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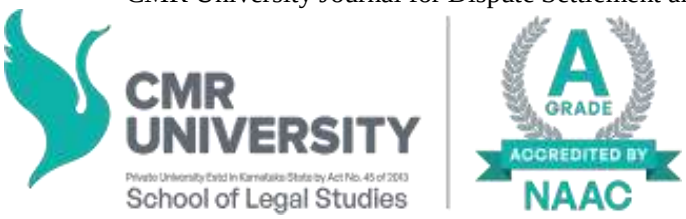

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MANDATORY MEDIATION UNDER SECTION 12A OF THE COMMERCIAL COURTS ACT: BALANCING EFFICIENCY WITH PARTY AUTONOMY

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Abstract

The legal innovation of the Commercial Courts Act of 2015, Section 12A, which provides for pre-institution mediation in cases where no urgent temporary relief is required, is a significant legal innovation. This section was included to ease the growing backlog of cases in business courts. This legal innovation aims to provide quick, cost-effective, and cooperative conflict resolution. To achieve this objective of efficiency and the creation of a culture of mediated settlement, this section provides for pre-litigation mediation. This legal need for mediation, however, brings into question the voluntary nature of mediation and the extent to which this concept of party autonomy can be maintained. This study aims to examine these issues using a comprehensive methodology. This study will examine the legal need for mediation using a detailed study of the legal framework of Section 12A of the Commercial Courts Act of 2015 and the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. This study will also examine judicial interpretation, focusing on the procedural approach. This issue can also be addressed by understanding the concept of balancing the need for compulsory mediation and judicial efficiency by conducting a comparative study of foreign mediation procedures. It also examines the sufficiency of infrastructure, the training of mediators, institutional preparedness, and the potential for the use of technology in pre-institution mediation. It argues that, as long as consent, capacity-building, and procedural protection are prioritized during its implementation, the potential of Section 12A as a tool for conflict resolution is promising. In conclusion, the study establishes that autonomy and efficiency are not mutually exclusive and suggests the application of Section 12A as a basis for promoting accessible,

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sustainable, and participative commercial dispute resolution in India.

Keywords: Mandatory Mediation, Section 12A, Commercial Courts Act, Party Autonomy, Access to Justice

I. Introduction

In order to facilitate the quick resolution of disputes between companies and enhance India's reputation as a business-friendly jurisdiction, the Commercial Courts Act of 2015 was enacted[1]. However, the Indian judiciary struggled with huge backlogs and procedural delays, which undermined the effectiveness of the commercial justice system despite this legislative intervention[2]. The Business Courts (Amendment) Act of 2018, which includes Section 12A requiring the use of pre-institutional mediation in all business disputes unless the parties are seeking any urgent interim relief, has been enacted by the legislature in recognition of the need for change[3]. In order to ease the court's workload and cultivate the practice of peaceful resolution of disputes, this is a major shift in policy in favor of Alternative Dispute Resolution Systems.

In the Indian system of law, ADR consists of arbitration, conciliation, mediation, negotiation, and Lok Adalats, and they are all alternatives to the conventional process of dispute resolution[4]. Amongst the various methods of ADR in the Indian system of law, mediation has become the preferred option in business disputes because it is cost-effective and enables the maintenance of long-term business relationships[5]. In accordance with the guidelines of voluntariness and mutual consent rather than the imposition of the process by the courts of law, mediation provides the parties with power over the process and the result. This is in accordance with the general aim of the process of dispute resolution in modern times, where the aim is to achieve the result with the least amount of hostile conflict. However, the introduction of compulsory mediation under Section 12A has sparked a significant amount of discussion

[1] *The Commercial Courts Act*, No. 4 of 2016, INDIA CODE (2016)
[2] Law Commission of India, *Report No. 253: Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015* (2015)
[3] *The Commercial Courts (Amendment) Act*, No. 28 of 2018, § 7, INDIA CODE (2018)
[4] *06 Chapter 1*, at 1.1 (defining ADR as alternative methods of dispute resolution).
[5] *Id.*, at 1.4.3 (highlighting mediation as a relationship-preserving process)

over the issue of the compatibility of the same with the concept of party autonomy in the process of mediation.

In accordance with this, Section 12A of the Commercial Courts (Pre-Institution Mediation, Settlement, and Conciliation) Rules, 2018, has made it a mandate for parties to undergo mediation before entering a court of law[6]. These are facilitated by Legal Services Authorities. For this purpose, a methodical yet time-bound framework has been laid down. However, it has been a point of contention regarding procedural formalism. As it is a fundamental principle of mediation that informed consent and choice are of utmost importance, it may be argued that a statutory compulsion undermines these very principles. However, it was not the intention of the legislature to ensure that disagreeing parties hold a dialogue.

This conflict has been highlighted in a large part through judicial interpretations. The Supreme Court of India in the case of ***Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. (2022)*** held that the importance of the observance of the provisions of Section 12A must be understood in such a way that "any suit not mediated in accordance with the provisions of Section 12A of the Act is not maintainable."[7] To uphold the autonomy of the parties with procedural discipline, the Court held that "while the parties must participate, the resolution is voluntary." This view of the Court places more emphasis on the fact that the objective of forced mediation is not to coerce the outcome. For example, experiences from countries like Singapore and Italy indicate that voluntariness and mandatory or court-annexed mediation can exist together, provided the process is underpinned by the presence of qualified mediators, procedural safeguards, and the level of public trust[8]. Section 12A is an effort by India to inject the elements of efficiency and autonomy into one system of resolving commercial disputes, inspired by the lessons of these comparative jurisdictions. Accordingly, this research submits that Section 12A holds the potential to become a transformative tool that increases access to justice and efficiency in procedures, while protecting autonomy, provided the implementation is adequate, i.e., with the right level of mediation training, infrastructure, and technology.

[6] *The Commercial Courts (Pre-Institution Mediation and Settlement) Rules*, 2018, rr. 3–8
[7] *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1 (India)
[8] Giuseppe De Palo & Mary Trevor, *Mandatory Mediation: The Italian Experience* (2014); *Singapore Mediation Act*, No. 1 of 2017 (Sing.)

II. Research Questions

The research paper aims to find an answer to the following questions:

1) What is the legislative intent and procedural framework of Section 12A of the Commercial Courts Act, 2015, and how does it aim to institutionalize pre-litigation mediation in India?

2) How have Indian courts interpreted and applied the mandatory nature of Section 12A, and what principles have guided judicial enforcement of pre-institution mediation?

3) Does mandatory mediation under Section 12A compromise the voluntary essence of mediation and the principle of party autonomy in dispute resolution?

4) What lessons can India draw from international models such as Italy, Singapore, and the United Kingdom to harmonize procedural efficiency with party autonomy in mandatory mediation?

III. Research Methodology

The legislative intent, structure, and implications of Section 12A of the Commercial Courts Act, 2015, are critically examined through this study by using a qualitative, doctrinal, and comparative research methodology. This study is mostly based on a doctrinal research method, focusing on how legislation, court decisions, and policy documents on pre-institutional mediation are interpreted. This method enables one to understand the legal foundation of Section 12A and its relationship with the Commercial Courts Amendment Act, 2018, and the Commercial Courts Pre-Institution Mediation and Settlement Rules, 2018. This study, through a critical analysis of legislative debates and court decisions, also involves an analysis of how this provision has evolved as a mechanism for improving efficiency and promoting alternative methods of dispute resolution in India's commercial courts. The comparative approach is also being employed alongside the doctrinal approach for the study of foreign forms of required mediation in countries such as Singapore, Italy, and the UK. These countries provide a variety of approaches to the implementation of mediation within their respective civil justice systems. The comparative approach would also assist in the identification of flexible best practices that would assist India in striking a balance between the two concepts of autonomy and efficiency. It would also assist in understanding how other countries are striking a balance between the mandatory requirement of mediation and the voluntary process of conflict resolution. In order to evaluate India's institutional readiness for effective implementation of Section 12A, a policy-oriented analysis is included in the study. For this purpose, the

study assesses the potential of mediation organizations, the quality of mediator education, the quality of the infrastructure, and the potential for the use of technology through Online Dispute Resolution. The study incorporates both primary and secondary sources of data. For example, statutes, case laws, and

reports are primary sources, whereas academic sources, journals, and professional opinions are considered secondary sources. The study aims to provide a comprehensive assessment of the making, implementation, and implications of Section 12A by combining doctrinal, comparative, and policy perspectives.

IV. Legislative Framework and Policy Rationale

The findings of this study reveal that over time, i.e., over the past few decades, the mechanism of settling business disputes in India has undergone a major change from the traditional mode of adjudication to modern institutionalized forms of settling conflicts in a manner that is effective and peaceful. It is the recognition of the fact that adversarial litigation, which is characterized by delay, costs, and formalism, is not suited for settling complex business disputes in a rapidly globalizing economy that led to the emergence of *Alternative Dispute Resolution (ADR)* in India as a mechanism for settling business conflicts[9]. The *Arbitration and Conciliation Act of 1996,* by incorporating the concept of conciliation and autonomy following the UNCITRAL Model Law, and demonstrating India's commitment to best practices in resolving conflicts, has provided the foundation for further changes to expand the ambit of application of non-adversarial methods of dispute resolution, such as conciliation, mediation, and negotiation, particularly in commercial disputes[10]. The *Commercial Courts Amendment Act, 2018*, by inserting *Section 12A to the Commercial Courts Act, 2015*, was intended to make mediation a prerequisite for litigation, as the importance of mediation as a form of dispute resolution came to be appreciated.

Pre-institution mediation was made compulsory for the parties to undergo before filing the commercial lawsuit, except in cases where immediate interim relief was necessary, through the mandate of Section 12A. The rationale for the legislation for this section was based on the need to resolve the long-standing problem of judicial backlogs, as well as the need to develop the culture of win-win situations for commercial enterprises[11]. Section 12A was operationalized through the promulgation of the *Commercial*

[9] *06 Chapter 1*, at 1.1–1.3
[10] *The Arbitration and Conciliation Act*, No. 26 of 1996, INDIA CODE (1996)
[11] *08 Chapter-2*, at 2.3

Courts (Pre-Institution Mediation and Settlement) Rules, 2018. The relevant provisions of the said rules provided for the filing of an application to the appropriate legal services authority, which will then appoint a mediator to facilitate the dialogue between the parties who desire to file the lawsuit. The said mediation will be completed within three months, but the period will be extendable for another two months if the parties so desire. The settlement arrived at in the mediation process is treated equally to the arbitral award on the agreed conditions, as prescribed by *Section 30(4) of the Arbitration and Conciliation Act, 1996*[12]. Therefore, the proposed pre-litigation mediation framework reflects the legislature's concern for procedural efficiency and corporate convenience by attempting to alter the existing dispute resolution paradigm from litigation-based to negotiation-based. But the introduction of Section 12A has also posed a vital legal and philosophical issue: *does the obligation of mediation undermine its free nature?* Mediation is by its very essence a private process that relies on the willingness of the parties to collaborate and identify areas of agreement[13]. Hence, one might argue that voluntariness is undermined by the obligation to institute mediation proceedings. Nevertheless, the legislative intent was not to impose a burden on the parties to negotiate before litigation but to ensure that the parties attempted to negotiate before litigation. In order to ensure voluntariness, Section 12A imposes an obligation of participation but not approval of a solution. The underlying philosophy is that by bringing parties together and encouraging them to talk to each other, amicable settlements can often be achieved without the need to resort to the law. This approach places mediation as a vital step in contemporary commercial law by acknowledging the pragmatic compromise between the need for judicial efficiency and the need for individual freedom.

The judiciary has been instrumental in the interpretation and enforcement of the intent of Section 12A. In the case of ***Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. (2022),*** the Supreme Court of India upheld the requirement for pre-institution mediation, stating, “Any commercial litigation filed without compliance will be unmaintainable[14].” The Court emphasized, “The legislative intent behind Section 12A was to ensure that the parties will first explore options for peaceful resolution before seeking the aid of the authority of commercial courts.” It was also made clear, however, that the requirement does not extend to situations where the plaintiff seeks immediate interim relief. The legal position on the requirement for pre-institution mediation was settled conclusively in this case, where it was held to be a procedural

[12] *The Arbitration and Conciliation Act*, No. 26 of 1996, S.30(4
[13] *08 Chapter-2*, at 2.6 - 2.8
[14] ibid

requirement, not simply formalistic. This logic has also been followed by high courts across the nation, and the importance of procedural compliance is to be viewed as an opportunity for the speedy resolution of disputes rather than as an impediment to justice. In the case of ***Max India Ltd. v. General Binding Corp.,*** the Delhi High Court highlighted the need to adopt ADR procedures in corporate disputes in 2009 and pointed out the importance of promoting judicial economy and stability in corporate entities[15].

While the enforceability of Section 12A has been boosted by judicial approval, the success of mandated mediation would also depend on the preparedness of institutions and public opinion. The success of this mechanism would depend on the ability of Legal Services Authorities to deal with the rising number of mediation applications. Mediation in India is still in its infancy, and variations in implementation in different states might also impact the quality of results. Ensuring that the mediators are sufficiently equipped with business and legal knowledge to deal with complex business disputes is a major issue of concern. In addition to this, there is a need to enlighten litigants and attorneys about the benefits of mediation, which has often been perceived negatively as a roadblock rather than a significant opportunity for settlement.

The comparative experience of various jurisdictions offers valuable and insightful information regarding the coexistence of voluntariness and forced mediation. To illustrate this point, it may be noted that the Italian Government introduced its Legislative Decree No. 28/2010, which introduced the concept of mandating mediation in civil and commercial disputes[16]. The results of revisions to this legislation, which focused on the accreditation of professional mediators and flexibility of process, have seen a significant improvement in the rate of settlements, notwithstanding initial criticisms of forced participation. The *Singapore Mediation Act of 2017 and the Singapore Mediation Center's court-annexed schemes*, which heavily promote but do not compel parties to engage in mediation with the backing of judicial support and financial sanctions against non-compliance, offer another interesting case scenario[17]. In a similar framework, the *Civil Procedure Rules of 1998 (Part 26)*, which apply to the UK, enable courts to promote the use of mediation and impose financial sanctions on parties who unjustifiably fail to comply with the obligation[18]. Collectively, these models serve to illustrate that compulsion can indeed be an effective

[15] *Max India Ltd. v. General Binding Corp.*, FAO (OS) 193/2009 (Del. HC)
[16] Giuseppe De Palo & Mary Trevor, *Mandatory Mediation: The Italian Experience* (2014)
[17] *Singapore Mediation Act*, No. 1 of 2017 (Sing.)
[18] Civil Procedure Rules, 1998, pt. 26 (U.K.)

means by which efficiency can be achieved without compromising autonomy.

It is, from this perspective, possible to argue that Section 12A can be characterized as having adopted an essentially hybrid form, which draws together aspects of both compulsory initiation and voluntary resolution. On the one hand, it provides for the guarantee of communication between the parties by requiring involvement; on the other hand, it provides for the guarantee of autonomy by requiring the settlement outcome to be elective. Appropriate institutional support, constant mediator training, and the application of technology with the help of Online Dispute Resolution (ODR) tools, which could make mediation more accessible and efficient in terms of time, especially in the case of cross-border disputes, are also a prerequisite for the success of such an approach. The application of such tools in India is in line with global trends in terms of creating more "digital," "user-friendly," and "participatory" models of justice. The broader policy rationale of Section 12A goes beyond the improvement of procedure. It reflects India's commitment to the principles of harmonization of international business practices, access to justice, and ease of business[19]. One of the proactive steps that can be taken to reduce court congestion and increase investors' perceptions of the predictability of the Indian system is the legislative introduction of pre-institutional mediation. It also reflects the state's increased understanding that justice is not limited to adjudication but also to cooperative, faster, less adversarial, and more sustainable forms of resolution. Section 12A establishes a framework that redefines the relationship between law, business, and justice in the modern Indian economy by fusing efficiency with autonomy.

V. Judicial Interpretation and Application

An important aspect of understanding the practical application of the required pre-institution mediation is the judicial interpretation of Section 12A of the Commercial Courts Act of 2015. Such an analysis indicates that the Indian judiciary, particularly the High Courts, has been instrumental in creating exemptions, clarifying the procedure, and ensuring that the legislative policy of promoting mediation does not conflict with the concept of party autonomy. Through such case law, the courts have recognized mediation as an important step in the litigation process aimed at enhancing efficiency and holistically promoting mediation.

[19] *08 Chapter-2*, at 2.11

In the case of ***Ganga Taro Vazirani v. Deepak Raheja (2019),*** the Bombay High Court was one of the first to interpret this section, stating that the introduction of pre-institutional mediation under Section 12A was a purposeful move to integrate ADR into the concept of commercial justice[20]. The judgment further states that mediation was introduced as a "filtering mechanism" to encourage discussion between parties before judicial action was initiated and to avoid futile litigation. The judgment also states that it was important for commercial courts to ensure that no plaint was accepted unless the party showed adherence to the criteria of mediation and that compliance with Section 12A was recognized as an essential prerequisite to filing a complaint. The judgment also confirmed that the intent of the legislation was reformative rather than merely procedural and encouraged businesses to hold talks.

The development of the doctrine on Section 12A has also been greatly impacted by the Delhi High Court. In ***Bolt Technology OU v. Ujoy Technology Pvt. Ltd. (2023),*** the Court stated: "The suit is not maintainable under Order VII, Rule 11 of the Code of Civil Procedure, as no report of mediation or initiation of the same is present[21]. The importance of mandatory pre-institutional mediation cannot be circumvented by filing a lawsuit on the pretext of urgency without a valid reason. Merely stating urgency without providing evidence will not be sufficient to exclude the application of Section 12A, and it must be interpreted in accordance with its objective of promoting settlement before the commencement of litigation." In another case, the Madras High Court upheld the necessary nature of mediation in the case of ***Dhananjay Kumar v. VRV (India) Pvt. Ltd. (2023),*** but it also showed some flexibility in cases where the mistake was due to administrative delays instead of the negligence of the parties[22]. The court stated, "If the intention to mediate was sincere, substantial compliance with Section 12A must be recognized, and formalism must not be allowed to defeat the cause of justice." Similarly, the Calcutta High Court also took a pragmatic approach in the case of ***Ambuja Neotia Holdings Pvt. Ltd. v. MSTC Ltd. (2021),*** where the court allowed the refiling of cases after the conclusion of mediation, stating, "Pre-mature cases must not be dismissed definitively if the parties later comply with the statutory provisions[23]." These cases, therefore, show the commitment of the judiciary to finding the right balance between the statutory provisions and the cause of justice, so that the necessary nature of mediation does not lead to the possibility of procedural injustice.

[20] *Ganga Taro Vazirani v. Deepak Raheja*, 2019 SCC OnLine Bom 110
[21] *Bolt Technology OU v. Ujoy Technology Pvt. Ltd.*, 2023 SCC OnLine Del 9341
[22] *Dhananjay Kumar v. VRV (India) Pvt. Ltd.*, 2023 SCC OnLine Mad 4771
[23] *Ambuja Neotia Holdings Pvt. Ltd. v. MSTC Ltd.*, 2021 SCC OnLine Cal 2378

The confidentiality of the mediation process and the admissibility of the mediation report in any future action are the two problems that the courts have considered. "Any statement, admission, or recommendation made during mediation shall be totally confidential in any legal action brought for a claim falling under *Section 75 of the Arbitration and Conciliation Act, 1996*, as amended by *Rule 9 of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018*[24]." In the case of ***Madhav Trading Co. v. Larsen & Toubro Ltd***., the Delhi High Court held on January 6, 2021, that the mediators must maintain complete secrecy and provide a succinct report indicating whether a settlement has been reached or not[25]. It was also held by the Court that revealing the details of the mediation process during subsequent litigation is not only against the legislative intent but also against ethical standards of mediation. This is in line with the principle of ensuring the importance of confidentiality, even in a mandated setting, to promote free flow of communication and trust, both of which are essential for the success of the mediation process.

Another subject that has been asked is the handling of non-compliance with Section 12A. It has generally been considered a jurisdictional requirement that has significant effects on the maintenance of the suit. In ***SBI General Insurance Co. Ltd. v. Paramount Health Services & Insurance TPA Pvt. Ltd. (2022),*** the Karnataka High Court held that "if mediation is not initiated before filing of the suit, the court would not have jurisdiction to entertain a commercial suit[26]." It was also held by the Court that "this would not be applicable where a plaintiff has sought immediate interim relief or where there are compelling circumstances where it was not practicable to initiate mediation." It was a fine balance of the general principles of substantive justice and legislative compliance by the Court.

In the case of ***M. Suresh Jewellers v. Monarch Gold Trading Co. (2020),*** the Bombay High Court was faced with the problem of the practicality of mediation carried out in front of the Legal Services Authority[27]. The Bombay High Court held that the only way to satisfy the provisions of Section 12A was to have mediation carried out under the supervision of the Legal Services Authority, as mandated in the 2018 Rules. In the pre-litigation stage, this ensures supervision, uniformity, and accountability. In the case

[24] *The Arbitration and Conciliation Act*, No. 26 of 1996, § 75; *Commercial Courts (Pre-Institution Mediation and Settlement) Rules*, 2018, r. 9
[25] *Madhav Trading Co. v. Larsen & Toubro Ltd.*, 2021 SCC OnLine Del 3450
[26] *SBI Gen. Ins. Co. Ltd. v. Paramount Health Servs. & Ins. TPA Pvt. Ltd.*, 2022 SCC OnLine Kar 5045
[27] *M. Suresh Jewellers v. Monarch Gold Trading Co.*, 2020 SCC OnLine Bom 655

of ***Union of India v. Punjab Communication Ltd. (2003),*** the Himachal Pradesh High Court held that sincere efforts for settlement cannot be negated on the grounds of non-compliance with the formalities during the ADR process[28].

In response to the research question, the study finds that judicial reasoning has also highlighted the constitutional and policy considerations of obligatory mediation as a response to the research topic. It has been held that "by providing a less adversarial, more economical, and quicker means of resolution for parties, Section 12A reflects the basic essence of access to justice under Article 39-A of the Indian Constitution[29]." It has been repeatedly held by high courts that mediation is also beneficial from the point of view of economic efficiency from a long-term perspective and business partnerships. Therefore, the legislative framework has ensured that the judicial ideology of India is consistent with international trends of ADR by incorporating a modern shift from adjudicatory confrontation to cooperative problem-solving. This view is also supported by various other jurisdictions' comparative jurisprudence. For instance, the efficacy of mandatory mediation in Italy is proven through the application of the Legislative Decree No. 28/2010[30]. Similarly, the Singapore Mediation Act of 2017 and the Civil Procedure Rules of 1998 in the United Kingdom also promote mediation through cost-based incentives and judicial persuasion, respectively, and prove the point that efficiency and autonomy can go together as long as the institutional framework is robust[31].

The view of coercion to participate, not being coercion to settle, is also proved through the development of Indian jurisprudence, aligning S. 12A of the Act with international best practices through purposive interpretation by the Indian courts. In summary, the judicial interpretation of S12A has given rise to a logical framework that is a compromise between procedural justice and legislative efficiency. Thus, while retaining the voluntary and private nature of the procedure, pre-institution mediation is invariably recognized by the Indian courts as a necessary procedural step to commercial litigation. The Indian courts have elevated mediation from an alternative to an essential component of commercial justice through a purposeful and informed reading of S12A, ensuring the interplay of autonomy, efficiency, and justice. This is also a reflection of the fact that the Indian mediation system is no longer an experimental but an

[28] *Union of India v. Punjab Communication Ltd.*, 2003 (2) Arb LR 604 (HP)
[29] Constitution of India art. 39-A
[30] *Singapore Mediation Act*, No. 1 of 2017 (Sing.); Civil Procedure Rules, 1998, pt. 26 (U.K.)
[31] Giuseppe De Palo & Mary Trevor, *Mandatory Mediation: The Italian Experience* (2014)

institutional framework for long-term conflict resolution and corporate trust.

VI. Comparative and International Insights

The findings indicate that the evolution of mediation as a mechanism for resolving disputes has been a global phenomenon, with all nations striving towards a common goal of achieving efficiency, cost-effectiveness, and fairness in commercial justice systems. The experiences of various countries, such as Italy, Singapore, and the UK, have shown that a well-structured mechanism for mediation can strike a balance between procedural compulsion and voluntariness, along with the development of public trust in the process[32]. These models are relevant for India, especially in the context of enhancing the effectiveness of Section 12A of the Commercial Courts Act, 2015, without compromising on the aspect of voluntariness.

A. Italy: From Resistance to Acceptance of Mandatory Mediation

One of the most outstanding cases of compulsory mediation in the EU is the Italian mediation system. Legislative Decree No. 28/2010, which makes mediation compulsory for certain types of civil and business disputes, such as insurance, banking, tenancy, and medical malpractice claims, was initially introduced[33]. Through intensive discussion with the assistance of experienced mediators, the idea was to reduce the backlog of cases in courts and promote the settlement of disputes at an early stage. The legal community initially reacted fiercely against the new legislation, arguing that it was against the spirit of mediation since it was compulsory. However, the Italian Constitutional Court ruled that the legislation was legal after reevaluating the policy and law[34]. The Italian experience has identified three key aspects of effective implementation: on one hand, procedural design: to avoid the risk of not seizing the opportunity of communication, the decree provides for the obligation of parties to participate in at least one mediation session before filing their claim; on the other hand, professionalism: Italy has established a registry of qualified mediators by its Ministry of Justice, ensuring training and moral criteria; finally, incentives and sanctions: if parties do not want to participate in mediation without a valid reason, they may be subject to procedural sanctions, such as evidentiary presumptions and cost sanctions, with a consequent increase in settlement rates and a positive evolution of public perception of mediation as a

[32] Civil Procedure Rules, 1998, pt. 26 (U.K.)
[33] *08 Chapter-2*, at 2.12
[34] Legislative Decree No. 28 of 2010 (It.)

respectable and successful procedure.

The Italian experience demonstrates the coexistence of voluntariness and the obligation to undergo mediation as long as the compulsion is limited to the process and not the result. It is the obligation of the state to guarantee the impartiality of the process, the transparency of the process, and the competence of the mediator. The quality assurance procedures in support of the process are more significant to the success of the process than the regulatory obligation. This is demonstrated by the Italian experience, which is also applicable to the Indian experience in the context of the voluntariness of Section 12A[35].

B. Singapore: Encouraging Mediation through Judicial and Institutional Support

Another, albeit equally successful, model is Singapore, which focuses more on judicial encouragement than compulsion under legislation. Through its institutionalized institutions, such as the *Singapore Mediation Centre (SMC) and the Singapore International Mediation Centre (SIMC)*, as well as the *Singapore Mediation Act, 2017*, mediation is deeply embedded in the dispute resolution system in Singapore[36]. Singapore focuses more on policy incentives and judicial persuasion than compulsion in the use of mediation. Under the Supreme Court of Judicature Act and the Rules of Court, which allow judges to suggest mediation at any stage of the case, mediation is often referred to. The cooperation between the government, judiciary, and professional mediation bodies is the key to Singapore's success in institutionalizing mediation. The government provides ongoing financial and training support, SMC assures professional accreditation of mediators, and the judiciary monitors compliance with moral codes[37]. The Mediation Act, 2017, bestows mediated settlement agreements with the status of a court order upon their registration, making them directly enforceable[38]. Confidentiality and enforceability are other pluses of the Singaporean model.

The use of incentives and disincentives is a feature of Singapore's approach that is not found anywhere else. Success in mediation can result in reduced costs or accelerated resolution of a case in the courts; courts have the power to make adverse costs orders against parties who unreasonably refuse to mediate.

[35] Italian Constitutional Court, Judgment No. 272/2012 (It.)
[36] *Singapore Mediation Act*, No. 1 of 2017 (Sing.); *Supreme Court of Judicature Act*, Cap. 322 (Sing.)
[37] Singapore Mediation Centre, *Annual Report 2022–23* (2023)
[38] *Singapore Mediation Act*, No. 1 of 2017 (Sing.) S.12

This approach does not compromise voluntariness but has been effective in promoting mediation nonetheless[39]. Compelling institutional trust is the foundation of Singapore's mediation culture; efficiency is achieved through trust in the process rather than compulsion. The Singapore approach highlights the importance of judiciary-led promotion, mediation training for mediators, and enforceability for giving settlements legitimacy for India's institutionalization of pre-litigation mediation under Section 12A[40].

C. United Kingdom: Judicial Encouragement and Cost-Based Enforcement

The UK has a hybrid approach that incorporates both enforcement measures based on cost and judicial promotion. The main piece of legislation in the United Kingdom on mediation is the *Civil Procedure Rules (CPR), 1998*. This is mainly focused on proportionality, fairness, and case management[41]. The courts have supported the theory of mediation, which states that parties who do not engage in mediation without a valid reason suffer financially even if mediation is not compulsory. In the case of ***Halsey v. Milton Keynes General NHS Trust (2004),*** the Court of Appeal supported the theory of mediation by saying, "Compelling parties to mediate who do not want to mediate is against the spirit of mediation; unreasonable refusal to mediate in itself inverts the costs[42]."

The UK's strategy is an ideal example of how compulsion through legislation can be replaced by judicial discretion. In ***Dunnett v. Railtrack plc (2002),*** the Court of Appeal also disallowed the claimant's cost recovery for having irrationally refused mediation and once again followed the norm of at least considering alternative dispute resolution (ADR) before proceeding to trial[43]. The *Overriding Objective clause* of the CPR, which directs courts to manage cases and promote alternative dispute resolution (ADR) to ensure that cases are resolved fairly, effectively, and at a reasonable cost, also formalized this strategy[44]. Soft compulsion is best described as a system encouraging mediation through financial and procedural consequences rather than legislative imposition, and the UK model is a good example of this. It ensures voluntariness through the granting of autonomy and the promotion of a culture of accountability for cooperative dispute resolution. India's evolving mediation policy could learn from the UK's judicial case

[39] *Rules of Court*, O.34A r.4 (Sing.)
[40] *08 Chapter-2*, at 2.14
[41] Civil Procedure Rules, 1998, pt. 26 (U.K.)
[42] *Halsey v. Milton Keynes General NHS Trust*, [2004] 1 WLR 3002 (C.A.)
[43] *Dunnett v. Railtrack plc*, [2002] 1 WLR 2434 (C.A.)
[44] Civil Procedure Rules, 1998, pt. 1.1 (U.K.)

management, accreditation of mediators through the Civil Mediation Council, and the norms of confidentiality[45].

D. Comparative Evaluation: Efficiency and Autonomy in Harmony

There are similarities and differences between Italy, Singapore, and the UK, all of which are related to the balance between party autonomy and procedural coercion. Legislative compulsion is the model followed by Italy, where legal requirements and penalties are used for procedural discipline. The Singaporean model, based on voluntary participation through institutional confidence, is one of judicial encouragement. The UK model, based on discretionary practice and cost-related disincentives for irrational refusal, is one of gentle compulsion[46]. Despite all these structural differences, all three models are based on the pillars of court supervision, enforcement of decisions, and quality assurance of mediation services. These models demonstrate that the effectiveness of forced mediation in the context of Section 12A in India is more dependent on the execution of the procedure rather than the element of coercion. The need for the mediator to remain credible is also linked to the need for the mediator to be impartial, competent, and confidential[47]. In addition, openness, accessibility, and effective oversight need to be ensured in the context of the development of public confidence in mediation organizations. A comparative analysis of the Singaporean digital mediation programs and the adoption of remote mediation in Italy in the context of the COVID-19 pandemic reveals the potential for the integration of technology through Online Dispute Resolution platforms[48].

E. Policy Lessons for India

It can be noted that the developing mediation strategy in India can be clearly guided by lessons learned from other jurisdictions. First, the mediator must become a professional. The establishment of a national registry of qualified mediators increases trust, as seen in Singapore and Italy. Second, there is a need to enhance judicial cooperation. The Indian business courts should emulate the active case management strategy, as seen in the UK, whereby judges often encourage alternative dispute resolution (ADR) and

[45] Civil Mediation Council, *Code of Practice for Civil and Commercial Mediation* (2020)
[46] *09 List of Cases*, at xvii–xviii
[47] *Id.* at xx
[48] *08 Chapter-2*, at 2.18

monitor compliance[49]. Third, there is a need for clear legislative provisions that enhance the enforcement and finality of mediated agreements. This can be achieved by extending the enforcement mechanism under *Section 30(4) of the Arbitration and Conciliation Act*.

Finally, in conclusion, it is recommended that India should focus on building trust in mediation with the assistance of technology, education, and awareness. A major step in the direction of developing an overarching institutional framework is the adoption of the Mediation Bill, 2023, which seeks to formalize the process of mediation[50]. In order to ensure that Section 12A is not just a procedural requirement but becomes a substantive procedure by incorporating the principles of efficiency, neutrality, and accessibility, comparative approaches should be utilized. The final objective of the policy should be to create an environment in which mediation is the preferred option for resolving commercial disputes rather than imposing a settlement[51].

VII. Challenges and the Way Forward

There are several problems with the structure of *Section 12A of the Commercial Courts Act of 2015* that hinder its potential to be a successful model of alternative dispute resolution. The conclusions of the study indicate a lack of infrastructure. Many of the District and State Legal Service Authorities, who are responsible for pre-institution mediation, are overwhelmed and underfunded, without digital capabilities to effectively manage cases. There has also been a lack of development of mediation centers around the country, which has hindered the resolution of disputes by causing a delay in the process. The lack of knowledge and cultural acceptability of mediation among litigants, solicitors, and businesses is also a related issue. Mediation is not perceived as a legitimate legal option but as a secondary or informal procedure due to insufficient coverage in legal education and a lack of support from professional bodies. The revolutionary character of mediation cannot be fulfilled without sensitization and integration into professional education.

Systemic issues also exist due to the impartiality and competence of mediators. In many countries, mediation is conducted by people who are not specifically trained in the various aspects of negotiation

[49] Law Commission of India, *Report No. 279: Mediation: The Future of ADR in India* (2021)
[50] *The Mediation Bill*, No. 19 of 2023, India Code (2023)
[51] *08 Chapter-2*, at 2.19

skills and business law. This impacts the quality of communication and the trust of the parties to the process. Trained mediators and continuous review of their competence, as well as transparent selection methods, greatly boost confidence, as seen in Singapore and Italy's best practices. As such, India needs to develop a national accreditation body to ensure adherence to ethical codes and standardized training.

Another field of reform is technology integration. Such logistical problems can be minimized through the use of Online Dispute Resolution (ODR) platforms, particularly for high-stakes disputes. Indeed, the COVID-19 pandemic has accelerated the use of digital mediation around the world, showing that "if security is adequate, technology can increase accessibility, reduce costs, and ensure confidentiality. India's model will be consistent with global best practices if its implementation of hybrid and online mediation under Section 12A is bolstered by online filing, virtual proceedings, and artificial intelligence-powered scheduling.

Lastly, with the aim of harmonizing the regulations, institutional frameworks, and process norms across jurisdictions, a National Mediation Policy will be required. Currently, various legal laws and administrative procedures govern mediation. In addition to fostering research and data collection towards continuous policy improvement, a unified policy under the Mediation Bill, 2023, may institutionalize key policy tenets of confidentiality, voluntariness, neutrality, and enforceability.

VIII. Balancing Efficiency with Party Autonomy

The major problem with Section 12A is striking the right balance between the voluntary nature of mediation and the need for efficiency through compulsory participation[52]. The spirit of cooperation, which is very important in mediation, may also be compromised through forced participation, even though it will ensure orderliness in procedure and avoid unnecessary litigation. Efficiency and autonomy can exist side by side if the system ensures elements such as consent, justice, and impartiality, as proved through comparative and judicial experiences. The setting up of flexible time scales and opting out, without undermining the principle of choice, but without inducing unnecessary delays, is critical for the success of Section 12A. The use of coercion can be avoided without undermining the integrity of the mediation process through the option for the parties to opt out if they have been genuinely involved, coupled with

[52] *09 List of Cases*, at xxiii

the declaration of reasons for opting out[53]. Similarly, the provision for the mediator to extend the three months, agreed to by both parties, will ensure flexibility without compromising the efficacy of the mediation process.

The emphasis should therefore be on ensuring accountability and accreditation of the mediator. This could be achieved by developing a centralized structure for accreditation, perhaps through the Mediation Council of India, maintaining a register of mediators, and regulating standards of professionals. Additionally, awareness campaigns by law schools, chambers of commerce, and bar councils could make mediation a norm for dispute resolution rather than a necessity of procedure[54]. Our analysis shows that trust-based models, rather than prescriptive models, are effective in achieving a balance between efficiency and autonomy. The importance of participation becomes relevant when mediated settlement is perceived by disputing parties as a serious possibility rather than a procedural mandate[55]. Therefore, Section 12A must be revised from being a mandatory procedural mandate to a participatory model, where efficiency is derived from cooperation rather than coercion. The future of commercial dispute resolution in India lies in achieving voluntariness through structured efficiency, not only achieving speed but also achieving justice through a consensual, fair, and sustainable model.

IX. Conclusion

According to the answer to the research question in the study, "Section 12A of the Commercial Courts Act, 2015 is a major step forward in the institutionalization of mediation as a fundamental part of commercial justice in India. Organized and cooperative pre-litigation procedures represent a positive attempt to broker a compromise between the need for court efficiency and the need for party autonomy. The research demonstrates that success lies in the maintenance of voluntariness, neutrality, and consent, even in the presence of necessary involvement to ensure discipline and reduce pendency. Section 12A of the Act has the potential to develop as a sustainable model of participatory conflict resolution in the context of effectiveness, equity, and access to justice in the commercial context in India."

[53] *08 Chapter-2*, at 2.21
[54] Legislative Decree No. 28 of 2010 (It.) art. 5
[55] Ministry of Law and Justice, *Draft National Mediation Policy Consultation Paper* (2023)