlement including settlement through Lok Adalat, or mediation.[34]

Section 89, however, operates primarily after a dispute has reached the court, whereas Section 12A of the Commercial Courts Act operates before institution of the commercial suit.

Consequences of Failure to Comply with Procedure

The CPC assumes particular significance in relation to the consequences of failure to comply with Section 12A. Order VII Rule 11 provides circumstances in which a plaint may be rejected. In *Patil Automation*, the Supreme Court held that where Section 12A is mandatory, a suit instituted without exhausting the mandatory pre-institution mediation requirement is liable to rejection of the plaint under Order VII Rule 11 CPC.[35]The judgment therefore creates a direct procedural connection between the "Commercial Courts Act" and the CPC. Section 12A establishes the obligation to undergo PIM, while "Order VII Rule 11"[36] provides the procedural consequence where the statutory requirement has not been satisfied.

This is particularly relevant to commercial litigation because it prevents parties from bypassing the statutory settlement mechanism and immediately burdening the Commercial Court with disputes that could potentially have been resolved through mediation.

3.5 **The Arbitration and Conciliation Act**

The "Arbitration and Conciliation Act, 1996'[37] is the principal Indian legislation governing arbitration and conciliation. Although the Act does not establish the mandatory pre-institution mediation mechanism applicable to commercial disputes under "Section 12A of the Commercial Courts Act, 2015," it is relevant to the broader legal framework of consensual dispute resolution. The relationship between arbitration, conciliation and pre-institution mediation is particularly important in commercial disputes because parties frequently include dispute-resolution clauses providing for negotiation, mediation, conciliation or arbitration before resorting to litigation.

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[34] Code Civ. Proc., 1908, § 89(1) (India); Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd., (2022) 10 SCC 1.
[35] Code Civ. Proc., 1908, Order VII, r. 11 (India).
[36]Code Civ. Proc., 1908, Order VII, r. 11 (India).
[37] The Arbitration and Conciliation Act, 1996 (India).

3.6 **The Commercial Courts (Pre-Institution Mediation and Settlement) Rules**

The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 constitute the principal procedural rules governing pre-institution mediation under “Section 12A of the Commercial Courts Act, 2015.”[38] Rule 2 defines important expressions used in the Rules, including the terms “Act,” “applicant,” “Authority” and “mediator.”[39]

Rule 3 provides the procedure for initiating pre-institution mediation. An applicant who intends to invoke PIM is required to submit the prescribed application to the appropriate Authority.

The application may be made in the prescribed form and accompanied by the required fee and relevant documents.[40] Rule 3 also reflects the statutory requirement that the mediation process should be completed within the prescribed period.

4 DOCKET EXPLOSION AND ROLE OF PRE- INSTITUTION IN PREVENTING DOCKET EXPLOSION:

Docket explosion refers to the continuous and substantial increase in the number of cases instituted before courts, resulting in an excessive judicial workload and difficulty in disposing of cases within a reasonable period. Pre-Institution Mediation provides an opportunity for parties to settle their disputes before filing a commercial suit, thereby preventing disputes capable of settlement from entering the court system.

Successful mediation reduces the number of cases instituted before Commercial Courts and enables judicial resources to be directed towards disputes requiring adjudication. Thus, PIM serves as a preventive mechanism against docket explosion and contributes to a more efficient and speedier commercial justice system.

The procedure for pre-institution mediation (PIM) is primarily governed by “Section 12A of the Commercial Courts Act, 2015”[41] and the “Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018”[42]. The application is submitted to the State Legal

[38] The Commercial Courts Act, 2015, § 12A (India).
[39] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 2 (India).
[40] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 3 (India).
[41] The Commercial Courts Act, 2015, § 12A (India).
[42] Commercial Courts (Pre-Institution Mediation and Settlement) Amendment Rules, 2020 (India).

Services Authority or District Legal Services Authority, as authorised under the statutory framework.[43]

The requirement of providing these particulars enables the Authority to ascertain the nature of the dispute and proceed with the mediation in an organised manner.[44]At the time of filing the application, the applicant is required to pay the prescribed mediation fee. Under Rule 3(1) of the 2018 Rules, the original prescribed fee for initiating PIM was ₹1,000, payable to the Authority by demand draft or online payment.[45]

Upon receipt of the application, the Authority examines the matter having regard to the territorial and pecuniary jurisdiction and the nature of the commercial dispute. Where both parties appear before the Authority and consent to participate in mediation, the Authority assigns the dispute to a mediator and fixes a date for the parties to appear before the mediator.[46]

Once the matter is assigned to the mediator, the mediation is conducted in accordance with Rule 7.[47] Confidentiality is an essential feature of the mediation process. If the parties arrive at a mutually acceptable settlement, the mediator reduces the settlement into writing in Form-4. The settlement agreement is signed by the parties and the mediator.[48]

A signed copy is provided to the parties; another copy is forwarded to the Authority. Section 12A of the Commercial Courts Act gives statutory recognition to settlements reached through PIM, thereby providing legal certainty to the outcome of the mediation.

Where the parties are unable to reach a settlement within the prescribed period, or where the mediator forms the view that settlement is not possible, the mediator submits a Failure Report in Form-5 to the Authority, stating the reasons for failure.[49]

The unsuccessful conclusion of mediation does not prevent the plaintiff from instituting the commercial suit. Thus, PIM operates as an opportunity for settlement before litigation

[43] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 3(1) *read with* Form 1 (India).
[44] National Legal Services Authority, *Pre-Institution Mediation in Commercial Matters*, NALSA, https://nalsa.gov.in (last visited Aug. 24, 2026).
[45] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 3(1) *read with* Form 1 (India).
[46] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 3(7) (India).
[47] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 3(7) (India).
[48] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 7(1)(vii)–(viii) *read with* Form 4 (India).
[49] Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, r. 7(1)(ix) *read with* Form 5(India).

rather than as a substitute for the judicial remedy. Section 12A (3) provides that "*the mediation process must ordinarily be completed within three months from the date of the application.* "With the consent of the parties, the period may be extended by a further two months.[50]

Where mediation fails or is treated as a non-starter, the plaintiff may institute the commercial suit before the competent Commercial Court, subject to fulfilment of the other procedural requirements. The plaintiff can demonstrate exhaustion of the statutory PIM requirement through the appropriate report issued by the Authority.

The Legal Services Authorities constitute an important institutional component of the pre-institution mediation framework for commercial disputes in India. The "Legal Services Authorities Act, 1987" National Legal Services Authority" (NALSA), State "Legal Services Authorities "(SLSAs) and "District Legal Services Authorities" (DLSAs) for promoting access to justice and alternative dispute resolution.

5. CASE LAWS:

Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.[51]

The dispute arose in the context of commercial suits instituted without first exhausting the pre-institution mediation procedure prescribed under Section 12A. The defendants challenged the maintainability of the suits and sought rejection of the plaints under "Order VII Rule 11 CPC" on the ground that the plaintiffs had failed to comply with the statutory requirement of pre-institution mediation.

The judgment establishes three principal propositions: (i) PIM under Section 12A is mandatory for applicable commercial suits; (ii) non-compliance can result in rejection of the plaint under "Order VII Rule 11 CPC;" and (iii) the requirement does not apply where the suit genuinely contemplates urgent interim relief. The judgment therefore gives substantial legal force to PIM as an instrument for early settlement and reduction of commercial court congestion.

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[50] The Commercial Courts Act, 2015, s. 12A (3) (India).

[51] *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

Yamini Manohar v. T.K.D. Keerthi[52]

The case concerned the scope of the urgent interim relief exception under Section 12A (1). The question before the Supreme Court was whether a plaintiff could avoid the mandatory requirement of pre-institution mediation merely by including a prayer for urgent interim relief in the plaint.

The Supreme Court held that the expression "contemplate any urgent interim relief" requires the Court to examine the substance of the case rather than merely the wording of the plaint. The Court made it clear that a plaintiff cannot use a prayer for urgent interim relief as a "disguise or mask" to circumvent the mandatory requirement of Section 12A.

This interpretation protects the legislative objective of Section 12A, namely, encouraging settlement before commercial litigation enters the judicial system. At the same time, the Supreme Court clarified that the Commercial Court is not required to conduct a detailed examination of the merits of the suit merely to determine whether PIM is necessary. The judgment therefore establishes that a plaintiff does not possess an absolute and unfettered right to bypass Section 12A simply by requesting urgent interim relief.

6. IMPLICATIONS, LEGAL GAPS AND CHALLENGES OF PRE-INSTITUTIONAL MEDIATION IN COMMERCIAL DISPUTES:

6.1 Implications

Pre-Institution Mediation has significant implications for the Indian commercial justice system because it seeks to facilitate early settlement of commercial disputes; to reduce the burden on commercial courts; to prevent pocket explosion and necessary litigation; to ensure speedy and efficient resolution of disputes; to reduce litigation costs for commercial parties; to promote party autonomy and voluntary settlement

The other benefits are to preserve continuing commercial and business relationships; to encourage negotiated and consensual dispute resolution; to promote confidentiality in commercial disputes; to improve the efficiency of the commercial justice system; to provide

[52] *Yamini Manohar v. T.K.D. Keerthi*, (2024) 5 SCC 815 (India).

flexible alternative to adversarial litigation; to facilitate access to effective and timely Justicia.[53]

6.2 LEGAL GAPS AND CHALLENGES OF PRE-INSTITUTIONAL MEDIATION IN COMMERCIAL DISPUTES

The legal gaps and challenges are

1. Ambiguity in the Urgent Interim Relief Exception
2. Lack of Uniformity in Institutional Implementation
3. Limited Awareness among Commercial Stakeholders
4. Delay in Commencement of Litigation
5. Enforcement and Interpretation of Settlement Agreements
6. Insufficient Number of Specialised Commercial Mediators
7. Conflict Between Mandatory Participation and Voluntary Settlement
8. Lack of Adequate Data on Settlement Rates
9. Digital and Technological Challenges
10. Need for Greater Coordination Between Laws.

7. SUGGESTIONS

The effectiveness of pre-institution mediation can be enhanced by addressing the existing legal, institutional and practical difficulties. The following measures may strengthen PIM and enable it to contribute more effectively to the speedy settlement of commercial disputes and prevention of docket explosion.

- There is a need of adequate mediation centres, trained administrative staffs and necessary technological facilities should be established at the State and District levels

[53] *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India).

to ensure that PIM is accessible and efficiently administered.

- There is a need of specialised training in areas such as commercial contracts, intellectual property, construction, banking, technology and corporate disputes to mediators; so that complex commercial matters can be handled effectively.

- To create awareness programmes should be conducted for businesses, advocates, entrepreneurs and other commercial stakeholders regarding the advantages, procedure and legal consequences of PIM.

- There is need of single standardised procedure should be followed by mediation authorities across different States and districts

- To secure online mediation facilities should be expanded to enable parties located in different cities or countries to participate conveniently, while maintaining confidentiality, cybersecurity and proper verification of participants.

- The courts should carefully examine claims of urgent interim relief to ensure that the statutory exception under Section 12A is invoked only where genuine urgency exists and is not used merely to avoid the mandatory PIM process.

- There must be regular monitoring, evaluation in collection and publication of data concerning the number of applications, settlements, failed mediations, duration and value of disputes would help evaluate the effectiveness of PIM and identify areas requiring further improvement.

Mandatory participation should not reduce mediation to a mere procedural formality. The success of PIM ultimately depends upon genuine participation, mediator competence, confidentiality, party autonomy and efficient administration.

8. CONCLUSION:

Pre-Institution Mediation has emerged as an important mechanism for the early and consensual resolution of commercial disputes. It provides parties with an opportunity to settle their disputes before commencing litigation and thereby reduces unnecessary burden on

Commercial Courts. The statutory framework under Section 12A of the Commercial Courts Act, 2015 has strengthened the role of PIM in India's commercial justice system.

At the same time, the effectiveness of PIM depends upon proper institutional implementation, trained mediators, awareness among commercial stakeholders and genuine participation by the parties. Effective mediation can prevent suitable disputes from entering the judicial system, thereby reducing the burden on Commercial Courts and contributing to the prevention of docket explosion. Strengthening the existing framework and addressing its practical challenges can enable PIM to become a more effective component of India's commercial justice system.

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